



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

NPM No. 122-2013

26 December 2013

MR. ROBERTO PIERDOMINICI

Regional Sales Director

ALENIA AERMACCHI

Via Ing. Paolo Foresio, 1

21040 Venegono Superiore (VA) - Italy

Re : Extension of Bid Closing Time; Late Issuance of Supplemental/Bid Bulletin; Declaration of Failure of Bidding

Dear Mr. Pierdominici:

This is in response to your letter dated 14 November 2013, requesting for our official position concerning the bidding procedures applied by the Department of National Defense (DND) relative to its procurement for Medium Lift Fixed Wing Aircraft Acquisition Project, and requesting that such bidding be suspended until receipt of our reply.

The above-mentioned requests are being made based on the succeeding facts and circumstances presented in said letter. The deadline for the submission and receipt of bids is scheduled at 1:30 p.m., but the Bids and Awards Committee (BAC) informed the bidders present to wait for further potential bidders to submit additional proposals. At 2 p.m., the BAC finally declared the bid as closed with two (2) bidders present, and with only the proposal of Alenia Aermacchi officially submitted. After such declaration, the other bidder questioned the late issuance of Supplemental/Bid Bulletin responding to the requests for clarifications, and requested for a postponement of the bidding. Despite your objection on the acceptance of the other bidder's remark, the BAC announced a failure of bidding. It then suspended the proceedings for an internal executive session. Thereafter, the BAC recognized their mistake in issuing the Supplemental/Bid Bulletin belatedly, and explained that the BAC did not consider the request for extension since it was also submitted outside the prescribed time. However, we note that you also stated that the BAC declared the request for postponement acceptable and extended the bid closing date up to 18 November 2013.

At the outset, we wish to note that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) are not in the position to decide for and on behalf of a procuring entity, nor can it overturn a decision of the procuring entity. The GPPB and its TSO have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, and thus, cannot dictate actions or decisions upon the BAC that are well within the latter's authority, discretion, and accountability to make. For this reason, we regret that we cannot favorably act on your request to suspend the bidding activity. In the same vein,

procuring entities need not wait for the opinion of this office before proceeding with their procurement activities. Nonetheless, we shall cite and explain relevant provisions of Republic Act No. (RA) 9184 and its revised Implementing Rules and Regulations (IRR) relative to the concerns raised in your letter.

Extension of the Bid Closing Time

In order to properly inform prospective bidders of the schedule of the stages of the procurement activity, procuring entities are required to specify, among others, the date, time, and place of the deadline for the submission and receipt of bids in the Invitation to Bid.¹ The BAC shall receive bids on the specified deadline, and reject all bids submitted after such deadline.²

If the procuring entity intends to postpone or reschedule the deadline for the submission and receipt of bids, it may do so by issuing a Supplemental/Bid Bulletin specifying the revised schedule for the procurement activity. It should be noted, however, that Section 22.5.2 of the IRR of RA 9184 provides that "Supplemental/Bid Bulletins may be issued upon the procuring entity's initiative for purposes of clarifying or modifying any provision of the Bidding Documents at least seven (7) calendar days before the deadline for the submission and receipt of bids."

As such, procuring entities cannot extend the "tender closing time" or the deadline for the submission and receipt of bids specified in the Bidding Documents without issuing a Supplemental/Bid Bulletin in accordance with Section 22.5.2 of the IRR.

Late Issuance of Supplemental/Bid Bulletin

As explained above, procuring entities may issue Supplemental/Bid Bulletin as provided in Section 22.5 of the IRR in order to modify any portion of the Bidding Documents, including schedules and timelines of the stages of the procurement activity. These bulletins are also issued to respond to requests for clarification on the Bidding Documents.³ However, Supplemental/Bid Bulletins cannot be issued by the procuring entity later than seven (7) calendar days from the deadline of the submission and receipt of bids. This period is meant to afford bidders adequate opportunity to revise its bid according to the changes in the Bidding Documents or to adjust its logistical arrangements to meet amendments in schedule.

In light of the mandatory directive to issue Supplemental/Bid Bulletin not later than the period prescribed in Section 22.5 of the IRR, we are of the view that Supplemental/Bid Bulletins issued by the BAC within seven (7) calendar days from the deadline of the submission and receipt of bids will be considered invalid and ineffective in modifying the Bidding Documents. If the BAC decides to carry the modifications made by an invalid Supplemental/Bid Bulletin in proceeding with the procurement activity, the BAC may be considered to have failed in following with the prescribed bidding procedures.

¹ Section 21.1 (c) of the IRR of RA 9184.

² Sections 25.4 and 25.5 of the IRR of RA 9184.

³ Section 22.5.1 of the IRR of RA 9184.

Declaration of Failure of Bidding by the BAC

The authority of the BAC to declare a failure of bidding is limited to instances enumerated in Section 35.1 of the IRR of RA 9184, specifically, when (a) no bids are received, (b) all prospective bidders are declared ineligible, (c) all bids fail to comply with all the bid requirements or fail post-qualification, or, in the case of consulting services, there is no successful negotiation, or (d) the bidder with the LCB or HRB refuses to accept the award.

The authority to declare a failure of bidding on the basis of the BAC's failure to follow the prescribed bidding procedures, such as in the case of non-compliance with mandatory timelines, belongs to the Head of the Procuring Entity (HOPE) pursuant to Section 41 (b) of the IRR of RA 9184.

Thus, the BAC cannot declare a failure of bidding for reasons other than those provided in Section 35 of the IRR of RA 9184. It cannot exercise the reservation clause provided in Section 41 of the IRR in declaring a failure of bidding since such authority exclusively belongs to the HOPE.

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 further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS LORNE S. NACARIO
Officer-in-Charge