

NPM No. 076-2016

15 November 2016

SULTAN KUDARAT WATER DISTRICT (SKWD)
Cor. Bonifacio St. and Quirino Ave.
Tacurong City

Re: Role of Observers

Dear Madam/Sir:

This refers to your electronic mail (e-mail) inquiring whether it is necessary for the procuring entity to provide procurement observers with a copy of the bidding documents and entertain their questions/opinions/comments during the procurement activities.

It is represented that SKWD provides its observers copies of the bidding documents to promote transparency in their bidding process. However, in providing copies of the bidding documents, SKWD's procurement activity is oftentimes interrupted by the comments, questions and reactions from the observers, affecting the perception and judgment of its Bids and Awards Committee (BAC) during bid evaluation and/or eligibility check. Thus, this request for opinion.

Rights of Procurement Observers

Please be informed that among the rights of an Observer under Section 13.5 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 is to be allowed access to the following documents free of charge upon their request: (a) minutes of BAC meetings; (b) abstract of Bids; (c) post-qualification summary report; (d) APP and related PPMP; and (e) opened proposals, subject to the signing of a Confidentiality Agreement with the concerned Procuring Entity in accordance with the form prescribed by the GPPB.¹ It bears stressing that alongside right to access these documents, is the concomitant and resultant right of Observers, based on the principle of transparency and accountability, to ask valid, reasonable and relevant questions based on the documents and their own observation in relation to the procurement law and associated rules.

The right of the Observer to review the aforementioned documents goes with its responsibility to prepare a Report on the observations made during the procurement activities conducted by the Bids and Awards Committee. The Report shall indicate an assessment on the extent of the BAC's compliance with the provisions of the IRR and shall likewise include an evaluation of the areas of improvement in the BAC's proceedings.² In case the Observers

¹ Confidentiality Agreement based on the 2014 Procurement Observer's Guide.

² Section 13.4 (a) of the revised IRR of RA 9184.

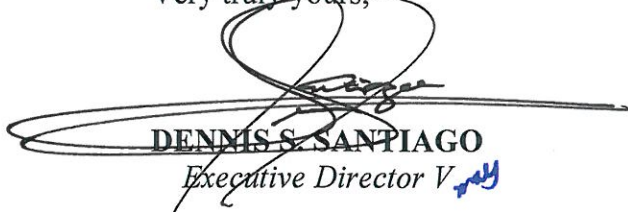
fail to submit their respective Reports, it is understood that the bidding activity conducted by the BAC followed the correct procedure.³

Summary

In sum, it is our view that to maintain transparency and integrity, Observers may take an active part during the bidding process by raising valid, reasonable and relevant questions based on the documents provided by the BAC and its observations in relation to the procurement law and associated rules. The Observer should also prepare a Report on its observations during the procurement activities conducted by the BAC, it is for this reason that procuring entities provide observers access to documents and entertain their questions. The BAC however, having full authority over the conduct of the procurement activities, is not prohibited from instituting order in its proceedings, and to regulate the manner and method of entertaining questions from the Observers, taking into consideration the principles of transparency, accountability and efficiency.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

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³ Section 13.4 (b), *Ibid.*