



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

NPM No. 82-2014

24 October 2014

DR. RAMONCITO D. VILIRAN
Chairman, Bids and Awards Committee (BAC)
CITY OF MARIKINA
Shoe Avenue, Sta. Elena, Marikina City

Re : Direct Contracting

Dear Dr. Viliran:

This refers to your letter dated 13 October 2014¹, requesting our opinion relative to the procedures adopted by the BAC in the procurement of rain water harvesting system through competitive bidding.

As represented, the City Government of Marikina conducted a competitive bidding for the Supply, Delivery, and Installation of Rainwater Harvesting System for all Public Schools and Government Buildings in Marikina City. The specifications of the project were referred to a patented design of AMECOS Intellectual Properties Inc. (AMECOS) as supplied by the end-user. In the pre-bid conference, AMECOS represented that they own the patented design of the project, and that it must be awarded to them through Direct Contracting. However, the procuring entity (PE) responded that the project will be subjected to public bidding as there were available substitutes in the market, and encouraged AMECOS to participate. It further stated that the patented design was only the minimum requirements, and bidders may submit counter-offers or its equivalent.

AMECOS did not participate in the bidding; the project was eventually awarded to JSG POLYMAX INDUSTRIES (POLYMAX). As mentioned, AMECOS is claiming that the design is patented in their favor, and POLYMAX, the winning bidder, is neither authorized nor appointed by them. It claims that there are no available substitutes in the market and insisted that Direct Contracting should have been the proper modality adopted by the BAC. AMECOS also relied on their 2011 Water Harvesting Project with the city that they claimed was procured through Direct Contracting. However, the BAC replied that the 2011 project was procured from AMECOS through Negotiated Procurement as a result of the 2nd failed bidding. It is in this context that our opinion is being requested.

As discussed in an earlier opinion,² in order to justify the need to procure through Direct Contracting, the BAC should conduct a survey of the industry and determine the supply source. This survey should confirm the exclusivity of the source of goods or services to be procured. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. In addition, specifications

¹ Received on 16 October 2014

² NPM No. 116-2012, dated 14 September 2012

for the procurement of goods shall be based on relevant characteristics and/or performance requirements.³

The procuring entity must justify the necessity for an item to be procured through Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms to government. It is only after the BAC has conducted its survey and determined that one of the conditions under Section 50 of RA 9184 is present that proper recommendation to the HOPE for the use of Direct Contracting modality may be made. Hence, if there are prospective bidders that can offer the goods subject of the procurement opportunity, Direct Contracting cannot be resorted to.

In addition, even if the details provided in the Technical Specifications may have a resemblance or similarity to a specific product, Direct Contracting modality should not be automatically resorted to because “[t]he specifications and other terms in the Bidding Documents shall reflect **minimum requirements** or **specifications** required to meet the needs of the procuring entity in clear and unambiguous terms.”⁴

Thus, a prospective bidder, couched upon lawful, valid, and reasonable limitations, may offer goods that exceed the minimum specifications provided in the Bidding Documents. In other words, goods that have higher specifications may be offered by the prospective bidder, as long as it meets the minimum specifications and identified limitations required by the procuring entity in the bidding documents.

Based on the foregoing, the fact alone that the technical specifications resembles or is similar to the specifications of a specific good or equipment does not sanction the immediate resort to procurement through Direct Contracting in lieu of Competitive Bidding. Under the rules, the procuring entity must first justify the necessity for Direct Contracting, and must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms to government. It is important to stress that RA 9184 and its associated IRR adopt “Competitive Bidding” as the primary method of procurement,⁵ and any alternative method of procurement may be employed only under highly exceptional circumstances to address economy and efficiency.

We hope that 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 there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

//sd2
R

³ Section 12 of RA 9184.

⁴ Section 17.2, IRR of RA 9184.

⁵ Section 10, RA 9184 and its IRR.

