



BIDS AND AWARDS COMMITTEE (BAC)

RESOLUTION NO. 2012-012
Series of 2012

**DECLARING FORFEITURE OF THE BID SECURITY AND DISQUALIFYING
ISLA LIPANA & CO. IN JOINT VENTURE WITH LAHMEYER IDP CONSULT, INC.
FOR THE AWARD OF CONTRACT FOR THE PROCUREMENT OF THE
2012 RATE REBASING CONSULTANCY SERVICES
UNDER CONTRACT NO. RO-CS2012-001**

WHEREAS, on 03 April 2012, the MWSS Board of Trustees (BOT) issued Resolution No. 2012-038 approving the Procurement of the 2012 Rate Rebasing Consultancy Services under Contract No. RO-CS2012-001 with an Approved Budget for the Contract (ABC) of Philippine Pesos Sixty One Million Eight Hundred Sixty Thousand Six Hundred (Php 61,860,600.00), Terms of Reference, Shortlisting and Technical Proposal Evaluation Criteria;

WHEREAS, on 14 June 2012, the BOT in its Resolution No. 2012-074 declared a 2nd failure of bidding, thus, authorizing the MWSS Regulatory Office Bids and Awards Committee (RO-BAC) to adopt a Negotiated Method of Procurement, to adopt the revised Terms of Reference (TOR) and Technical Proposal Evaluation Criteria (TPEC);

WHEREAS, on 16 June 2012, the RO-BAC posted the Invitation for Negotiated Procurement for the 2012 Rate Rebasing Consultancy Services in the website of the Philippine Government Electronic Procurement System (PhilGEPS);

WHEREAS, on 26 June 2012, the RO-BAC held a pre-bid conference attended by the four (4) pre-qualified bidders, namely:

1. Isla Lipana & Co. (ILC)
2. Reyes Tacandong & Co.
3. Angel Lazaro & Associates International
4. Punongbayan & Araullo

WHEREAS, on 05 July 2012, the RO-BAC conducted a debriefing on the technical results of the 2nd bidding for pre-qualified bidders;

WHEREAS, on 23 July 2012, the deadline for submission of the bid, all four (4) pre-qualified bidders submitted on time their respective eligibility documents and technical proposals;

WHEREAS, on the same date, the schedule set for the opening of bids, only the representative of ILC remained after the submission to witness the opening. It was then decided by the RO-BAC to re-schedule the opening to 25 July 2012 and to inform the other bidders accordingly;

WHEREAS, on 25 July 2012, the RO-BAC opened the eligibility documents and technical proposals and witnessed by representatives from the pre-qualified bidders;

WHEREAS, on 06 August 2012, the RO-BAC deliberated on the Technical Evaluation Report submitted by the TWG under the negotiated procurement method applying the Board-approved Technical Evaluation Criteria, where a technical score of at least 70 points should be earned in order to qualify by using the Quality-Based Evaluation Procedure as provided for Item 24.1,

Section III Bid data Sheet, page 32 of the Bidding Documents consistent with Section 33.2.1(a) of RA 9184, otherwise known as the Government Procurement Act and its Revised Implementing Rules and Regulations;

WHEREAS, on 28 August 2012, the RO-BAC issued Resolution No. 2012-011 recommending to the MWSS Board of Trustees the declaration of Isla Lipana & Co. in joint venture with Lahmeyer IDP Consult, Inc. (ILC/LICI) as the bidder with the Highest Rated Bid (HRB);

WHEREAS, on 28 August 2012, the RO-BAC received Board Resolution No. 2012-110 dated 16 August 2012 approving and confirming RO-BAC Resolution No. 2012-011 and declaring ILC/LICI as the eligible firm with the Highest Rated Bid (HRB). The Board likewise authorized the RO BAC to invite ILC/LICI for the opening of its Financial proposal and to conduct negotiations as provided by pertinent provisions of RA 9184;

WHEREAS, on 28 August 2012, the RO-BAC sent a letter through facsimile to ILC/LICI informing them that it is the firm declared as HRB and invited said firm for the opening of their financial proposal and negotiation on 30 August 2012. Likewise, said firm was to submit requirements for post-qualification, pursuant to Section 34.2 of the revised IRR for R.A. 9184;

