



Republika ng Pilipinas
KAGAWARAN NG PAGAWAIN AT LANSANGANG PAMBAYAN
TANGGAPAN NG KALIHIM
 Maynila

*To PAC Chairman
 For your immediate
 Action*

New Paragraph

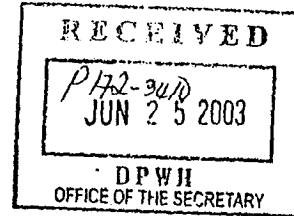
23 June 2003

MEMORANDUM

FOR : The Secretary
 This Department

FROM : The Investigation Committee

SUBJECT : **REPORT ON THE INVESTIGATION OF
 ALLEGED COLLUSION IN THE BID OF CW-RU-
 1.4B AND CW-RU-1.6**



In compliance with the Memorandum of the Secretary, dated June 9, 2003, copy attached, the Committee hereby submits this Report, which contains its findings and conclusions in the investigation.

During the period from June 9 to 20, 2003, the Committee undertook the following activities, namely:

1. Conducted thorough examination of the bids of all seven and five bidders in CW-RU-1.4B and CW-RU-1.6, respectively;
2. Required the two(2) lowest bidders in CW-RU-1.4B namely, China Roads and Bridge Corporation and China International Waters and Electric Corp. as well as the two lowest bidders for CW-RU-1.6 namely, E.C. de Luna Construction/China State Construction (JV) and China Roads and Bridge Corporation, to submit their reasons, explanations and justifications for their bid prices which the Bank perceived to have substantial variances from those of the ABC, and which the Committee evaluated;
3. Reviewed and studied the Bid Evaluation Reports on those two contract packages and the pertinent comments and findings of the Bank.

OFFICE OF THE SECRETARY
 DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

6/25/03

FINDINGS:

1. The documents submitted by all bidders were subjected to detailed investigation for possible sign or indication that could give rise to suspicion of any collusion among the bidders. Special attention was given to the unit cost analyses submitted.

Following are observations based on our investigation:

- a) Three out of the seven bidders for CW-RU-1.4B submitted bid security in the form of Letter of Credit while the rest were in the form of Bank Guarantee. In CW-RU-1.6, four out of five bidders submitted Bank Guarantee while E.C. de Luna Const./China State Const. submitted a Letter of Credit. The bid securities were issued by different Banks.
 - b) The bidders' unit cost analyses differed from one another. There were substantial variances in the unit prices for many items of work. No definite pattern was observed in the computation and the unit prices did not show unusual coincidences or follow a designed pattern.
2. The investigation zeroed in on the unit cost analyses of the lowest evaluated bids for the two contract packages for the purpose of determining possible reasons and factors that influenced the high prices resulting in high variances against the ABC. The bids of the other bidders, which were definitely higher, were assumed to have generally similar reasons. Please refer to the detailed analysis of the bid of China Roads and Bridge Corporation for CW-RU-1.4B in Annex A and the detailed analysis of the bid of E.C. de Luna Construction/China State Construction (JV) for CW-RU-1.6 attached in Annex B.
 3. As part of the investigation, the Committee summoned the Authorized Representatives of the two lowest bidders for the two contract packages to answer questions related to the bidding. They were also requested to submit in writing reasons, explanations, and justifications for their high bids. All those invited graciously responded to the request and their explanations are attached as Annexes C, D, E and F.

CONCLUSIONS:

1. The bid prices in the bids reviewed and evaluated by the Committee are generally higher than those in the ABC although some prices are slightly lower than those in the former.

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2. Nevertheless, the bidders offered plausible explanations or justifications for the prices, which have substantial variances from the ABC.
 3. The Bank's perceived suspicion of collusion arising exclusively from the high prices could not be established without collateral or extrinsic proof.
 4. Declaring the existence of collusion in these biddings merely because of the comparatively high prices would likewise cast doubt on the integrity of the previous biddings where the winning bids exceeded the ABC by 25% or more. Besides, the lending agency does not allow negotiation for the lowering of the bids of the contractors.
 5. Since suspicion of collusion by the Bank, as noted, is very hard to prove, corollarily, there are neither bidders nor Department officials who can be said to have participated therein.

RECOMMENDATIONS:

In view of the foregoing reasons, we recommend that the following actions be taken, to wit:

1. Declare failure of bidding for CW-RU-1.4B

CW-RU-1.4B is located in between two other projects along Surigao Davao Coastal Road, namely CW-RU-1.4A and CW-RU-1.4C, which were also bid out almost at the same time. In fact, these three contract packages were bid out under the "slice and package" method. It has been found out that the lowest evaluated bid for CW-RU-1.4A had a variance of (-)0.71% from the ABC and the lowest evaluated bid for CW-RU-1.4C had a variance of (-)4.21% (the second lowest evaluated bid had a variance of (+)5.37%).

In view thereof, we came to the conclusion that the lowest bid for this project submitted by China Roads and Bridge Corp. with a variance of (+)27.83% from the ABC is exceptionally high compared to the lowest bids for the adjacent projects.

2. Sustain the award of CW-RU-1.6 to the lowest evaluated bid.

The lowest evaluated bid of E.C. de Luna Const./China State Const. (JV) is 25.47% above ABC and has almost the same variance as the bid of China Roads and Bridge Corp. for CW-

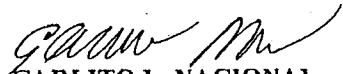
RU-1.4B. Unlike CW-RU-1.4B, this contract package has no adjacent projects with which a comparison could be drawn.


CW-RU-1.6 is composed of two road sections 150 kilometers apart which need to be implemented simultaneously according to the requirements of the contract. These factors demand more resources from the contractor in terms of the mobilization of additional sets of equipment and manpower, increase in the cost of transporting materials, and increase in the supervision cost. Furthermore, one road section traverses through a protected area (park) and with stringent restrictions affecting the contractor's work. These factors present in this project, could have prompted the joint venture to allow provisions that eventually increased their bid prices.

The variance of the lowest evaluated bid is high but there were other projects under NRIMP, as well as those under different loan agencies like, JBIC and ADB, that were awarded to bids at more than 25% above the Government Estimate. Moreover, there is no guideline under the WB that allows bracketing or imposition of ceiling on prices. It is also a fact that these loan agencies expressed strong objection to DPWH Department Order No. 167 (Series of 2002) imposing a 15% over ABC ceiling on bid prices.

Respectfully Submitted:


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