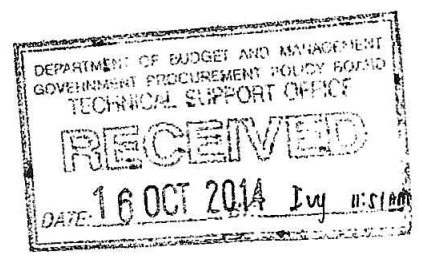
01/29/15

Republic of the Philippines
CITY OF MARIKINA
Shoe Ave. Sta. Elena, Marikina City
646-2360 loc. 215; 646-1626

BIDS AND AWARDS COMMITTEE

13 October 2014

ATTY. DENNIS S. SANTIAGO
Office of the Executive Director
Government Procurement Policy Board
Unit 2506, Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center, Pasig City



Dear Dir. Santiago:

The City Government of Marikina invited prospective bidders for the **SUPPLY, DELIVERY AND INSTALLATION OF RAINWATER HARVESTING SYSTEM FOR ALL PUBLIC SCHOOLS AND GOVERNMENT BUILDINGS IN MARIKINA CITY.**

The said project was procured via public bidding as there were available substitutes in the market precluding the Procuring Entity to resort to Direct Contracting. The specifications of the project referred to a patented design of AMECOS INTELLECTUAL PROPERTIES INC., (AMECOS for brevity) as supplied by the End User (CEMO).

Considering that there are available substitutes in the market, the procuring entity treated the said specification as the minimum requirements or its equivalent for prospective bidders' guidance and information.

During the pre-bidding conference, AMECOS INTELLECTUAL PROPERTIES, attended the same and represented that they own the patented design and it must be awarded to them via Direct Contracting. Verbally, the Bids and Awards Committee (BAC) reiterated that the said project will be subjected to public bidding as there are available substitutes in the market and encouraged AMECOS to join the public bidding. Further, the patented design is only the minimum requirements and bidders may submit counter-offers or its equivalent.

At the opening of bids, only one bidder, JSG POLYMAX INDUSTRIES (POLYMAX for brevity) participated in the bidding process while AMECOS did not submit its bid. Having been post qualified by the TWG and finding the counter offer or the equivalent bid of the single bidder, POLYMAX, responsive to the needs of the procuring entity, the project was subsequently awarded to POLYMAX.

AMECOS, **A NON-BIDDER**, begun to question the proceedings of the BAC.

the applicable fees of AMECOS except for the TOR as this only required in Consulting Services.

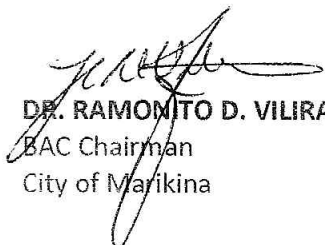
Despite that fact, AMECOS insisted to get the TOR equating the same to the BAC Resolution which we declined to furnish as there was no TOR to speak of and that the TOR and BAC Resolution is not the same. Instead, BAC advised to submit a written request for the release of BAC Resolution or check the procuring entity's website where the relevant BAC Resolution is posted and uploaded.

- On September 4, 2014, two letters were received by the BAC. One is requesting for the release of the specifications of the bid offer of POLYMAX while the other letter is accusing the BAC of violation of laws, anomalies in the bidding process and a threat to sue for legal action for infringement of their intellectual property rights (**ANNEXES 6 to 6-A**).
- BAC responded immediately via letter dated 05 August 2014 (**ANNEX 6-B**) as its final response to all queries of AMECOS, citing thereto all applicable provisions of RA 9184 showing that the bidding process was conducted in regular and beyond reproach.

All the foregoing being told, the BAC respectfully request your good office's assistance in the issuance of appropriate opinion on the matter relative to the procedures adopted by the BAC in the procurement of rainwater harvesting system.

Trusting that this letter would merit your preferential attention and consideration.

Respectfully yours,



DR. RAMONITO D. VILIRAN
BAC Chairman
City of Marikina

FROM: HENRY
DATE: 2014-08-05
Ref: 01 2001 05120PM 01 2



AMECOS INTELLECTUAL PROPERTIES INC.

AMECOS Bldg 2nd Floor No. 38 Alma Jose Street
Zabarte Road Carocan City, Philippines
E-mail : amecos2004@yahoo.com

Tel. No. (632) 961-3919
Fax No. (632) 961-3925
Website : www.amecos.org

August 2, 2014

MARIKINA CITY GOVERNMENT
OFFICE OF THE MAYOR
Republic of the Philippines
CITY OF MARIKINA

ATTENTION : BIDS & AWARDS COMMITTEE : DR. RAMONITO D. VILIRAN
Chairman

SUBJECT : STATUS OF PROJECT NO.1 UNDER DIRECT CONTRACTING

Gentlemen :

The Notice of Award for the above Project No.1 was scheduled on June 23, 2014 in accordance with the schedule of bidding activities.

