



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

NPM No. 168-2012

28 December 2012

MS. JOANNA MAY F. VALDEZ
Sales Assistant – Business Unit 3 (Hyundai Truck & Bus)
MAXIMA MACHINERIES INCORPORATED (MAXIMA)
871 Quezon Avenue, Quezon City

Re: Review of Public Bidding Conducted by a Procuring Entity (PE)

Dear Ms. Valdez:

We respond to your electronic mail dated 8 October 2012, with an attached letter from Ms. Jennifer Agleron and addressed to our office, requesting our assistance in reviewing and evaluating the public bidding conducted by the Armed Forces of the Philippines (AFP) for the procurement of two (2) buses.

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 laws, rules and regulations.¹ It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions² under the law. Thus, it cannot impose or recommend to the Bids and Awards Committee (BAC) which bidders should be declared as eligible, which bid should be accepted as the lowest calculated and responsive bid, and to whom the contract should be awarded.

We adhere to the position that we cannot, nor any other government agency, authority or official, encroach upon or interfere with the exercise of the functions of the BAC, since these duties and responsibilities fall solely within the ambit of its authority as sanctioned by law, for as long as the BAC performs its concomitant responsibilities and functions with judiciousness, adhering to the principles of transparency, accountability, equity, efficiency, and economy in the procurement process that it carries out for the PE.³

Considering the foregoing, the GPPB-TSO does not have the authority to review and evaluate the bidding conducted by the AFP as this would constitute an encroachment or interference on the authority being exercised by the BAC. Nonetheless, this office may

¹ NPM No. 150-2012 dated 11 December 2012.

² 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 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.)

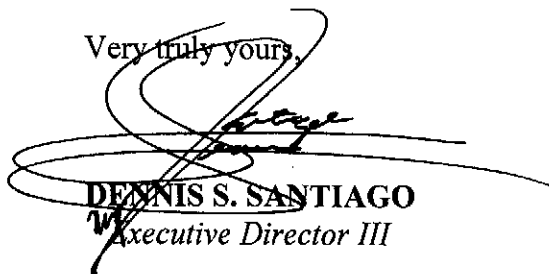
³ NPM No. 127-2012 dated 10 October 2012; NPM No. 87-2012 dated 16 July 2012 citing NPM No. 44-2009 dated 18 August 2009.

monitor and assist the PE/BAC in improving their compliance with Republic Act (RA) 9184 and its revised Implementing Rules and Regulations (IRR) and evaluate the effectiveness of the government procurement system and recommend improvements in systems and procedures.⁴

In case of grievances or complaint on decisions of the BAC, bidders may resort to the protest mechanism provided under Sections 55 to 58 of the IRR of RA 9184 in questioning the decisions of the BAC at any stage of the procurement process. Bidders may file a request for reconsideration within three (3) calendar days from receipt of written notice or verbal notification of the BAC's decision. In the event that the request for reconsideration is denied, bidders may file the corresponding protest in the prescribed form, *i.e.* a verified position paper⁵ to the Head of the Procuring Entity (HOPE) within seven (7) calendar days from receipt of the BAC's denial of the request for reconsideration. Court action may be resorted to only after the protests contemplated shall have been completed, *i.e.* resolved by the HOPE with finality.⁶

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 situation 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,



DENNIS S. SANTIAGO
Executive Director III

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⁴ Section 63.3(d) and (e) of the IRR of RA 9184.

⁵ Section 55.4 of the IRR of RA 9184.

⁶ Section 58 of the IRR of RA 9184.