



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 18-2012

2 February 2012

HON. CONCHITA CARPIO MORALES

Ombudsman

OFFICE OF THE OMBUDSMAN

Ombudsman Bldg., Agham Road, Government
North Triangle, Diliman, Quezon City

Re: Validity of Bid Security After Issuance of Notice of Award

Dear Ombudsman Carpio Morales:

We respond to your letter dated 19 January 2012 requesting for clarification whether the winning bidder's submission of performance security prior to the lapse of the bid security and within the three-month reglementary period provided in Section 38.1 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, under the situation where the Notice of Award (NOA) was timely issued, but the execution of the corresponding contract and the issuance of the Notice to Proceed were deferred beyond said period, may be considered compliant with the procurement rules.

As represented, the Joint Venture (JV) of Filipinas (Prefab Building) Systems, Inc. and F.F. Cruz & Co., Inc. was the winning bidder in the construction of the Ombudsman Annex Building. The JV's bid was secured by a bid security valid until 23 June 2011 and pursuant to the issuance of the NOA in favor of the JV on 4 March 2011, the performance security was posted by the JV on 11 March 2011.

Based on Non-Policy Matter (NPM) 10-2012¹, which we issued on a related issue, the Office of the Ombudsman surmised that there are two conditions in case the procuring entity opts to award a contract even beyond the three-month period, *i.e.*, the failure/delay must be due to justifiable causes and the bid security remains valid. Considering that the winning bidder did not extend its bid security, despite the deferment of the signing of the contract and issuance of the NTP, the foregoing clarification is being made.

We wish to clarify that in the related opinion² we cited in NPM 10-2012, the bidding process was still in the post-qualification stage and the NOA has not yet been issued. It was then necessary to emphasize that the bid security should still be valid at the time of contract award in line with Section 37.1.5 of the IRR. The validity of the bid security is material at the time of the issuance of the NOA since the validity of the bid security signifies that the

¹ Dated 16 January 2012

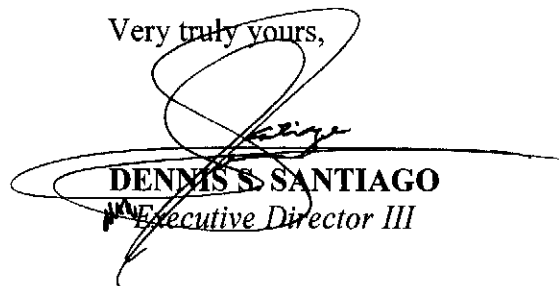
² NPM No. 014-2008 dated 8 August 2008

bidder's bid or offer still stands at the time the procuring entity awarded the contract. The validity of the bid or offer is vital because the NOA or the act of acceptance by the procuring entity will be rendered nugatory and ineffectual when there is no longer an "offer" to accept. Under the law on contracts, an offer must be duly accepted during its validity or prior to its revocation. Thus, the issuance of the NOA by the procuring entity is actually the acceptance of the winning bidder's offer; and the latter's act of posting the performance security guarantees that it will fulfill its contractual obligations.

Based on all the foregoing, it is our considered opinion that if the NOA was issued and the winning bidder has submitted a performance security within the three-month period, the requirement that the bid security should remain valid no longer finds application considering that the act, i.e. the offer, which it guarantees has already been accepted. In other words, since the offer/bid was accepted through the issuance of the NOA, during the validity of the bid and the corresponding bid security, it is no longer relevant whether the bid security was extended or not. Accordingly, under the attending circumstances, the non-extension of the validity of the bid security should not prevent the execution of the contract for the construction of the Ombudsman Annex Building.

We hope our advice provided sufficient guidance on the matter. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III