As the Inventor and developer of the Rainwater Harvesting System components as described in the Bid Documents, which are all covered by 12 Patents and Registrations, the said Notice of Award was expected as scheduled or within the month of July, 2014, if delays cannot be avoided.

In addition, with 18,000 liters Modules installed and being used by the Marikina City Government, also under Direct Contracting pursuant to R.A. 9184, Art. XVI, Sec. 50, and relying on the National Policy of giving priority to Filipino Inventions, there will be no reasons for the delay in receiving the Purchase Order.

The Bids and Awards Committee thru Dr. Viliran as Chairman, had received our letters of June 6, 2014 inclusive of attachments and letter of June 24, 2014 indicating the Intellectual Property Rights, confirmation of the budget and specifically identifying AMECOS INTELLECTUAL PROPERTIES INC. (ATPI) as the Exclusive IRHS Technology and Component Distributor and Installer / Contractor.

Based on the above may we be informed formally on the status of the above Project No. 1.

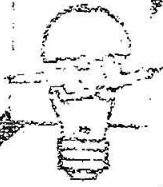
Rest assured that if delays are due to some requirements, compliance will not be a problem on our part.

Anticipating for your understanding and full support for Filipino Inventors and Inventions.

FRANK YOU.

Very truly yours,

Amecos Intellectual Properties Inc.
Ramon D. Viliran



AMECOS INTELLECTUAL PROPERTIES INC.

AMECOS Bldg 2nd Floor No. 36 Alma Jose Street
Zapote Road, Calapan City, Philippines E-mail:
amecos2004@yahoo.com

Tel No. (632) 961-3919
Fax No. (632) 961-3925
Website: www.amecos.org

August 6, 2014

DR. RAMONTO D. VILIRAN
Chairman
BIDS & AWARDS COMMITTEE
CITY OF MARIKINA

SUBJECT : STATUS OF PROJECT NO.1 UNDER DIRECT CONTRACTING

Dear Dr. Viliran,

Thank you for your prompt response on our inquiry on the status of Project No 1 that specified the undersigned Rainwater Harvesting System and components which are all covered by 12 Patents and Registrations.

With due respect, the statement that there are suitable substitutes in the market maybe contradictory to existing Intellectual Property Rights and Patent provisions. The undersigned Rainwater Harvesting System and Components, as specified in the bidding documents, were given Invention Patents and Registrations on the principle that there is no prior arts existing and that said inventions & innovations are new, thus protected by the Patent Laws.

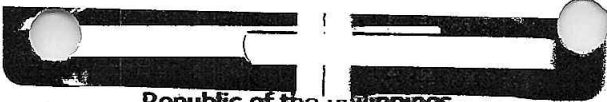
In addition, while we respect the general mode of procurement being followed by all government agencies, a specific provision for Direct Contracting pursuant to R.A. 9184, Art. XVI, Sec. 50 are also being enforced by all our government clients. Marikina City Government included. To wit:

- a) **The undersigned, after a lecture/seminar and training of some of your plumbers had installed the 6,000 Liters Module in your Sport Center, on January 11, 2011, on the same mode of Direct Contracting.**
- b) **Recognized by Marikina City Government as a highly exceptional case, the Bids and Awards Committee thru the Office of the Honorable Mayor R. De Guzman, had approved the undersigned letter of September 15, 2011, and installed the additional requirements for two (2) 6,000 liters Module of the undersigned Rainwater Harvesting System and components at your City hall and CEMO Offices on January 28, 2012, again under the Direct Contracting provision.**
- c) **Finally, your record will show and with a report dated 02 July, 2014 that the lone bidder who was not even present during the pre-bid conference, submitted a non-complying bid, proving the exceptional status of our Rainwater Harvesting System.**

The undersigned is still relying on the COMMITTEE's sense of Nationalism and Rationality and re-consider the undersigned Filipino development to be issued the corresponding P.O under the same DIRECT CONTRACTING policy followed by the Marikina City Government.

