



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

NPM No. 85-2014

24 October 2014

MR. REYNALDO S. TAMAYO

Regional Director

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

REGIONAL OFFICE XII (DPWH-RO XII)

Mabini St. cor. Alunan Ave., Koronadal City


Re: Forfeiture of Bid Security

Dear Mr. Tamayo:

This refers to your letter dated 29 September 2014¹, requesting our opinion relative to the propriety of forfeiting the bid security of a post-disqualified bidder upon its failure to submit a written waiver of its right to file a motion for reconsideration.

As represented, DPWH-RO XII issued a Notice of Post-Disqualification to Kupler Industries, Inc. (Kupler) because it failed to meet the required technical specifications for the Procurement of the Supply and Delivery of Electrical materials for use in Upgrading and Rehabilitation of DPWH-RO XII Office Electrical System. Thereafter, Kupler requested for the return of its Bid Security, however, DPWH sent a letter to Kupler informing the latter that its Bid Security was forfeited, since it failed to submit a written waiver of its right to file a motion for reconsideration within the prescriptive period of three (3) calendar days upon receipt of the Notice of Post-Disqualification. DPWH based the forfeiture on *Section 27.4* of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, *to wit*:

Without prejudice to the provisions of the Act and this IRR on the forfeiture of bid securities, bid securities shall be returned only after the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be, has signed the contract and furnished the performance security, except to those declared by the BAC as failed or post-disqualified in accordance with this IRR, upon submission of a written waiver of their right to file a motion for reconsideration and/or protest.

It is in this context that our opinion is being requested as to whether a written waiver of right to file a motion for reconsideration (MR) from the post-disqualified bidder is a condition *sine qua non* for the return of its bid security. 

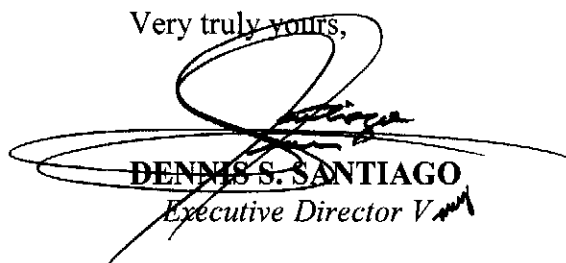
¹ Received on 7 October 2014.

It bears stressing that *Section 27.4* does not require the forfeiture of the bid security in case a post-disqualified bidder does not submit a written waiver of its right to file an MR and/or protest. The requirement under the said provision is that before the bid security is returned, a written waiver of the right to file MR and/or protest shall first be submitted by the bidder. This refers to the return of bid security during the period within which an MR and/or protest may still be filed. Thus, failure to submit the waiver does not amount to forfeiture of the bid security, the procuring entity should merely withhold the release of the bid security until the reglementary period for the filing of an MR and/or protest has lapsed.

In view of the foregoing, we wish to clarify that if the bidder is post-disqualified, the bid security shall only be returned to the bidder upon submission of a written waiver of its right to file a motion for reconsideration and/or protest. Failure to submit the waiver shall not amount to the forfeiture of the bid security, but the procuring entity should not release the same until a waiver of right to file a motion for reconsideration and/or protest is submitted by the bidder, or when the reglementary period to file an MR/protest has lapsed.

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



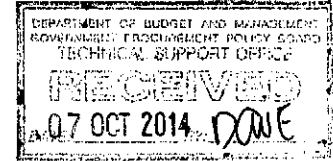


Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
OFFICE OF THE REGIONAL DIRECTOR
Regional Office No. XII
Mabini Street corner Alunan Avenue, Koronadal City

11/20/15

September 29, 2014

The Executive Director
Government Procurement Policy Board
Technical Support Office
Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City



Sir:

The undersigned is respectfully requesting your opinion/advice regarding the propriety of forfeiting the bid security of a post-disqualified bidder upon their failure to submit a written waiver of their right to file a motion for reconsideration.

