



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

NPM No. 128-2013

27 December 2013

MR. ROBERTO PIERDOMINICI

Regional Sales Director

ALENIA AERMACCHI

Via Ing. Paolo Foresio, 1

21040 Venegono Superiore (VA) - Italy

Re : Request for Suspension of the Bidding Procedure

Dear Mr. Pierdominici:

This is in response to your letter dated 13 December 2013 requesting for a suspension of the bidding procedure for Medium Lift Fixed Wing Aircraft Acquisition Project (Project) until investigation is conducted verifying that the Department of National Defense (DND) followed the right procedures for the issuance of the new bid and the relevant pre-bid conference.

The foregoing request is being made in light of the conclusion made by Alenia Aermacchi that the DND mishandled the bidding procedures for the Project based on the following factual representations:

1. It failed to call the attention of Alenia Aermacchi to attend the pre-bid conference scheduled on 2 December 2013;
2. It failed to post the Supplemental/Bid Bulletin dated 6 December 2013 in the Philippine Government Electronic Procurement System (PhilGEPS) and the DND website; and
3. It failed to communicate the issuance of said Supplemental/Bid Bulletin to Alenia Aermacchi.

We wish to reiterate our position that neither the Government Procurement Policy Board (GPPB) nor its Technical Support Office (GPPB-TSO) can act on your request to suspend the bidding activity of the DND for its Project for the same reason given in Non-Policy Matter (NPM) No. 122-2013 dated 26 December 2013. Again, please note that the GPPB and the GPPB-TSO are not in the position to decide for and on behalf, or overturn a decision, of a procuring entity because they have no jurisdiction to rule over actual controversies with regard to the conduct of bidding.

Article XVII of Republic Act No. (RA) 9184 and Rule XVII of its revised Implementing Rules and Regulations (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.¹ In this regard, we suggest that Alenia Aermacchi subject its grievances to the protest mechanism provided in RA 9184 and its IRR by submitting a request for reconsideration to the Bids and Awards Committee of the DND within three (3) calendar days upon receipt of written notice or upon verbal notification of the questionable decision.


Nonetheless, for further guidance, please note that RA 9184 and its IRR provide that the details of the pre-bid conference shall be specified in the Invitation to Bid (IB) or in the Supplemental/Bid Bulletin, as we have explained in NPM No. 124-2013, to wit:

[B]idders are informed of the details of the pre-bid conference through the IB, which should comply with the posting/advertisement requirements under Section 21.2 of the IRR of RA 9184. In case the BAC decides to conduct new pre-bid conference not included in the IB, it has to issue a Supplemental/Bid Bulletin on the matter. The dissemination of this information should follow the rules prescribed in Section 22.5.3 of the IRR, *i.e.*, the Supplemental/Bid Bulletin should be posted on the PhilGEPS and the website of the procuring entity, if available. In connection with this, bidders are responsible for inquiring whether any Supplemental/Bid Bulletin has been issued for the project they are interested in. However, the BAC must inform bidders who have submitted bids before the issuance of Supplemental/Bid Bulletin.

Based on the foregoing, we wish to clarify that the procuring entity is under no obligation to call the attention of any prospective bidder to attend a scheduled pre-bid conference, unless such bidder has submitted its bid before the issuance of the Supplemental/Bid Bulletin indicating the intention of the procuring entity to conduct a pre-bid conference that was not previously specified in the IB for the procurement activity. Otherwise, it remains the responsibility of prospective bidders to inquire with the procuring entity as to the issuance of Supplemental/Bid Bulletin for projects that it intends to participate in. However, it is mandatory for the Bids and Awards Committee to post any Supplemental/Bid Bulletin it issues on the PhilGEPS and its website, if available.

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 ORNE S. NACARIO
Officer-in-Charge

¹ Non-Policy Matter No. 116-2013 dated 26 December 2013.