My apologies for some direct statements and hope for your kind understanding and full support for all Filipino creative developments.

Rest assured that as a Filipino Inventor, the priority advocacy is to help our country and people. **THE END**



11-0026085

BIDS AND AWARDS COMMITTEE

Resolution No. 307
Series of 2011

RESOLUTION DECLARING THE BIDDING FOR THE SUPPLY AND DELIVERY (WITH INSTALLATION) OF RAINWATER HARVESTING TECHNOLOGY FOR RAINWATER HARVESTING AT MARIKINA CITY HALL & CEMO AREA, AS FAILURE

WHEREAS, the City Government of Marikina advertised the Invitation to Bid for Rainwater Harvesting Technology on August 11 & 18, 2011 in the City Government of Marikina website, the G-EPS and a conspicuous places at the premises of the City of Marikina continuously for 7 days;

WHEREAS, at the opening of bids on August 31, 2011 no prospective bidder submitted a bid for:

WCN	Item No.	QTY	Unit	Item Description	Unit Cost (in figures)	Total Amount
	1	2	sets	Rainwater Harvesting Technology/System (Installation Included)		

NOW THEREFORE, BE IT RESOLVED, as it is hereby RESOLVED, that the supply and delivery of Rainwater Harvesting Technology be declared failure for want of prospective bidder/s and be subjected for re-bidding:

Done this 5th day of September, 2011

ATTESTED BY:

EDUARDO C. FRANCISCO
Observer-President
Mkna. Valley Chamber of Commerce and Industry

LITO FERRER
Observer-Skipper
Civic Action Team-Skipper

COA Representative
BIDS AND AWARDS COMMITTEE

ADRIAN S. SALVADOR
City General Services Officer
B.A.C. Member

JANET S. OBISPO
Personnel Officer
B.A.C. Member

RAMONITO D. VILIRAN, MD., MPH
City Market Administrator
B.A.C. Member

ZENAIDA M. SANTOS
City Budget Officer
Vice Chairman, B.A.C.

TOMAS C. AGUILAR, JR.
City Planning and Development Officer
B.A.C. Member

RICARDO L. CASTRO
City Treasurer
B.A.C. Member

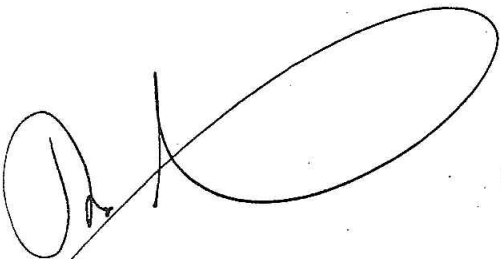
Engr. ALFONSO P. ESPIRITU
City Engineer
B.A.C. Chairman

GLORIA C. BUENAVENTURA
End User & City Environmental Officer

Approved by the Mayor on: _____

DEL R. DE GUZMAN
City Mayor

**RESOLUTION DECLARING THE RE-BIDDING FOR THE SUPPLY AND DELIVERY (WITH INSTALLATION) OF
RAINWATER HARVESTING TECHNOLOGY FOR RAINWATER HARVESTING AT MARIKINA CITY HALL &
CEMO AREA, AS FAILURE**



TOMAS C. AGUILAR, JR.
City Planning and Development Officer
B.A.C. Member



RAMONITO D. VILIRAN, MD., MPH
City Market Administrator
B.A.C. Member



RICARDO L. CASTRO
City Treasurer
B.A.C. Member

BIDS AND AWARDS COMMITTEE



JANET S. OBISPO
City Personnel Officer
B.A.C. Member



ZENAIDA M. SANTOS
City Budget Officer
Vice Chairman, B.A.C.