In relation to the Procurement of Goods and Services, this Office posted at PhilGEPs on July 16, 2014 to August 5, 2014 Contract ID No. 14GM0004, Supply and Delivery of Electrical Materials for use in Upgrading and Rehabilitation of DPWH Region XII Office Electrical System, DPWH Region XII, Koronadal City.

Two (2) suppliers respond to said invitation to bid, purchase Bidding Documents and submitted bids, namely: Kupler Industries, Inc. and Tomas Electrical Supply. On August 5, 2014, the bids were opened and Kupler Industries, Inc. submitted the lowest bid. During Post-qualification by the Technical Working Group, it was found out that Kupler Industries, Inc. failed to meet the technical specifications on some items of the contract. Thus, they were issued the Notice of Post-Disqualification on August 29, 2014.

On September 17, 2014, our Office received the letter dated August 19, 2014 of Kupler Industries, Inc. requesting for the retrieval of their Bid Security under OR No. 6559278-B dated August 5, 2014 for the said contract in the amount of P65,000.00.

On September 23, 2014, we wrote Mr. Ruel Mordeno, Proprietor/Authorized Managing Officer of Kupler Industries, Inc. informing them that their Bid Security was forfeited in their failure to submit a written waiver of their right to file a motion for reconsideration within the prescriptive period of three (3) calendar days upon receipt of our written Notice of Post-Disqualification on August 29, 2014, which was sent thru mail and likewise faxed to their Office, citing Section 27.4, Revised IRR of RA 9184 which states that "*Without prejudice to the provisions of the Act and this IRR on the forfeiture of bid securities, bid securities shall be returned only after the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be, has signed the contract and furnished the performance security, except to those declared by the BAC as failed or post-disqualified in accordance with this IRR, upon submission of a written waiver of their right to file a motion for reconsideration and/or protest.*"

On this regard, this Office would like to seek the opinion/advice of your Office on the provision of the IRR as previously mentioned, whether a written waiver of their right to file a

Jan/

If a bidder is post-disqualified, and did not submit a waiver, the Bid Security should be returned to said bidder.
PK OS



Republic of the Philippines
Department of Public Works and Highways
OFFICE OF THE REGIONAL DIRECTOR
 Regional Office No. XII
 Cor. Alunan Avenue – Mabini Street, Koronadal City

Bid Evaluation Report
 Date: August 5, 2014

1.0 PROJECT IDENTIFICATION

Table 1. Basic Contract Information

1.1 Contract I.D.	14GM0004
1.2 Purchase Request No.	PR # 032-2014
1.3 Brief description of Goods to be procured	Supply and Delivery of Electrical Materials for use in Upgrading and Rehabilitation of DPWH Region XII Office Electrical System, Koronadal
1.4 Purchaser (or Employer)	
(a) Name	DPWH R.O XII
(b) Address	Mabini St. Cor. Alunan Ave., Kor. City
1.5 Implementing Office/ End- User	DPWH R.O XII, For use in Upgrading and Rehabilitation of Office Electrical System
1.4 Approved Budget for the Contract (ABC)	P 3,248,530.00
1.5 Method of Procurement	Public Bidding

2.0 INITIAL STEPS IN BIDDING PROCESS

Table 2. INITIAL STEPS IN BIDDING PROCESS

2.1 Pre-Procurement Conference	
Date of Conference	July 23, 2014
2.2 Invitation to Apply for Eligibility and Bid	
(a) Date of First Advertisement	July 18, 2014
(b) Name of Newspaper	Manila Standard Today
(c) Date of Posting in DPWH Website & G-EP5	July 16, 2014 to August 5, 2014
2.3 Issuance of Bidding Documents	
(a) Period of availability of Bid Documents	July 16, 2014 to August 5, 2014
(b) Number of Bidders who purchased BDs	Two (2) Bidders
2.4 Amendments of Bidding Documents: if any	
(a) List all Issue Dates	None
2.5 Pre- Bid Conference, if any	
(a) Date of Conference	July 23, 2014 (9:00 a.m.)
(b) Date Minutes sent to bidders	Not Applicable

