



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

NPM No. 23-2014

17 June 2014

MR. ADOLFO L. ESCALONA

Executive Director

ROAD BOARD (RB)

2nd Floor Ave Maria Bldg.,
1517 Quezon Avenue cor. Examiner St.,
Quezon City

Re: Motion for Reconsideration

Dear Executive Director Escalona:

This refers to your letter dated 9 June 2014 seeking our opinion on the propriety of entertaining a bidder's manifestation to file a motion for reconsideration made after the envelope containing its financial proposal was unconditionally returned to the bidder, but prior to the termination of the bid proceedings.

It is represented that a public bidding was conducted for the procurement of road signage with an Approved Budget for the Contract (ABC) of Php 125,632,000.00 that was intended for installation along national highways. Three parties participated during the bidding - the first bidder who was found to be non-compliant with the formal/technical requirements, and to whom the sealed envelope containing the financial proposal was returned un-opened; the second bidder who was also found to be non-compliant, but verbally manifested its intention to file a motion for reconsideration prompting the RB - Bids and Awards Committee (BAC) to retain the sealed envelope containing the financial proposal; and, the third bidder who was found to be compliant with the requirements, and whose bid in the amount of Php 97,987,635.00 is within the ABC.

Per your letter, it was likewise disclosed that the RB-BAC proceedings was about to be terminated when the first bidder manifested its intention to file a motion for reconsideration. The RB-BAC initially refused, but the first bidder manifested that it earlier tried to verbally state its intention to seek a reconsideration but the same was allegedly not heard by any member of the RB-BAC. Finally, it is represented that the RB-BAC later on decided to conditionally retain the sealed envelope containing the financial proposal of the first bidder pending the resolution of this request for opinion. It is in this light that you raised the above-stated query to our office.

Based on Section 55.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184, an ineligible or disqualified bidder is given three (3) calendar days upon receipt of written notice or verbal notification to question a decision of the BAC at any stage of the procurement process by filing a request for reconsideration. Per your

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representation, the first bidder verbally manifested the intention to request for a reconsideration but this was allegedly not heard by any member of the RB-BAC. This circumstance is solely for the RB-BAC to evaluate, assess, consider and ascertain as to its veracity and truthfulness. The confirmation of the bidder's claim will enable the RB-BAC to reasonably consider the matter.

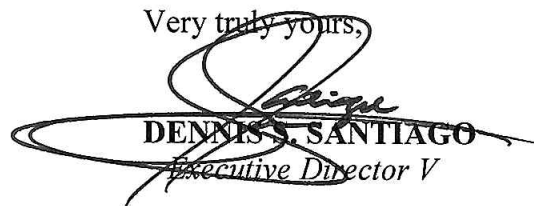
A bidder cannot be unduly deprived of its right to file a request for reconsideration except through a valid waiver.¹ Under the law, rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.² Further, there are several requirements for a waiver of right to be considered valid based on jurisprudence. One of these requirements is that the waiver of right must be made clearly, although not necessarily express³.

Anent the foregoing, it is our considered view that upon due ascertainment and validation of the first bidder's claim, the RB-BAC may still entertain the manifestation of an eligible or disqualified bidder to file a request for reconsideration even after the return of the financial envelope to the concerned bidder, provided that such request for reconsideration is made within the three-day reglamentary period. We note that in this case, the manifestation was made by the bidder within the allowable period for the filing of motion for reconsideration.

On another note, we assume that the financial envelope of the first bidder was returned to the RB-BAC still sealed and unopened, which assures the RB-BAC that there was no changes, alteration or switching of its contents. Considering that the RB-BAC, including its Secretariat, was able to witness the entire proceedings, including the conduct, decorum and actuations of the bidder, it should assure itself that the financial envelope was not opened at all and ascertain that there was no improvement of the bidder's financial bid to the detriment of other bidders in particular, and competition, as a whole.

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 you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director V

¹ NPM No. 083-2007 dated 7 December 2007.

² Section 6, Republic Act No. 386 otherwise known as the Civil Code of the Philippines.

³ Paras, Edgardo L., Civil Code of the Philippines Annotated Volume I, 2008, citing Acting Provincial Sheriff of Surigao vs. PTC, L-4083, 31 August 1953 and Andres vs. Crown Life Insurance Co., L-10874, 28 January 1958.

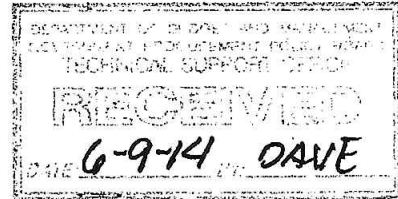


Republic of the Philippines
ROAD BOARD
OFFICE OF THE CHAIRMAN

Riza Lopez, 6/11/14
pleas prepare bony
OPINION, Bidder's name 3
Calendar days to file MR - 10/15/14

9 June 2014

**GOVERNMENT PROCUREMENT
POLICY BOARD**
Unit 2506 Raffles Corporate Center
F. Ortigas Jr., Avenue, Ortigas Center
Pasig City



Attention: **ATTY. DENNIS S. SANTIAGO**
Executive Director III

Gentlemen:

May we kindly seek your opinion pertaining to the resolution of a motion for consideration manifested during the course of a public bidding. The facts are as follows:

The Road Board is a government agency created under R.A. 8794 that is principally tasked with the maintenance of national, provincial, and city roads. As part of its mandate, the Road Board decided to procure road signages for installation along national highways with an approved budget contract of P125,632,000.00. At least three (3) parties participated in the public bidding therefor.

During the course of the bidding, the bidder whose documents were the first to be evaluated was found by the Bids and Awards Committee (BAC) to be non-compliant with the formal/technical requirements. Accordingly, the sealed envelope containing the financial proposal was returned to the bidder un-opened.

The bid proposal of the second bidder was also found to be non-compliant with the formal/technical requirements. The bidder, however, verbally manifested its intention to file a motion for reconsideration so the BAC retained the sealed envelope containing the financial proposal subject to the resolution of the aforementioned motion.

The bid proposal of the third bidder was found to be compliant with the formal/technical requirements and, upon opening of the second envelope containing the financial proposal, showed a bid amounting to P97,987,635.00.

The BAC Chairman was about to terminate the proceedings when the first bidder manifested its intention to file a motion for the reconsideration of the BAC's earlier ruling declaring the said bidder's failure to comply with the formal/technical requirements. The BAC initially refused to entertain any such motion because the bidder had already received, without any protest or reservation, the envelope containing its financial proposal. The bidder, however, manifested that it earlier tried to state its intention to seek a reconsideration although the same was not heard by any member of the BAC.

After some discussions, the BAC decided to conditionally retain the sealed envelope containing the financial proposal of the first bidder subject to the filing and resolution of this request for opinion on whether the BAC may still entertain a manifestation to file a motion for reconsideration after the envelope containing its financial proposal was already unconditionally received by a bidder, but prior to the termination of the bid proceedings.

Hoping for your usual prompt response and consideration.

Very truly yours,



ADOLFO L. ESCALONA
Executive Director



ROAD BOARD

In replying, pls. cite this number:



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