

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

NPM No. 84-2012

11 July 2012

MR. CEDRIC C. LEE
President/CEO
IZUMO CONTRACTORS, INC.
8th Floor, Galleria Corporate Center
EDSA Corner Ortigas Ave., Quezon City

Re: Protest on Decisions of the Bids and Awards Committee (BAC)

Dear Mr. Lee:

This is in response to your letter requesting the Government Procurement Policy Board (GPPB) to mediate with the BAC of the Office of the Ombudsman relative to the award of the contract for the construction of the new Ombudsman Building (Building) to the bidder with the Lowest Calculated Responsive Bid (LCRB), and inquiring on the procedure to contest the same.

It is represented that during the bidding on 25 February 2011 for the construction of the Building, the Joint Venture (JV) between FF Cruz and Co. (FF Cruz) and Filipinas (Prefab Building) Systems, Inc. (Filipinas) submitted the lowest calculated bid, followed by IZUMO Contractors, Inc. (Izumo). Izumo asserts that the BAC hastily and immediately awarded the project to the JV despite its request to hold in abeyance the awarding of the contract until it has secured a copy of the minutes of the post-qualification proceedings. Moreover, Izumo claims that the BAC improperly awarded the project to the JV despite the fact that the Mayor's Permit submitted by Filipinas was not in its name but in the name of another company, Filipinas Systems, Inc. Likewise, Izumo asserts that there is no need to file a protest considering that it had already requested the BAC to hold in abeyance the awarding of the contract.

We would like to clarify at the outset that the Government Procurement Policy Board (GPPB) has no jurisdiction to rule over actual controversies relative to the conduct of the bidding process, considering that it has no quasi-judicial functions under Republic Act (RA) No. 9184. The determination of the legality and/or validity of the actions and decisions of the BAC including contracts emanating therefrom is not within the express mandate of the GPPB.¹

Section 34.4² of the Revised IRR of RA 9184 provides that the determination of whether the bidder with the Lowest Calculated Bid (LCB) has passed all criteria for post-

¹ NPM 64-2012 dated 25 May 2012.

² Section 34.4. If the **BAC determines** that the bidder with the Lowest Calculated Bid/Highest Rated Bid **passes all the criteria for post-qualification**, it shall declare the said bid as the Lowest Calculated Responsive Bid/Highest Rated Bid, and recommend to the Head of the Procuring Entity the award of contract to the said bidder xxx.

qualification lies with the BAC. Consequently, the GPPB can neither rule upon the propriety of the BAC's act of awarding the contract to the JV nor determine the validity of the Mayor's Permit submitted by Filipinas.

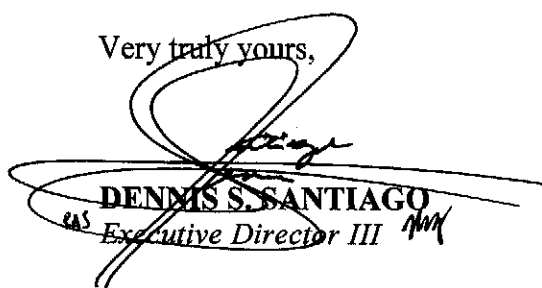
If a losing bidder desires to contest the BAC's decision at any stage of the procurement process, Section 55.1 of the Revised IRR of RA 9184 provides that said bidder should file a request for reconsideration within three (3) calendar days upon receipt of written notice or verbal notification. If the same is denied, the bidder must file a protest in the form of a verified position paper with the Head of the Procuring Entity (HOPE) within seven (7) calendar days from receipt of the BAC's denial of the request for reconsideration³. In the event that such protest is filed, the same shall not stay or delay the bidding process, but the protest should be first resolved before any award can be made⁴.

The cited provisions show that a protest filed with the HOPE preceded by a request for reconsideration filed with the BAC are the proper steps to take in order to prevent the awarding of the contract until such time that the protest has been resolved. Hence, a mere request to hold the proceedings in abeyance which is filed after bid opening will not suffice. The bidding process would be unnecessarily hampered if each bidder may simply request to hold the proceedings in abeyance without following the correct process within the proper periods and the required procedures⁵ laid out by the rules.

It is a settled rule that compliance with the mandatory protest mechanisms of law is jurisdictional in character. Thus, the Supreme Court has ruled that aggrieved party's failure to avail of the proper procedure on protest amounts to non-compliance with the mandatory protest mechanisms and a valid ground for dismissing a court action due to lack of jurisdiction.⁶

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

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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³ Sections 55.2 and 55.3 of Revised IRR of RA 9184

⁴ Section 57, *Id.*

⁵ The requirements for a valid protest were enumerated by the Supreme Court in the case of *Department of Budget and Management Procurement Service vs. Kolonwel Trading*, G.R. 175608, June 8, 2007, as follows: (1) the protest must be in writing, in the form of a verified position paper; (2) the protest must be submitted to the head of the procuring entity; and (3) the payment of a non-refundable protest fee.

⁶ *Dimson (Manila), Inc. vs. Local Water Utilities Administration* (G.R. 168656, September 22, 2010).