3.0 SUBMISSION/RECEIPT, OPENING AND PRELIMINARY EXAMINATION OF BIDS

Table 3. BID AND OPENING

3.1 Bid Submission Deadline	
(a) Original Date, Time	August 5, 2014 on or before 10:00 a.m.
3.2 Bid Opening Date, Time	August 5, 2014, 2:00 p.m.
3.3 Bid Validity Period (days of weeks)	
(a) Original Specified	120 Calendar days
(b) Extension/ Revisions, if any	None
3.4 Number and Names of Bidders that submitted Bids	1. TOMAS ELECTRICAL SUPPLY 2. KUPLER INDUSTRIES INC.
3.5 Number and Names of Bidders that withdrew Bids	None

Table 4. Preliminary Examination of Bids

(Determining Bidder's compliance with the requirements of Technical and Financial Proposal)

Bidder's Name	Complying (check)	Non-Complying (check)	Reasons for Non-Compliance
1. KUPLER INDUSTRIES INC.			
2. TOMAS ELECTRICAL SUPPLY			

4.0 BID PRICES

Table 5. BID PRICES (as read out)

Bidder's Identification/Name	Amount
KUPLER INDUSTRIES INC.	P 3,002,020.00
TOMAS ELECTRICAL SUPPLY	P 3,142,305.00

9

IS- "B" DOCUMENTS

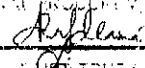
If applicable, valid Joint Venture Agreement (JVA) or, in lieu thereof, duly notarized statement from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful shall be included in the bid		Not applicable.
---	--	-----------------

B. FINANCIAL AND TECHNICAL PROPOSAL

Requirements	Parties Consulted	Findings/Remarks
1. Bid Security		Responsive. Submitted Manager's Check No. 0004319 in the amount of P55,000.00 issued from BDO-Davao Agdao Branch with O.R. No. 6559278
2. Authority of Signatory		Responsive. Submitted Special Power of Attorney issued by Edel Luiza Lu-Marquez, Proprietor/Electrical Business Group Manager of Kupier Industries Inc. appointing Ruel Mordeno as his Attorney-in-Fact, duly notarized on July 21, 2014 by Atty Angela A. Librado, entered in Notarial Registry Doc. No. 16, Page No. 4, Book No. CLXXXVI, Series of 2014
3. Product/Delivery Schedule		Responsive. The delivery schedule expressed shall be within 45-60 days after the receipt of the approved Purchase Order signed by Ruel Mordeno, Sales/Marketing Officer, Kupier Industries Inc.
4. Manpower requirements		Responsive.
5. After-sales service/parts, if applicable		Responsive One (1) year warranty for equipment/six (6) months for wires/goods
6. Certification of Compliance with Labor Laws		Responsive Submitted Ombudsman Sworn Statement duly signed and notarized.
7. Sworn statement with the enumerated list in Section 25.2 (a) (iv) of the IRR of RA 9134 in the prescribed form		Responsive Submitted Affidavit by Ruel Mordeno duly signed and notarized.

C. FINANCIAL PROPOSAL

Items & Description	Qty	Unit	Unit Price (Pesos)	Total (Pesos)
1. Automatic Transfer Switch in free standing NEMA 3R Enclosure with 100 amperes 3-Pole, 60hz, 220V, Draw-Out Breaker, ATS Controller with Digital Display	1	set	628,000.00	628,000.00
2. Circuit Breaker in NEMA 1 Enclosure Surface Mounted with 1000 Amperes, 3-Pole, 220V, 42KAIC, Bolt-On Type, with Ammeter and Voltage Gauge	1	Set	166,000.00	166,000.00
3. 100KVA Distribution Transformer, 13.2/7.6 KV Primary, 240V Secondary, 1-Phase, 60hz, OISC, Pole Mounted Type, Brand New	3	1	208,000.00	624,000.00
Panel Boards Distribution Free Standing with Ammeter/Voltage Gauge:				
4. Panel Boards Distribution Free Standing with Ammeter/Voltage Gauge MPP1 - 600A, 3-Pole, 220V, 42KAIC BRS- 3-60A, 5-Pole, 10KAIC 3-200A, 3-Pole, 22 KAIC 2-200A, 3 Pole, SPARE 2- SPARE, 3 Pole	1	Set	178,000.00	178,000.00