WHEREAS, on 29 August 2012, the said letter was officially delivered to ILC and duly received by the said firm;

WHEREAS, also on 29 August 2012, ILC sent a letter through facsimile to RO-BAC where it stated that the 28 August 2012 letter of RO-BAC was officially received on the 29th. In the same letter, ILC requested to reschedule the opening of the financial proposal and negotiation on September 4 or 5, 2012 citing therein the following reasons: First, the firm needs more time to complete the documents required to be submitted and second, the people who should attend the opening of financial proposal and negotiation are out of the country and will be back only on 04 September 2012;

WHEREAS, on 30 August 2012, the RO-BAC officially received the said letter of ILC;

WHEREAS, on 30 August 2012, the RO-BAC wrote ILC and sent the same through facsimile informing them that their request to reschedule the opening of the Financial Proposal and negotiation to 04 September 2012 was granted. Further, the RO-BAC reminded ILC that the Tax Clearance, Latest Income and Business Tax Returns, and Certificate of PhilGEPS Registration should be submitted on 01 September 2012 pursuant to Rule X, section 34.2 of the Implementing Rules and Regulations of R.A. 9184;

WHEREAS, on 31 August 2012, ILC officially received the 30 August 2012 letter of RO-BAC;

WHEREAS, also on 31 August 2012, the RO-BAC received another request from ILC for the extension of the deadline for the submission of documents requested pursuant to Section 34.2 of the revised IRR for RA 9184 to 04 September 2012. Upon verbal communication by RO-BAC Secretariat with ILC Staff, the firm requested to disregard the above-said letter because they will comply with the submission of the required documents of 03 September 2012, the deadline of 01 September 2012, being a Saturday;

WHEREAS, on 03 September 2012, ILC/LICI submitted the documents requested. Upon examination of the said documents, it was found out that the Tax Clearance Certificate of LICI was not included. The submission instead included a Verification Slip from the Bureau of Internal Revenue (BIR) for LICI;

WHEREAS, on 04 September 2012, upon discussion by the RO-BAC of the submission of a Verification Slip instead of a Tax Clearance Certificate, the scheduled opening of the financial proposal and negotiation was postponed, subject to verification of whether the document submitted (verification slip) constitutes compliance with Section 34.2 of the revised IRR for RA

9184. Since representatives of ILC were already in the RO premises at that time purportedly for the negotiation and opening of the financial proposal, they were informed of the RO-BAC decision immediately;

WHEREAS, also on 04 September 2012, the RO-BAC received a letter from ILC/LICI requesting the extension of another ten (10) days for the submission of the Tax Clearance Certificate of LICI;

WHEREAS, also on the said date, the RO-BAC verified with the BIR the verification slip submitted by LICI and the Tax Clearance allegedly issued by them to ILC. The BIR confirmed that the Tax Clearance allegedly issued to ILC had matched with the records maintained by the Task Force on Tax Clearance for Bidding Purposes;

WHEREAS, on 06 September 2012, ILC submitted with the RO-BAC the Tax Clearance of LICI which is valid for one (1) month or from September 5, 2012 to October 4, 2012;

WHEREAS, 06 September 2012, per BOT actions of the same date, the MWSS BOT approved the request of ILC for extension of time to submit documents subject to the RO-BAC securing a reply from the GPPB;

WHEREAS, on 11 September 2012, ILC submitted with the RO-BAC the Tax Clearance of LICI which is valid for six (6) months or from September 7, 2012 to March 6, 2013;

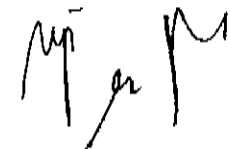
WHEREAS, on 12 September 2012, the RO-BAC submitted a Memorandum to the Board Committee on Governance clarifying therein issues arising from the Board Actions dated 06 September 2012 wherein the Committee instructed the RO-BAC to submit a memorandum on the matter containing a comprehensive report on the events/circumstances that transpired and recommending to the BOT appropriate actions on the issues as well as succeeding procedures to be adopted. The Committee was of the view that the "relaxation or sticking to the unextendible 3-day period for submission of documents is a matter for the BAC to resolve;"

