



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

NPM No. 63-2014

15 October 2014

MR. BONIFACIO S. YSALINA
Chairman, Bids and Awards Committee
NATIONAL IRRIGATION AUTHORITY (NIA)
DAVAO DEL NORTE
IRRIGATION MANAGEMENT OFFICE (IMO)
Sto. Niño, Carmen, Davao del Norte

Re: Bid Security

Dear Mr. Ysalina:

This refers to your letter seeking our opinion relative to the bid security submitted by the bidders in a bidding project of NIA Davao del Norte IMO.

As represented, NIA Davao del Norte IMO conducted competitive bidding for the procurement project involving the Construction of Diversion Works, Irrigation Canals, Canal Structures, and Road Systems of MELOYA SIP with an Approved Budget for the Contract (ABC) of Php 11,374,407.57. Two bidders submitted their bids with the following price proposals and amounts of bid security:

Bidder	Price Proposal	Amount of Bid Security
1. RDG Construction	Php 11,119,084.28	Php 227,488.15
2. MDA Builders	Php 11,355,073.87	Php 227,489.00

It is also represented that during the bid opening, NIA Davao del Norte IMO Bids and Awards Committee (BAC) accepted the submitted bid security. Subsequently, MDA Builders went to the Head of the Procuring Entity (HOPE) of NIA Davao del Norte IMO in the person of Engr. Cornelio M. Bautista, Jr. to air a complaint regarding the bidding proceedings. The complaint is anchored on the ground that the bid security of RDG Construction is not exactly 2% because the quotient of the ABC and its bid security is only 0.199999. It is in this light that you are seeking the opinion of our office to assist you in resolving the matter.

At the outset, we wish to inform you that we have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since the office has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from courts having actual jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the BAC, since these duties and responsibilities fall solely within the ambit of its authority and discretion sanctioned by the law.¹ In this regard, we shall limit

¹ NPM No. 46-2013 dated 11 June 2013.

our discussion on the interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented.

Bidders are mandated to include bid security in the prescribed form, amount and validity period in the first envelope of their bids.² The bid security must be in the amount equal to a percentage of the ABC, in accordance with the schedule indicated in Section 27 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184, and in the form and validity period indicated in the Bidding Documents of the Procuring Entity (PE). Failure to enclose the required bid security in the prescribed form and amount shall automatically disqualify the bid concerned.³

Under Clause 18.1⁴ of the Bid Data Sheet (BDS) of the Philippine Bidding Documents for the Procurement of Infrastructure Projects, PEs are required to indicate the allowable forms of bid security and their corresponding amount, if applicable. The purpose of this requirement is two-pronged. First, it will guide all prospective bidders in preparing a responsive bid as regards the required form and amount of bid security, and second, it shall serve as basis or reference of the BAC during the preliminary examination and detailed evaluation of submitted bids.

It bears stressing that in the exercise of the BAC's functions to conduct preliminary examination and detailed evaluation of bids, it shall use a non-discretionary "pass/fail" criterion, such that, if a bidder submits the required documents, it shall be rated as "passed" while a bidder who submitted an incomplete or patently insufficient bid shall be considered as "failed".⁵ All told, it is our considered view that the BAC, using a non-discretionary "pass/fail" criterion, should refer to the correct form and amount of bid security as indicated in their Bidding Documents in determining the bidder's compliance therewith.

We hope 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

1/1/13

² Section 25.2(b)(ii) of the IRR of RA 9184.

³ Section 27.1 of the IRR of RA 9184.

⁴ As Amended by GPPB Resolution 25-2013 dated 30 August 2013

⁵ Section 30.1 of the IRR of RA 9184.

12/09/14



Republic of the Philippines
Office of the President

Pambansang Pangasiwaan ng Patubig
(National Irrigation Administration)

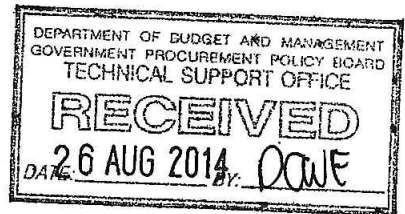
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19 August 2014

ATTY. DENNIS S. SANTIAGO
Executive Director V
Government Procurement Policy Board (GPPB)
Unit 2506, Raffles Corporate Center
F. Ortigas Jr. Ortigas Center, Pasig City



RE: **BID SECURITY OF PARTICIPATING BIDDER ON PROJECTS FOR BIDDING**

Sir/Madam:

The undersigned is the Chairman: Bids and Awards Committee (BAC) of NIA Davao del Norte IMO Office, Sto Niño, Carmen, Davao del Norte. Last week, August 12, we had conducted Bid Opening of Project on the Construction of Diversion Works, Irrigation Canals, Canal Structures, & Road Systems of MELOYA SIP with an ABC or Approved Budget of Contract in the amount of **P 11,374,407.57**.

If we compute the 2% Bid Security, it will come out to be **P 227,488.1514** which has 4 decimal points. Rounding off the amount, it will be **P 227,488.15** considering the last 2 decimal points.

- There are two bidders who joined the bidding exercise with their corresponding bid security submitted:
- 1. RDG Construction -**P 227,488.15** Total Bid Amt. = **P 11,119,084.28**
 - 2. MDA Builders -**P 227,489.00** Total Bid Amt. = **P 11,355,073.87**

During the Reading of their Bid Documents, the BAC had accepted their bid security presented. And it happened that the Lowest Bidder was the RDG Construction. After the Bidding proper, the MDA Builders went to the HOPE or Head of the Procuring Entity, or the Chief of Office in the person of Engr. CORNELLO M. BAUTISTA, JR. and aired her complain regarding the bidding. That the Bid Security of RDG Construction is not exactly 2%. Because of her reasoning that if we devide **227,488.15** by **11,374,407.57** which is the ABC, it will come out to be **0.0199999** only.

Due to her verbal complain, although it was still verbal, the committee decided to raise this matter to your kind attention hoping that we could gather and received your kind consideration to give us your comments, suggestions and advice to what action shall we do.

At this point in time, we are still undecided as to how do we go thru this problem.

We hope you could help us and give us your recommendation and advices.

Thank you very much.

(Sgd) BONIFACIO S. YSALINA
Chairman, Bids and Awards Committee

CC: DBM, Region XI, Davao City

Jan/Sfong,
Please prepare OPINION.
1/sep/2014
BS