



TECHNICAL SUPPORT OFFICE

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NPM No. 21-2011

29 November 2011

HON. RAMON ALLAN V. OCA
Assistant Secretary
Chairman, Bids and Awards Committee
DEPARTMENT OF ENERGY
Energy Center, Merritt Rd.,
Fort Bonifacio, Taguig City, M.M.

Re: Bid Opening and Supplemental/Bid Bulletin

Dear Assistant Secretary Oca:

We refer to your letter dated 22 November 2011 seeking opinion on whether the re-scheduling of the opening of bids results to the automatic re-scheduling of the deadline for submission of bids.

We understand that the Department of Energy's (DOE's) Bids and Awards Committee (BAC) originally scheduled the deadline for the submission of bids for the DOE's procurement of Annually Contracted Maintenance Services for CY 2012 on 15 November 2011 at 9:00 a.m., followed by the Opening of Bids at 9:30 a.m.

On 8 November 2011, the BAC issued Bid Bulletin No. 1 moving the opening of bids to 17 November 2011 without changing the date for the deadline of submission of bids.¹ For this reason, the BAC Secretariat refused to accept bid documents submitted on 17 November 2011 since the deadline for submission of bids on 15 November 2011 has already lapsed.²

At the outset, it bears stressing that the submission of bids and the opening of bids are two different stages in the government procurement process, the requirements of which are found in Sections 25 and 29 of Republic Act No. 9184 (RA 9184) and its Implementing Rules and Regulations (IRR).

Section 29 of the IRR requires the BAC to open the bids immediately after the deadline for the submission and receipt of bids following the time, date, and place specified in the Bidding Document. Evidently, the intent behind the revision is to

¹ Bid Bulletin No. 1 was posted in the DOF and PhilGEPs websites.

² Two prospective bidders have filed their respective Motion for Reconsideration (MR) on this decision of the BAC claiming that DOE-BAC violated Section 29 of RA 9184's revised Implementing Rules and Regulations.

clarify the policy that the opening of bids should be conducted within the same day as, and immediately after, the deadline for the submission and receipt of bids in as much as the proximity of these processes holds material importance in ensuring the integrity of the submitted bids.

Additionally, Annex "C" of the IRR indicates that the submission and receipt of bids, including the opening of bids and eligibility check, shall be performed in one (1) calendar day.

From the foregoing, it is clear that the opening of bids should be conducted within the same day as, and immediately after, the deadline for submission and receipt of bids. However, a careful study of RA 9184 and its IRR shows that nowhere is it stated that the re-scheduling of the opening of bids automatically results to the re-scheduling of the deadline for submission of bids.

It appears, therefore, that the BAC's act of postponing the opening of bids from 15 November 2011 to 17 November 2011 without postponing the deadline for submission of bid documents is contrary to the bidding procedures prescribed by the IRR. Thus, the Supplemental/Bid Bulletin issued for the purpose cannot validly amend or modify this date of opening of bids as indicated in the Bidding Documents.

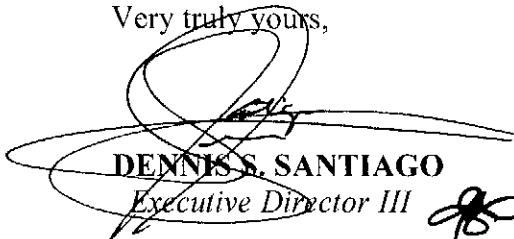
Nonetheless, knowing that the deadline for submission of bids has not been postponed and remained set to 15 November 2011 in the Invitation to Bid on the basis of the Bid Bulletin No. 1, the bidders cannot belatedly submit their bid documents on 17 November 2011.

In sum, while the BAC erred in changing the date for the opening of bid documents to a date different from the deadline for submission of bids, the bidders have no basis for submitting their bid documents beyond the deadline for its submission.

We hope to have provided sufficient guidance on the matters raised for clarification. We wish to stress that this opinion is being rendered on the basis of the facts and particular circumstances as represented.

Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III