

NPM No. 15-2006

7 November 2006

SUSAN V. TECSON
Managing Director
INTEGRATED ENERGY SYSTEMS & RESOURCES, INC.
Unit 201 Antel Seaview Tower,
2626 Roxas Boulevard, Pasay City

Re : Cash Deposit Certificate

Dear Ms. Tecson:

We refer to your letter dated 15 August 2006 where you posed the following query:

Whether the cash deposit certificate must expressly stipulate that a specified amount is being put on hold in favor of the procuring entity and for a specific project.

At the outset, allow us to note that the sample forms prescribed by the Government Procurement Policy Board merely serve as guides. Eligible bidders need not copy *verbatim* the language used in the sample forms. They may change its wordings as long as the language employed is consistent with the purpose and intent of the law.

Consequently, we concur with the action taken by the Bids and Awards Committee (BAC) not to declare a bidder ineligible simply because the cash deposit certificate submitted is not in accordance with the sample form prescribed. It bears stressing that the BAC is legally obliged to accept said submission during bid opening and leave the detailed scrutiny of its contents and determination of its compliance for post qualification.

Section 23.11.1 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. (R.A.) 9184 provides that prospective bidders must be able to submit any of the following: (i) a commitment from a licensed bank to extend to the bidder a credit line equal to at least 10% of the Approved Budget for the Contract (ABC) if awarded the contract to be bid, (ii) a cash deposit certificate in an amount at least equal to 10% of the ABC, or (iii) its Net Financial Contracting Capacity (NFCC) which should be at least equal to the ABC.

All of the above documents serve to establish the bidder's liquidity and its capacity to absorb the additional obligations from the contract to be bid. They safeguard the interest of the procuring entity by ensuring that the bidder has the necessary resources to successfully implement and complete the project to be bid.

Mindful of such purpose, the procuring entity must determine if the contents of the cash deposit certificate complies with the following elements:

- (a) It must contain a clear commitment to hold out a specified amount of cash;
- (b) Amount of cash being held out must not be lower than that set by the procuring entity in the bidding documents, which is at least equal to 10% of the ABC.
- (c) The commitment must be issued by a licensed bank; and
- (d) It must be specific to the contract to be bid. For this last element, we believe that the project may be sufficiently described without need of specifying the name of the procuring entity. However, it would be more advisable to provide the name of the procuring entity.

If the procuring entity determines that the language of the cash deposit certificate meets the foregoing requirements, then the cash deposit certificate submitted is presumed to have complied with Section 23.11.1 of the IRR-A of R.A. 9184.

We hope that this clarifies matters.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III