



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

NPM No. 29-2012

28 March 2012

ENGR. MARCELINO S. SANQUI
BAC Chairman
SUBIC BAY METROPOLITAN AUTHORITY (SBMA)
Bldg. 255, Barryman Road,
Subic Bay Freeport Zone

Re: Counter-offer or Counter Proposal

Dear Engr. Sanqui:

We respond to your letter dated 6 March 2012 requesting for clarification on the predicament that the Bids and Awards Committee (BAC) of the SBMA is currently confronted in the conduct of its public bidding for supply and delivery of diesel fuel and unleaded gasoline for one year.

As represented, SBMA would like to be advised if the BAC will be violating any rules under Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR) if it decides to consider the bid of a lone bidder, which complied with all the legal and technical requirements of the project, but qualified its bid with a condition requiring SBMA to post a security.

For reference, Article 1319 of the Civil Code of the Philippines provides that the offer must be certain and the acceptance absolute in order to manifest the meeting of minds. In addition, the Supreme Court held in the case of *Development Bank of the Philippines vs. Ben Medrano and Privatization Management Office*¹ that a qualified offer constitutes a counter-offer. Applying the DBP case alongside Section 23 of the IRR and Clause 12 of the Instruction to Bidders in the Philippine Bidding Documents (PBDs), it is clear that both the offer and the acceptance must be made absolutely without any qualifications or reservations. Thus, strict compliance with the eligibility, technical, and financial requirements enumerated in the bidding documents must be observed.

Considering that the bidding documents practically provide all the requirements and conditions upon which the procuring entity will evaluate an acceptable offer, bidders are left with no option but to provide an offer that complies with all the requirements specified in the bidding documents without qualifications or reservations. Accordingly, the bidder's

¹ G.R. No. 167004, 7 February 2011 citing *Traders Royal Bank v. Cuison Lumber Co., Inc.*, G.R. No. 167004, 7 February 2011.

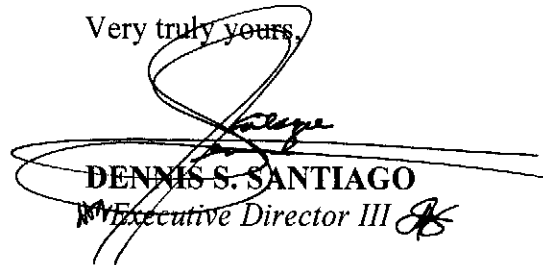
compliance with these requirements must be certain and absolute; otherwise, the bidder's act of providing qualifications on its submitted bid or offer is likened to and treated as a counter-offer or counter proposal.

In the case of SBMA, the bidder imposes a condition upon the procuring entity relative to the latter's acceptance of the offer, *i.e.*, the submission of a security equivalent to the credit line that the bidder will provide. This condition clearly modifies the strict documentary requirements enumerated in the IRR and the PBDs, and takes the form of a counter-offer or counter proposal that is not allowed under RA 9184 and its IRR.

Based on the foregoing, we are of the opinion that even if the lone bidder complies with all the legal and technical requirements in Section 23 of the IRR and its corresponding clause in the PBDs, it is not acceptable for the bidder to provide a condition that the procuring entity must first post a security equivalent to the credit line before it enters into a contract. The lone bidder, in making its offer, should strictly conform with all the requirements provided in the bidding documents, including the submission of all eligibility, technical, and financial documents without any qualifications and reservations.

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

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