



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

**NPM No. 68-2013**

28 June 2013

**MR. JOSE ANTONIO K. ALESNA**

*Head, Marketing Department*

**MERALCO INDUSTRIAL ENGINEERING SERVICE CORPORATION (MIESCOR)**

5/F Renaissance Tower 1000, Meralco Avenue

Ortigas Center, Pasig City

**Re: Payment of Bidding Documents for the Re-bidding**

Dear Mr. Alesna:

We write in response to your letter inquiring on the propriety of requiring an unsuccessful lone bidder in the first bidding to pay for bidding documents in the second bidding, where both bidding documents are substantially similar.

As represented, MIESCOR participated as the lone bidder in the Clark Development Corporation's (CDC) project entitled "Design and Build Services for Clark 230 KV Power Transmission Line Phase 3B" in January 2012. MIESCOR was declared ineligible, resulting in a failure of bidding. Shortly thereafter, CDC conducted a second bidding, and MIESCOR prepared to participate again. MIESCOR sought to be exempted from paying the "bidding fee" claiming that "aside from material dates, there is no substantial difference" in the bidding documents of the first and second biddings, and that it already has in its possession the bidding documents from the first bidding opportunity after previously paying the amount of PhP1,000,000 "filing fee". The CDC, through its Bids and Awards Committee (BAC), denied the request for exemption, and MIESCOR filed a request for reconsideration on 29 March 2012.

We first note that there is no requirement for a "bidding fee" or "filing fee" in our government procurement system. Neither Republic Act (RA) No. 9184 nor its revised Implementing Rules and Regulations (IRR) requires prospective bidders to pay a fee as a condition for bidding or submitting bids for any government procurement activity. What RA 9184 and its IRR allow is for procuring entities to charge a fee for the sale of the bidding documents in order to recover the cost of its preparation and development<sup>1</sup>. As such, the fee allowed to be charged pertains to the sale of bidding documents, and not for participating or submitting a bid. Consequently, it is neither precise nor proper to refer to the fee for the sale of bidding documents as a "**bidding**" or "**filing**" fee.

Please note, however, that each procurement activity is distinct and separate from each other, even if the subject matter of the procurement activities are one and the same - as in the case of a second bidding after the failure of the first. Considering that the preparation

<sup>1</sup> Section 17.4, IRR.

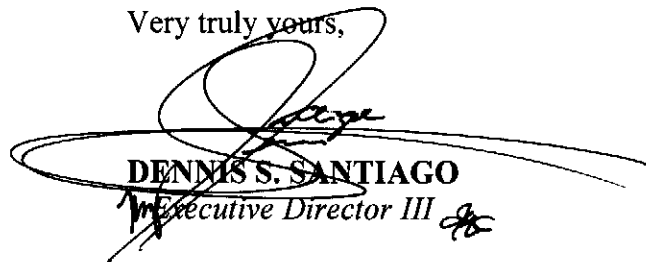
and development of a revised bidding document may entail another set of costs and expenses upon the procuring entity, they may deem it necessary to charge bidders anew. Consequently, the exercise of discretion to require payment for bidding documents in one activity has no bearing on the exercise of the same discretion in another. The procuring entity can, therefore, still charge for the acquisition of bidding documents in the second bidding, especially if the bidding documents may have been modified as a result of the mandatory review and evaluation to determine the reason for the failed bidding.

In this regard, we wish to stress that the decision in charging fees for bidding documents, whether for the first bidding or any subsequent re-bidding, depends upon the procuring entity, taking into account the need to recover the cost of its preparation and development *vis-a-vis* the effects on competition and participation of bidders.

Lastly, please note that the GPPB has issued the Guidelines on the Sale of Bidding Documents through GPPB Resolution No. 04-2012, which took effect on 4 September 2012. Under these Guidelines, standard rates for the sale of bidding documents based on the Approved Budget for the Contract have been established..

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable to 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 III*

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