Engr. ALFONSO P. ESPIRITU
City Engineer
B.A.C. Chairman

GLORIA C. BUENAVENTURA
End User & City Environmental Officer

Approved by the Mayor on: _____



DEL R. DE GUZMAN
City Mayor


**RESOLUTION AWARDING THE SUPPLY AND DELIVERY (WITH
INSTALLATION) OF RAINWATER HARVESTING TECHNOLOGY FOR RAIN
WATER HARVESTING AT MARIKINA CITY HALL AND CEMO AREA BY
WAY OF NEGOTIATED PROCUREMENT**

Done this 26th day of September 2011

BIDS AND AWARDS COMMITTEE


JANET S. OBISPO
City Personnel Officer


DR. RAMONITO VILIRAN
City Market Administrator


TOMAS C. AGUILAR
City Planning Officer


ZENAIDA SANTOS
City Budget Officer
Vice Chairman

ENGR. ALFONSO P. ESPIRITU
City Engineer
Chairman

Approved by the Honorable City Mayor on _____


DEL R. DE GUZMAN
City Mayor 



AMECIS INTELLECTUAL PROPERTIES INC.

Amecis Bldg. 2nd Floor, No. 26 Alina Jose Street
Tolosa Road, Calorcan City, Philippines
E-mail: amecis2004@yahoo.com

Tel. No. : (832) 861-3318
Fax No. : (832) 861-3325
Website : www.amecis.org

August 18, 2014

MARIKINA CITY GOVERNMENT
OFFICE OF THE MAYOR
Republic of the Philippines
CITY OF MARIKINA

BIDDING BIDS & AWARDS COMMITTEE SECRETARIAT

SUBJECT: REQUEST FOR MINUTES OF THE BID OPENING, TOR & NOTICE OF AWARD FOR PROJECT 1

Dear Sirs:

This is a formal request for a Certified True Copy of the Minutes of the Bid Opening Terms of Reference and the Notice of Award for Project 1: Supply, Delivery and Installation of Rainwater Harvesting System in Public Schools and Buildings.

This request is in accordance with Sec. 1, Sec. 3 and Art. VIII, Sec. 29 of P.D. 1517.

We will coordinate with your office for the issuance of our above indicated request for the required items.

We appreciate your help for the usual prompt action.

Very truly yours,

Amecis Intellectual Properties Inc.

[Signature]
JEAN ANTONIO F. MATEO, PH.D.
President / Inventor

cc: **MS. GLORIA C. BUENAVENTURA** *Encl. To 942-1201 10:50 AM*
City Environment Officer

ATTY. NANCY TABAO
For Contact



AMECOS INTELLECTUAL PROPERTIES INC.

AMECOS Bldg. 2nd Floor , No. 36 Alma Jose Street
Zabarte Road, Caloocan City, Philippines E-mail :
amecos2004@yahoo.com

Tel. No. : (632) 961-3919
Fax No. : (632) 961-3925
Website : www.amecos.org

September 4, 2014

HON. DEL R. DE GUZMAN
Mayor, Marikina City
Shoe Ave., Sta. Elena
Marikina City

Dr. Nov
in writing
10/14
10/15

City Government of Marikina
GSO Records Management Division
Document Tracking System



14- 026764

SUBJECT : BAC'S PROJECT 1 NOTICE OF AWARD : A CLEAR VIOLATION OF LAWS , AN INJUSTICE TO A FILIPINO INVENTOR AND TO THE CITY OF MARIKINA

Dear Mayor De Guzman,

The undersigned Filipino Inventor introduced the Innovative Rainwater Harvesting System (IRHS) inventions covered by twelve (12) Letters of Patents and Registrations and conducted free training and seminars to CEMO in 2010.

Being Proprietary Filipino developments, government clients, Marikina City government included, had directly purchased this technology without bidding under DIRECT CONTRACTING PROVISIONS of Republic Act No. 9184, specifically Art. XVI, Sec. 50 .

Marikina City government had approved the installation of 6,000 liters IRHS Module in your Sport Center on January 11, 2011 and two (2) more 6,000 liters IRHS Modules at your City Hall and CEMO on January 28, 2012, all under the Direct Contracting provisions.

In spite of the clear specification of the technology, under the "Invitation to Bid" (Attachment "1") which was even announced during the June 6, 2014, Pre-Bid Conference, attended by our company and our letter on same date (Attachment "2") , informing BAC of the proprietary of our Rainwater Harvesting System, attaching all 12 Invention Patents Certificates and Registrations issued by the Intellectual Property Office, and our quotation , your BAC with Chairman Ramonito D. Viliran insisted on the general mode of procurement, disregarding continuing appeal for compliance to the provisions R.A. 9184.

