



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

NPM No. 154-2012

21 December 2012

MS. MARIBETH P. SANZ
Vice President for Operations
RON DANIELL CONSTRUCTION
Unit 819 Globe Telecom Plaza,
1 Pioneer St., Mandaluyong City

Re: Discounts on Bid Price and Affixing Signature/Initial on the Bidding Documents

Dear Ms. Sanz:

We respond to your letter dated 11 September 2012 seeking our opinion on the following issues related to the Design and Build Project for the Clark 230kv Power Transmission Line (Project) of the Clark Development Corporation (CDC):

1. Whether the Special Bids and Awards Committee (SBAC) erred in accepting the "discount of 28% on all items in the Bill of Quantities" offered by the MIESCOR-Nari-Tbea Joint Venture after the bids have been submitted and sealed; and,
2. Whether the SBAC erred in disqualifying Ron Daniell Construction-Iljin Electric Joint Venture (RDC-IE JV) for its failure to submit signed Technical Data Sheet.

As represented, three (3) bidders, including RDC-IE JV, have participated in the competitive bidding conducted by the CDC for its Project. After submission of the bids, the MIESCOR-Nari-Tbea Joint Venture manifested that it would provide a discount of twenty-eight percent (28%) on all items in the Bill of Quantities, which was accepted by the SBAC. It is likewise represented that the SBAC declared RDC-IE JV ineligible on the ground that it stamped the words "Not Applicable" and refused to sign the Technical Data Sheet. Thereafter, a series of exchanges have transpired between CDC and RDC-IE JV involving these issues.

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) only render policy and non-policy opinions, respectively, on issues purely relating to the interpretation and application of our procurement law, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions¹ under the law. Thus, it

¹ Quasi-judicial is defined as the term applied to the actions or discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their

cannot dictate to the BAC which bidders should be declared as eligible, which bid should be accepted as the lowest calculated and responsive bid, and to whom should the contract be awarded. We adhere to the view that the functions of the BAC cannot be interfered with by any government agency since these solely fall within their authority as sanctioned by law, but with the concomitant responsibility that they perform such functions with judiciousness, adhering to the principles of transparency, accountability, equity, efficiency, and economy in the procurement process that it carries out for the Procuring Entity (PE).²

Provision for Discounts

As discussed in a previous opinion³, although discounts are not entirely prohibited, it should be made an integral part of the original bid such that the discount and the bid price have the same validity period in order for it to be considered for purposes of bid evaluation; otherwise, the bid shall be evaluated *sans* the discount. This can be done either by including the document offering the discount in the bid or by submitting a modification prior to the deadline for submission, receipt and opening of bids.

Applying this principle to the present situation, a discount proposed by a bidder after submission, receipt and opening of bids should not be considered by the BAC as part of the bidder's bid price. Acceptance of the discount offered and made manifest only after the deadline for submission of bids, and after the bids were opened would constitute improvement or modification of bids, which is prohibited under Section 26.1⁴ of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

Failure to Sign the Technical Data Sheet

The Bidding Documents refer to documents issued by the PE as the basis for bids, and it furnishes all information necessary for a prospective bidder to prepare a bid for the infrastructure projects, goods and/or consulting services required.⁵ For your guidance, Section 17.1 of the IRR of RA 9184 provides that plans/drawings and technical specifications form part of the Bidding Documents in the procurement of infrastructure projects. As the repository of all the specific requirements, limitations and parameters of the procurement at hand, as determined by the PE,⁶ the prospective bidder must conform with the instructions and requirements in the Bidding Documents.

Clause 19.4 of the Philippine Bidding Documents (PBDs) for the Procurement of Infrastructure Projects⁷ provides that the bid, with the exception of unamended printed literature, should be signed, and each and every page thereof initialed, by the duly authorized representative/s of the bidder. This requirement of affixing a signature and/or an initial on the Bidding Documents necessarily includes the Bid, Technical Data Sheet and Technical

official action and to exercise discretion of a judicial nature. (See Agpalo, Philippine Administrative Law 1999 Ed., p. 216 citing *Lupangco v. CA*, 160 SCRA 848, series of 1988.

² NPM No. 87-2012 dated 16 July 2012 citing NPM No. 44-2009 dated 18 August 2009.

³ NPM No. 114-2004 dated 13 August 2004.

⁴ A bidder may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. Where a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked to its original bid and marked as a "modification," thereof, and stamped "received" by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened.

⁵ Section 5(f) of the IRR of RA 9184.

⁶ NPM No. 100-2012 dated 13 August 2012.

⁷ Fourth Edition, December 2010.

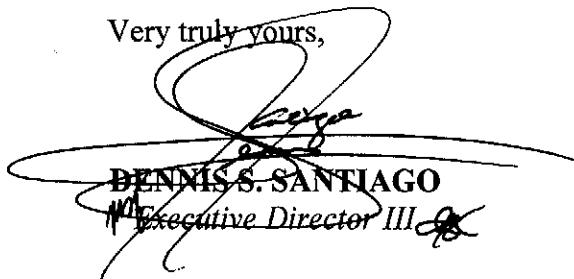
Specifications, and non-compliance with this requirement shall be ground for disqualification.

On the other hand, the Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects (Guidelines), specifically Section 7, requires the PE to prepare the Preliminary Design and Construction Studies indicating several criteria,⁸ and the bidder is responsible for the accuracy and applicability of all data that it will use in its Design and Build proposal and services. Consequently, the bidder is expected to comply with the minimum technical requirements indicated in the Technical Data Sheet or its equivalent Technical Specifications. Relative thereto, we opine that indicating "Not Applicable" to a specific technical requirement is considered insufficient compliance with the minimum technical requirements as set by the PE in the Technical Data Sheet and the bidder may be disqualified for non-compliance.

Based on the foregoing, we are of the view that a proposal for a discount made after the deadline for the submission, receipt and opening of bids constitutes modification of the bid which is not allowed under Section 26.1 of the IRR of RA 9184. In addition, failure of the bidder or his/her duly authorized representative to sign the bid, and initial each and every page of the Bidding Documents is a ground to disqualify a bidder. Moreover, in the case of Design and Build Infrastructure Projects, the Guidelines require the bidders to comply with the minimum technical specifications as indicated in the PE's Preliminary Design and Construction Studies by providing and complying with the technical data and specification required.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



BENNIS S. SANTIAGO
Executive Director III

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⁸ Project description, conceptual design, performance specifications and parameters, preliminary survey and mapping, preliminary investigations, utility locations, approved budget for the contract, proposed design and construction schedule, minimum requirements for a construction safety and health program for the project being considered, and tender/bidding documents, including Instructions to Bidders and Conditions of Contract.