



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

NPM No. 036-2005

August 31, 2005

MR. CONRADO B. ROXAS

Vice Chairman, Bids and Awards Committee
Vice President, Land Bank of the Philippines
1598 M.H. del Pilar cor. Dr. J. Quintos Streets,
Malate, Manila

**Re : Procurement of a Two-Year Lease Rental of Thirty Four (34)
Units Brand New Copier Machine for Land Bank of the
Philippines Head Office**

Dear Mr. Roxas:

This refers to your letter dated 15 August 2005, which we received on 18 August 2005, requesting for opinion on the action of the Bids and Awards Committee (BAC) of the Land Bank of the Philippines (LBP) relative to the procurement of a two-year lease rental contract for thirty four (34) units of brand new copier machines.

At the outset, notice should be taken of two important facts represented in your letter, particularly, that: (i) the financial proposal of U-Bix Corporation (U-Bix) contained a clause which states that their quotation is "inclusive of 2% maximum spoilage allowance;" and (ii) the declaration that U-Bix had the Lowest Calculated Bid is based on the reasoning that since spoilage is not monitored by LBP, the 2% maximum spoilage allowance offered by the said bidder should be discounted from its price offer of Php0.50 per copy. It is on the basis of these representations that we have determined the following substantial issues to be resolved:

1. Whether or not the two percent (2%) maximum spoilage allowance offered by U-Bix may be considered a discount on its quoted price of P0.50 per copy; and
2. Whether or not a procuring entity may consider an offer in addition to the minimum requirements or specifications provided in the bidding documents for purposes of bid evaluation.

Whether the Maximum Spoilage Allowance is a Discount

With respect to the determination of whether the clause in the proposal providing for a 2% maximum spoilage allowance qualifies the original price offer of Php0.50 per copy and operates as a discount thereto, we are of the view that this office is not in a position to make a categorical resolution on this matter as it will result to an adjudication on factual issues of the case – an authority not within the powers of this office.

Consideration of Bonus, Credit or Premium in the Bid Evaluation

On the second issue as mentioned above, please note that Section 17.4 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act 9184 (R.A. 9184) provides that the bidding documents shall provide for the minimum requirements or specifications necessary to meet the needs of the procuring entity, to wit:

The specifications and other terms in the bidding documents shall reflect the minimum requirements or specifications required to meet the needs of the procuring entity in clear and unambiguous terms. The bidder may submit an offer which provides for superior specifications and/or better terms and conditions to the Government at no extra cost. However, these shall not be given any bonus, credit or premium in the bid evaluation.

In light of the afore-quoted provision, it cannot be gainsaid that even if a bidder offers items or services that are not included or mentioned in the bidding documents such offer cannot be given weight and considered in the evaluation of bids. A procuring entity cannot consider any offer, for purposes of bid evaluation, above the minimum requirements or specifications provided in the bidding documents.

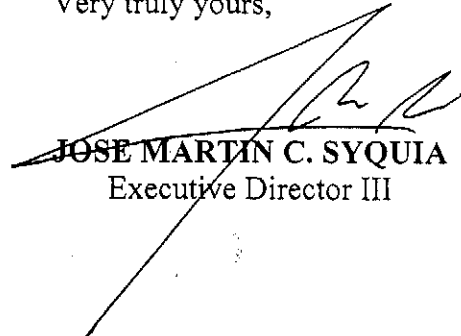
Applying this principle to the facts of the procurement project subject matter of this opinion, we are of the opinion that even assuming *arguendo* that the clause “inclusive of 2% maximum allowable spoilage” is considered a provision for discount to the price offer of Php0.50 per copy, the LBP-BAC cannot deduct said two percent (2%) from the Php0.50 price proposal in the evaluation of its bid because the bidding documents did not provide for any requirements pertaining to spoilage.

As a final note, we wish to reiterate our reminder for the LBP-BAC to refrain from seeking clarifications from its bidders when the documents are clear and categorical because doing so would invite the exercise of unnecessary discretion on its part – a situation which the IRR-A shuns and discourages. This practice of seeking clarifications from bidders was first brought to our attention when asked to resolve an issue regarding the procurement of a contract for a Two-Year Lease Rental of Thirty Three (33) Brand New Copier Machines. We have reminded the LBP-BAC on the impropriety of calling similar conferences as being incongruent to the rules provided in the IRR-A of R.A. 9184.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that the principles enshrined in R.A. 9184 and the provisions implementing these principles will also be taken into consideration in your other procurement activities.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III