On June 24, 2014, based on information received , that the BAC upon insistence of Chairman Viliran, had allowed the participation of a lone bidder, "JSG Polymax" who did not even attend the Pre-Bid conference, and with non-complying TOR , reminded again the BAC and its Chairman Viliran and OIC of the Procurement Division , Mr. Edgardo Pamuti with copy furnished the Procuring Entity (Please refer to Letter dated June 24, 2014 marked as Attachment "3"), the Direct Contracting provision and the information that we had not appointed or authorized JSG or any company to carry or bid the Patented IRHS and components under Project 1

CEMO, the procuring entity, after receipt of our letter of June 24, 2014, sent thru Fax, a letter



Republic of the Philippines
CITY OF MARIKINA

Shoe Ave. Sta. Elena, Marikina City

www.marikina.gov.ph

BIDS AND AWARDS COMMITTEE

05 September 2014

DEAN ANTONIO F. MATEO, MD

President

Amecos Intellectual Properties

Dear Sir:

Hereunder is our response to your letter dated September 4, 2014, to wit:

Sec. 17.2. The specifications and other terms in the Bidding Documents shall reflect minimum requirements or specifications required to meet the needs of the procuring entity in clear and unambiguous terms.

The Procuring Entity clearly indicated in the bidding documents the specification in its minimum and any bidder who will participate may submit an offer not below the minimum requirements or a counter offer which may be equal or over and above the minimum requirements which must be at the same time responsive to the needs of the procuring entity. Otherwise, the bid offer would be non-responsive and non-complying and shall be declared as disqualified.

The specifications submitted by the end user may seem to refer to a patented system. But this committee cannot resort directly to direct contracting should there be a substitute in the supply market. That is why we subjected the same for public bidding and had indicated in the instruction to bidders that the specifications are the minimum requirement and prospective bidders may submit a bid or a counter-offer or its equivalent since the procurement of the same shall be thru public bidding.

However, while Sec. 50 of RA 9184 allows a procuring entity to directly purchase goods from an exclusive dealer or manufacturer, per GPPB non-policy opinion, this has to be done with utmost prudence and justifications. Under the law, procuring entities are mandated to adopt public bidding as the general mode of procurement and alternative methods is resorted to only in highly exceptional cases set forth in Sec. 48-54 of RA 9184.

Accordingly, before resorting to said alternative method, the BAC shall first determine that there is no existing substitute for said product in the market that may be procured at

- a) If after advertisement, only one prospective bidder submits an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR, and it meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements;

xxx

Only POLYMAX Industries submitted a bid. And being a single bidder that met the eligibility requirements and found its bid to be responsive is regular and compliant with the law.

POLYMAX submitted a counter offer or its equivalent which the TWG had found to be responsive to the needs of the procuring entity.

Equity, due process and the legal procedures were faithfully observed by the BAC.

The BAC endorsed the bid offer of POLYMAX to the end user for their comments and recommendations.

The end user found the offer of POLYMAX as non-responsive based on apple to apple comparison of the specifications. POLYMAX's counter offer will not match the specifications as the same is just the minimum specifications requirement.

But nevertheless, BAC sent a post-disqualification to POLYMAX based on the evaluation of the end user. POLYMAX on the other hand filed a motion for consideration on the disqualification within the prescribed period on the contention that they cannot submit an offer similar to the patented design but a counter offer or its equivalent.

The BAC endorsed both the end user's evaluation and motion for consideration to the Technical Working Group for their evaluation and recommendations. The TWG found the counter offer as responsive and therefore, the BAC granted the motion for consideration on the basis of the TWG evaluation and recommendation.

Hence, the award of the project to POLYMAX as the single lowest calculated and responsive bid.

The allegation of P132,000.00 anomaly is a mere figment of your imagination.

The BAC cannot consider a quotation improperly submitted.

Had you participated in the public bidding, your bid offer may be considered in the evaluation of the BAC. But you failed to participate in the bidding.

The purchase price of the project is the bid offer of the responsive bidder not your quotation as **you were not even a bidder during the bidding.** (emphasis ours)

Release of bidding documents is via letter request and payment of