

Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE**NPM No. 162-2012**

21 December 2012

ENGR. TEOTIMO C. REYES, JR.*Bids and Awards Committee Chairman***ZAMBOANGA CITY WATER DISTRICT (ZCWD)**

Pilar Street, Zamboanga City

Re: Guidelines for Design and Build Projects

Dear Engr. Reyes:

We respond to your letter dated 12 November 2012 inquiring on the proper course of action in case the bidding documents issued by the procuring entity provided for the inclusion of the Value Engineering Analysis of Design and Construction Method in the Second Envelope (Financial Proposal), instead of having it in the First Envelope (Technical Proposal), as required in the Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects (Guidelines for Design and Build) under Annex "G" of the revised Implementing Rules and Regulations (IRR) of Republic Act 9184 (RA 9184).

As represented, the ZCWD opened bids for the procurement of a design and build project, specifically, the *Design, Supply, and Installation of a Capacity Complete Compact Water Treatment Facility*. In the bidding documents, ZCWD required bidders to exclude the document pertaining to the Value Engineering Analysis of Design and Construction Method, from the First Envelope (Technical Proposal) and its inclusion instead in the Second Envelope (Financial Proposal). A bidder was able to comply with this requirement. However, a disqualified bidder questioned the proceeding stating that the instruction given in the bidding documents are contrary to Section 10.1 of the Guidelines for Design and Build Projects which requires the inclusion of the Value Engineering Analysis of Design and Construction Method as part of the first envelope (Technical Proposal).

Please note that RA 9184 and its IRR, specifically the Guidelines for Design and Build, provide for the rules and regulations that procuring entities should adopt in the procurement of infrastructure projects to be implemented using the design and build scheme. Section 10.1(iv) of the Guidelines for Design and Build expressly states that the Value Engineering Analysis of Design and Construction Method forms part of the First Envelope (Technical Proposal).

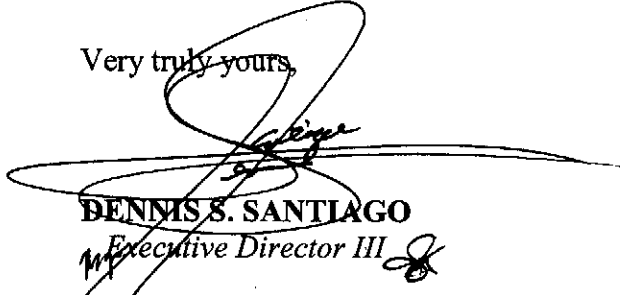
Thus, as directed in said Guidelines, the PE is required to comply with this particular provision and see to it that the bidding documents reflect the same instruction. Non-compliance with said requirement amounts to the failure of the Bids and Awards Committee

(BAC) to comply with the requirements of the present law and its associated rules and guidelines, which may result in the disallowance by the Commission on Audit and the likely imposition of applicable administrative, civil, and criminal sanctions. It is worthy to stress that "acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity"⁵.

Considering the foregoing, it is our view that the available recourse to the Head of the Procuring Entity in light of the BAC's failure to follow the prescribed procurement procedures is to declare a failure of bidding pursuant to the Reservation Clause under Section 41 of the IRR of RA 9184, and impose proper and applicable administrative sanctions against the erring officials for their failure to comply with existing procurement law, rules, and regulations, after due notice and hearing.

We hope that our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situation 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 S. SANTIAGO
Executive Director III

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⁵ Article 5, Civil Code of the Philippines.