



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

**NPM No. 163-2012**

21 December 2012

**ENGR. ALAN B. ZENIT**  
*General Manager*  
**AZTEK CONSTRUCTION FIRM**  
252 D1 Villa Marina Homes,  
Calderon Street, Old Balara,  
Quezon City

**Re : Payment of Bidding Documents and Requirement for  
Certificate of Registration and License for Shipyard  
and Ship Repair Yards**

Dear Engr. Zenit:

This refers to your letter requesting for opinion on the following issues relative to the procurement of Fabrication of Vessel Launch by the Bureau of Quarantine (BOQ):

1. Whether it is valid for the Bids and Awards Committee (BAC) to require your company to pay anew for the Bidding Documents in the rebidding of the same project; and,
2. Whether the Certificate of Registration and License for Shipyard and Ship Repair Yards from the Maritime Industry Authority (MARINA) may be required instead of the Philippine Contractors Accreditation Board (PCAB) License and Registration required under Section 23.5.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

As represented, Aztek Construction Firm (Aztek) purchased Bidding Documents for the Fabrication of Vessel Launch under the Design and Build Scheme project of the BOQ. However, the procurement was eventually declared a failure. It was re-advertised later under the category of infrastructure or civil works project, but the Bidding Documents do not require the submission of PCAB License and Registration. Instead, bidders were required to submit the Certificate of Registration and License for Shipyard and Ship Repair Yards from MARINA as an additional requirement.

**Payment of Bidding Documents for the Second Bidding**

Anent the first issue, we wish to point out that Section 17.4 of the IRR of RA 9184 provides that bidders may be asked to pay for the Bidding Documents to recover the cost of

its preparation and development. It does not, however, clearly provide whether bidders that paid for the Bidding Documents in the first bidding that failed may be exempted from paying the Bidding Documents for the second bidding.

Please note that Section 35 of the IRR requires the procuring entity to conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates, every time that a failure of bidding occurs. In the course of such review and evaluation, the procuring entity may incorporate revisions to the Bidding Documents, which may include changes such as schedule of procurement activities, specifications, delivery schedule, and cost estimates.

The preparation and development of the revised Bidding Documents may entail upon the procuring entity another set of costs and expenses. Based on these costs and expenses, procuring entities may deem it necessary to charge bidders anew for the purpose of recovering the costs for its development and preparation.

In this regard, we wish to stress that the decision in charging fees for Bidding Documents, whether for the first bidding or any subsequent re-bidding, depends upon the discretion of the procuring entity, taking into account the need to recover the cost of its preparation and development *vis-à-vis* the effects on competition and participation of bidders.

In relation to this, we wish to inform you that the Government Procurement Policy Board (GPPB) issued GPPB Resolution 04-2012<sup>1</sup> adopting the Guidelines on the Sale of Bidding Documents, which provides the standard rates for the cost of Bidding Documents.

### **Certificate from MARINA in lieu of PCAB License and Registration**

We stress that the eligibility requirements specified in Section 23.1 of the IRR of RA 9184 are absolute and exclusive. This means that procuring entities cannot delete or replace any of the requirements that are applicable to the category of their procurement activity. As such, the submission of a PCAB License and Registration cannot be dispensed with in the procurement of infrastructure projects.

Under Section 34.2 of the IRR, submission of additional requirements may be stipulated by the procuring entity in the Bidding Documents as long as these involve appropriate licenses and permits required by law. This does not, however, give leave to procuring entities in dispensing with the eligibility requirements identified in Section 23.1 of the IRR.

In this regard, although the BOQ may require the submission of the Certificate of Registration and License for Shipyard and Ship Repair Yards from MARINA as an additional requirement, it cannot waive or dispense the eligibility requirement for a PCAB License and Registration.

### **Summary**

In sum, we wish to clarify that the decision to charge fees anew for acquisition of Bidding Documents for a re-bid project depends upon the discretion of the procuring entity,

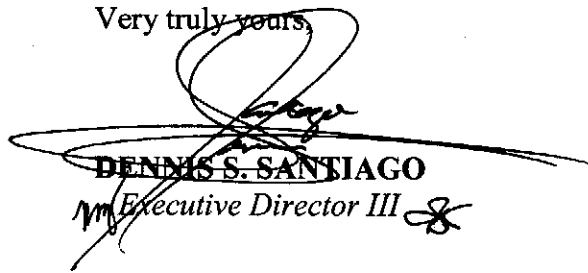
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<sup>1</sup> Published in The Daily Tribune on 20 August 2012, and took effect on 4 September 2012.

taking into account the need to recover the cost of its preparation and development *vis-à-vis* the effects on competition and participation of bidders. The eligibility requirement for a PCAB License and Registration cannot be dispensed with and substituted by a Certificate of Registration and License for Shipyard and Ship Repair Yards from MARINA, although these documents may be required as additional legal requirements under Section 34.2 of the IRR of RA 9184.

We hope our advice 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 other concerns, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
Executive Director III

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