WHEREAS, on the same date, the RO-BAC extensively discussed the issue/concern and the following pertinent documents/ provisions of law:

1. Item 24.1, Section III Bid Data Sheet of the Bidding Documents

"The evaluation procedure is Quality Based Evaluation/Selection (QBE/QBS). The following processes for the opening and evaluation of bids shall be adopted:

- a. A two-stage procedure shall be adopted whereby each Consultant shall be required to submit his technical and financial proposals simultaneously in separate sealed envelopes.*
- b. After receipts of bids, the technical proposals shall first be opened and evaluated, in accordance with ITB Clause 24.2. The BAC shall rank the consultants in descending order based on the numerical ratings of their technical proposals and identify the Highest Rated Bid: Provided, however, that the Highest Rated Bid shall pass the minimum score indicated therein.*
- c. The Head of the Procuring Entity shall approve and disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation from the BAC.*
- d. After approval by the Head of the Procuring Entity of the Highest Rated Bid, its financial proposal shall then be opened. The BAC shall, within three (3) calendar days, notify and invite the consultant with the Highest Rated Bid for the opening of financial proposal for the purpose of conducting negotiations with the said*

X 

consultant. In the letter of notification, the BAC shall inform the consultant of the issues in the technical proposal the BAC may wish to clarify during negotiations.

- e. Negotiations shall be in accordance with ITB Clause 26, provided that the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the ABC stated in ITB Clause 11.7."

2. Item 27.2, Section II Instructions to Bidders of the Bidding Documents

"Within a non-extendible period of three (3) calendar days from receipt by the Consultant of the notice from the BAC that it is the HRB, the Consultant shall submit the following documentary requirements:

- a. Tax clearance per Executive Order 398, Series of 2005;
- b. Latest income and business tax returns in the form specified in the BDS;
- c. Certificate of PhilGEPS Registration; and
- d. Other appropriate licenses and permits required by law and stated in the BDS.

Failure of the Consultant declared as HRB to duly submit the requirements under this Clause or a finding against the veracity of such, shall be ground for forfeiture of the bid security and disqualification of the Consultant for award."

3. Section 34.2 of the Revised IRR for RA 9184

"Within three (3) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Bid or Highest Rated Bid, the bidder shall submit the following documentary requirements to the BAC:


- a. Tax clearance
- b. Latest income and business tax returns;
- c. Certificate of PhilGEPS Registration; and
- d. Other appropriate licenses and permits required by law and stated in the Bidding Documents

Failure to submit the above requirements on time or a finding against the veracity of such shall be ground for the forfeiture of the bid security and disqualify the bidder for award."


WHEREAS, it is the RO-BAC's decision that the three (3) days within which to submit the required documents is on 01 September 2012 which falls on a Saturday, thus, the next business day or 03 September 2012 became the due date of submission, without any extension being granted;

NOW THEREFORE, for and in consideration of the foregoing premises, the RO-BAC hereby **RESOLVES**, as it is hereby **RESOLVED** pursuant to Item 27.2, Section II Instructions to Bidders of the Bidding Documents and Section 34.2 of the Revised IRR for RA 9184, to declare Isla Lipana & Co. in Joint Venture with Lahmeyer IDP Consult, Inc. **DISQUALIFIED** for award and its bid security amounting to One Million Two Hundred Thirty Seven Thousand Two Hundred Twelve Pesos (P1,237,212.00) is **FORFEITED**.


Adopted this 12th day of September 2012.



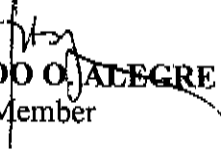
RANDOLPH Q. MARCIAL
Acting Chairman



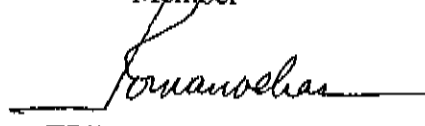
MYLENE JOY S. PARRÁS
Vice-Chairman



GUILLERMO O. MENDOZA, JR.
Member



ROSENDO O. ALEGRE
Member



ELIAS R. ROMANO
Member/End-User