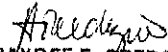
GPWH-REGIONAL XII
 REGIONAL ASSISTANT COMMISSIONER

 OFFICE OF THE REGIONAL ASSISTANT COMMISSIONER

RECOMMENDATION

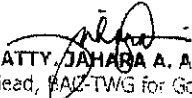
After examination, the Technical Working Group determines that KUPLER INDUSTRIES Inc. complied with the Legal, and Financial capability requirements contained in the bidding documents. However, it failed to comply with the required technical specification for some items for the above subject project; hence, KUPLER INDUSTRIES Inc. fails the criteria for post-qualification.

The finding of this evaluation is being submitted by the TWG to the BAC for information, deliberation and further instruction.

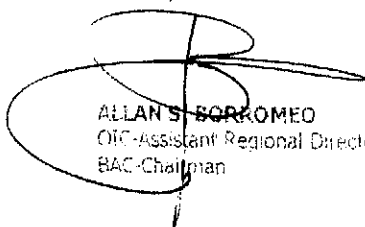

SOGDARONT SARIP
Member, BAC-TWG for Goods

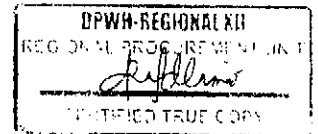

HAYDEE E. OBEDOZA
Member, BAC-TWG for Goods

O.B.
NURHANI J. IBRAHIM
Member, BAC-TWG for Goods


ATTY. JAHARA A. ALI
Head, BAC-TWG for Goods

Noted by:


ALLAN S. BORRAMEO
OIC-Assistant Regional Director
BAC-Chairman



Department of Public Works and Highways (DPWH)

Contract ID : 14GM0004
Contract Name : SUPPLY AND DELIVERY OF ELECTRICAL MATERIALS FOR USE IN
UPGRADING AND REHABILITATION OF DPWH REGION XII OFFICE
ELECTRICAL SYSTEM, KORONADAL CITY
Location of Contract : DPWH REGION XII, Koronadal City

DPWH Regional Office XII
Mabini Street corner Alunan Avenue
Koronadal City

NOTICE OF POST-DISQUALIFICATION

August 29, 2014

MR. RUEL MORDENO

Proprietor/Authorizing Managing Officer
KUPLER INDUSTRIES INCORPORATED
Doors 4-5, Don Pedro Buiding Lapulapu St., Agdao,
Davao City

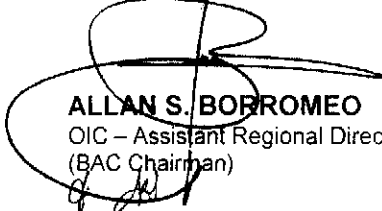
Gentleman :

Upon post qualification and careful review, validation and verification of the eligibility, technical and financial requirements that you have submitted for the bidding of the above stated Contract, we regret to inform you that your firm/company failed to pass the post qualification on the following grounds: **Technical Requirements, failed to comply with the required technical specification for some items of the above subject project.**

Hence, with the above findings, your firm is post disqualified.

Attached herewith are the copy of Post Qualification Summary Report of Technical Working Group for Goods, Technical Specifications required, and copy of your Bill of Quantities.

Very truly yours,


ALLAN S. BORROMELO
OIC – Assistant Regional Director
(BAC Chairman)

Received by:

Name and Signature of Bidder's Representative

Position

Date received: _____

cillo nang ospa/kl