



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

NPM No. 72-2012

8 June 2012

MR. FRANCISCO L. BRIES

Operations Manager

ODIN SECURITY AGENCY, INC.

Unit 411, Sofia Tower,

85 Don A. Roces Ave., Quezon City

Re: Validity of the LBP-BAC's Ground for Disqualification

Dear Mr. Bries:

We respond to your letters dated 6 and 30 September 2011 seeking our opinion on the validity of the decision rendered by the Land Bank of the Philippines (LBP) Bids and Awards Committee (BAC) in disqualifying Odin Security Agency, Inc. (OSAI) under Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR).

As represented, OSAI participated in the recently concluded public bidding for security services of LBP for Regions 6, 7 and 8 under Invitation to Bid (ITB) No. 2011-3-049. Among the eligibility requirement of LBP was the submission of a Notarized Certification¹. However, during the pre-bid conference on 4 August 2011, the BAC clarified that the Notarized Certification and the Monthly Disposition Report (MDR) should be as of 31 July 2011, and which was subsequently reflected in its Bid Bulletin No. 1 dated 9 August 2011. During the bid opening on 19 August 2011, OSAI was disqualified for its failure to submit the required Notarized Certification since it merely submitted a sworn Certification that it has deployed at least 200 guards as of December 31, 2010, which was supported by the MDR of Guards for the month of July 2011 and notarized not later than 31 July 2011. OSAI stated that it timely filed an MR on 22 August 2011, which was subsequently denied by the LBP-BAC on 23 August 2011. Thereafter, it caused the filing of another request for reconsideration dated 2 September 2011.

For your guidance, one of the powers granted to the BAC under Section 12 of RA 9184 and its IRR is to determine the eligibility of prospective bidders. Such determination is conducted using non-discretionary "pass/fail" criterion wherein the BAC merely checks whether a particular requirement is present, missing, incomplete, or patently insufficient which makes the process very simple and efficient.² Accordingly, the GPPB does not dictate upon, nor interfere with the functions of the BAC since these solely fall within their authority.

¹ Notarized Certification from the bidder that it has deployed at least 200 guards as of 31 December 2010 supported by a complete list of clients with names of security guards deployed as shown in the Monthly Disposition Report of Guards duly received by the Philippine National Police Supervisory Office for Security and Investigation Agencies (PNP-SOSIA) or Firearms Explosives Security Agencies and Guards Supervision (FESAGS)

² NPM No. 003-2005 dated 13 January 2005

as sanctioned by law for as long as the BAC observes its concomitant responsibility to perform such functions with judiciousness, adhering to the principles of transparency, accountability, equity, efficiency, and economy in the procurement process that it carries out for the procuring entity.³

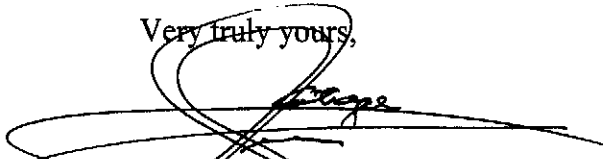
On the matter of the ambiguous instructions between the Bid Documents and the Bid Bulletin, it is OSAI's responsibility to clarify such with the procuring entity. Bid Bulletin No. 1 was issued by the LBP-BAC after acting on some clarifications raised by the bidders during the pre-bid conference. Thus, it cannot be claimed that OSAI was unaware of the changes made as regards the Notarized Certification. If it was confused as to the actual cut-off date to be followed (31 December 2010 v. 31 July 2011) or as to any other specific requirements, then OSAI was not barred to clear this fact with the LBP-BAC. Section 6.5 on the Bidder's Responsibilities under the Philippine Bidding Documents provides that:

The Procuring Entity shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the procuring entity.

Based on the foregoing, we defer to the decision of the LBP-BAC relative to the determination whether participating bidders complied with the legal, technical and financial requirements of the bid as this is within the purview of its mandated functions under the law and the rules.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

//LSD3

³ NPM No. 065-2009 dated 17 December 2009