



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

**NPM No. 116-2013**

26 December 2013

**MS. REMA P. OHNO**

*Senior Executive Vice President*

**HIMEX CORPORATION (HIMEX)**

Prestige Tower, F. Ortigas Jr. Road, Ortigas Center

Pasig City

**Re : Disapproval of the Recommendation of the Bids and Awards  
Committee (BAC); Protest Mechanism**

Dear Ms. Ohno:

This is in response to your letter dated 18 October 2013, seeking our opinion on the remedies available to a bidder after the Head of the Procuring Entity (HOPE) disapproved the Bids and Awards Committee (BAC) resolution recommending the contact award in favor of Himex.

Based on your representation, Himex was informed by the BAC of West Visayas State University Medical Center (WVSUMC) that its Board of Regents disapproved their recommendation to award to Himex the contract for the General X-ray Machine and Radio-Fluoroscopy X-ray Machine with Direct Radiology System, without providing the reasons for such disapproval. Although Himex has already filed a request for reconsideration on the decision and inquiry on the ground/s of the disapproval, the HOPE has not resolved the same even after the lapse of two (2) weeks. It is in this context that you are seeking our opinion on the remedies available to Himex while awaiting the decision of the procuring entity on its request for reconsideration.

**Disapproval of BAC Resolution**

For your guidance, we refer to the relevant statements under Sections 37.1.1 to 37.1.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA). Under these Sections of the IRR, the BAC shall recommend to the HOPE the award of contract to the bidder with the Lowest Calculated Responsive Bid after the post-qualification process has been completed. Within seven (7) calendar days from its receipt of the recommendation, the HOPE shall approve or disapprove such recommendation. In the event the HOPE disapproves such recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, copy furnished the BAC.

In this regard, we wish to stress that the notice of disapproval by the HOPE of the recommendation of the BAC should be communicated to the bidder concerned in writing, and contain sufficient information upon which the valid, reasonable, and justifiable grounds for such decision is based.

## Remedy Pending Resolution of the Request for Reconsideration

Article XVII of RA 9184 and Rule XVII of its IRR provide the avenue for redress of grievance on decisions of the BAC and the HOPE. The protest mechanism established in these rules, dictates that decisions of the BAC may be questioned by filing a request for reconsideration. If the BAC denies such request, the decision may be subsequently protested by filing a verified position paper to the HOPE. Thus, in the case of *Dimson (Manila), Inc. and Phesco, Inc. v. Local Water Utilities Administration*<sup>1</sup>, the Supreme Court held that “only upon the final resolution of the protest can the aggrieved party be said to have exhausted the available remedies at the administrative level. In other words, only then can he viably avail of the remedy of certiorari before the proper courts. Non-compliance with this statutory requirement, under Section 58 of R.A. No. 9184, constitutes a ground for the dismissal of the action for lack of jurisdiction.”

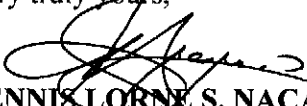
In connection with this, we refer to the same Supreme Court decision, citing *Carale v. Abarintos*<sup>2</sup>, that “the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the procuring entity an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.”

Based on the foregoing, there are no other available administrative remedy provided in RA 9184 and its IRR aside from the protest mechanism established in Article XVII of RA 9184 and Rule XVII of its IRR. Since Himex has already filed a request for reconsideration before the HOPE of WVSUMC, it should await the resolution thereon before filing a petition under Section 65 of the Rules of Court, unless it could prove that waiting for such reply would be useless and the rule on exhaustion of administrative remedies may be disregarded. Please be reminded that the extraordinary remedies of *certiorari* and *mandamus* are available only when there is no other plain, speedy, and adequate remedy in the ordinary course of law, such as a motion for reconsideration.

In sum, we wish to clarify that the notice from the HOPE disapproving the recommendation of the BAC should be based on valid, reasonable, and justifiable grounds, and should be indicated in such notice to the bidder. The decision of the BAC and the HOPE may be questioned following the Protest Mechanism provided in RA 9184 and its IRR, which must be complied with by the aggrieved bidder prior to resorting to regular courts. Pending its request for reconsideration or protest, the aggrieved bidder must await its resolution, unless it can establish that there is no other plain, speedy, and adequate remedy in the ordinary course of law.

We hope that this opinion issued by the GPPB-TSO 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 given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS LORNE S. NACARIO**  
*Officer-in-Charge*

  
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<sup>1</sup> G.R. No. 168656 dated 22 September 2010.

<sup>2</sup> 336 Phil. 126 (1997).