

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

NPM No. 24-2013

27 March 2013


MR. GARY L. SO
Marketing Manager
MAXIAIR CORPORATION (MAXIAIR)
318 Poblete St., Binondo, Manila

Re: Grounds for Post-Disqualification

Dear Mr. So:

We respond to your letter dated 27 December 2012, requesting our opinion on issues concerning post-qualification under Section 34 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

It is represented that Maxiair was the bidder with the Lowest Calculated Bid (LCB) in a public bidding conducted by the Veterans Memorial Medical Center (VMMC) on 31 October 2012 for the *Supply and Installation of Air-conditioning Units at the Out-Patient Department Main and Annex Building and Dialysis Center*. It is likewise represented that even prior to the receipt of the Notification of LCB, Maxiair submitted the required post-qualification documents to VMMC. Initially, Maxiair was disqualified for its non-submission of the Site Inspection Certificate, but the Bids and Awards Committee's (BAC) original decision to deny Maxiair's request for reconsideration was later reversed.¹ Nonetheless, on 14 December 2012, Maxiair received a Notice of Post-Disqualification from VMMC citing two (2) grounds² pertaining to the incomplete specifications, *i.e.* Energy Efficiency Ratio in Maxiair's brochure, and the non-availability of IDEC brand spare parts in the market. It is within this context that Maxiair raises the following issues:

1. Whether the BAC may require other specifications in addition to what was indicated in the Bidding Documents without the issuance of the corresponding Supplemental/Bid Bulletin; and,
2. Whether the receipt of complaints from end-users on the service and spare parts of air conditioning units may be a ground for a bidder's disqualification. 

¹ Letter of the BAC Chairman to Mr. Gary So dated 20 November 2012.

² (1) The specifications of the IDEC brand of air conditioning units offered is incomplete particularly the Energy Efficiency Ratio (EER) which is very necessary in determining the energy consumption of each unit. Likewise, the type of motor compressor installed in each unit is not indicated in the submitted documents by your office; and

(2) Furthermore, based on our experience, all existing IDEC brands installed in VMMC has defective power supply, control board and maintenance in service is difficult due to limited and non-availability of spare parts in the market.

Specifications in the Bidding Documents

For your guidance, the Bidding Documents refer to documents issued by the Procuring Entity (PE) as the basis for bids, and it furnishes all information necessary for a prospective bidder to prepare a bid for the infrastructure projects, goods and/or consulting services required.³ Thus, the Bidding Documents contain all the specific requirements, limitations and parameters of the procurement at hand, as determined by the PE.


Clarifications, modifications, changes or amendments to the Bidding Documents must be reflected through the issuance of the corresponding Supplemental/Bid Bulletin, and posted in the websites of the Philippine Government Electronic Procurement System (PhilGEPS) and the concerned PE.⁴ This is important to inform the prospective bidders of the revised requirements, if any, and to afford them the opportunity to comply with them. Consequently, if no Supplemental/Bid Bulletin is issued to reflect changes in the Bidding Documents, or even if the same was issued but not posted at the PhilGEPS' and PE's websites, the original provisions contained in the Bidding Documents remain and the prospective bidder, including the winning bidder cannot be compelled to abide or comply with the changes made by the PE.⁵

End-User Complaints

Anent your second query, RA 9184 and its IRR imposes to the PE, specifically through the BAC, the duty and the obligation to verify, validate and ascertain that the bid subject of post-qualification has satisfied the legal, technical and financial requirements for the specific procurement activity, including all attending circumstances that would warrant the determination of the eligibility, capacity and capability of a bidder to perform the contract.⁶

Please note that the technical specifications stated in the Bidding Documents provide the basis for determination of the responsiveness of an offer. Hence, in cases where the PE received complaints coming from the end-users relative to technical specifications, specifically on service and spare parts of the air conditioning unit being procured, the BAC is not precluded from verifying the complaints and, eventually, from post-disqualifying the bidder if such allegations against the goods to be procured are confirmed to render the bidder legally, technically, and financially unqualified to perform the project.⁷

Summary

Based on the foregoing, we opine that the PE cannot compel prospective bidders or the winning bidder to submit or comply with requirements not initially provided in the Bidding Documents or through any Supplemental/Bid Bulletin issued by the PE for the project that must be posted at the PhilGEPS' and the PE's website. Moreover, end-user complaint is not in itself ground for post-disqualification, unless the PE determines that the bidder is not legally, technically and financially capable to complete the project based on such complaints. 

³ Section 5(f) of the IRR of RA 9184.

⁴ Sections 22.5.2 and 22.5.3 of the IRR of RA 9184.

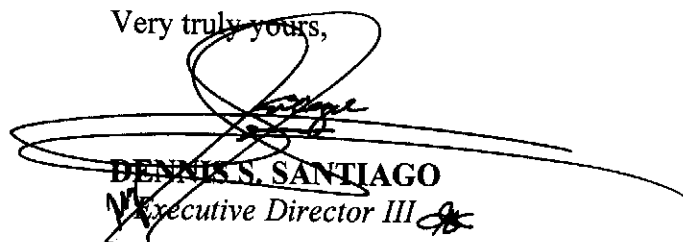
⁵ NPM No. 100-2012 dated 13 August 2012.

⁶ NPM No. 127-2012 dated 10 October 2012.

⁷ NPM No. 102-2012 dated 14 August 2012.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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