



Republic of the Philippines
Department of Transportation
MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY
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BIDS AND AWARDS COMMITTEE

March 31, 2017

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Re: **DESIGN AND CONSTRUCTION OF MCIAA OPERATIONS BUILDINGS**

Dear **Madam and Messrs.:**

Pending before this Bids and Awards Committee (BAC) are the requests for reconsideration filed by the participating bidders involving the project, re: **Design and Construction of MCIAA Operations Buildings**. The said requests are the results of the manifestations made by the bidders during the submission and opening of bids of the aforementioned project conducted on March 24, 2017 at 2:00 o'clock in the afternoon. This is a consolidated reply to all the bidders that requested reconsideration.

The eligibility/technical components submitted by the participating bidders were evaluated by the BAC using a non-discretionary "pass/fail" criteria as mandated under Section 30.1 of the Revised IRR of R.A. 9184, to wit:

"x x x the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are present, **using a non-discretionary "pass/fail" criterion, x x x**" (*Emphasis supplied*)

Also, the same section of the said Revised IRR of RA 9184 provides:

"In this regard, **bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". x x x.**" (*Emphasis supplied*)

There were six (6) bidders who participated and rated "FAILED". However, only five (5) bidders requested for reconsideration which was received by the BAC within the reglementary period.

On March 30, 2017, this BAC conducted an emergency meeting to discuss thoroughly the pending motions/requests filed by the bidders. After thorough review of the relevant facts, the documents on file, and the applicable NPMs issued by the GPPB, the BAC made the following decision as discussed and itemized below:

A. Verzontal Builders, Inc.

Issue:

1. Certificate of Completion submitted was only signed or issued by the owner's consultant instead of the owner as required under A.6 of the Bid Bulletin No. 1 and the Checklist:

BAC RULING:

After review of the motion for reconsideration, the BAC found no sufficient basis to reverse its findings. The requirement is that the certificate of completion should be issued by the **owner and not by the consultant**. Certainly, a consultant is not the owner. The consultant only made a recommendation to the owner. The owner still has not signed the certificate. Thus, the certificate submitted is not issued by the owner for being unsigned. Consequently, the BAC could not ascertain if there was satisfactory performance by the bidder and acceptance by the owner in the submitted completed project. Hence, the BAC maintains its decision to declare the bid as "failed" for that requirement.

Issues:

2. Failed to submit the Preliminary Conceptual Design Plans as required under B.3 (d); and
3. Failed to submit Value Engineering Analysis of Design and Construction Method as required under B.3 (f)

BAC RULING:

Verzontal Builders Inc. (Verzontal) failed to submit the Preliminary Conceptual Design Plans and the Value Engineering Analysis during the bid opening. Under RA 9184 IRR "**bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed"**". Thus, the BAC was left with no choice but to declare the Bid of Verzontal as "Failed".

In their motion for reconsideration, Verzontal attached the documents that they failed to submit during the bid opening. The BAC could not act and/or accept them because to allow the same would tantamount to improvement or modification of bids.

The Government Procurement Policy Board (GPPB) in its NPM 151-2012 states that -

*"Section 26.1 of the IRR, x x x, prohibits bidders from modifying their bid, through the **submission of new or additional documents after the deadline for submission, receipt and opening of bids**, to support its eligibility or qualification as this constitutes an improvement of bids; and is violative of the rule that bids must be submitted complete on the date, time and place for the submission of bids.*

*[D]uring the pendency of the request for reconsideration, the **movant-bidder is barred from submitting new or additional documents as this action constitutes modification, enhancement or improvement of the bids.**" (Emphasis supplied)*

The BAC finds no cogent reason to set aside and/or reverse its decision in rating Verzontal Builders, Inc. as "FAILED". Hence, their request for reconsideration is hereby **denied**.

B. ARN BUILDERS

Issue: In computing the NFCC, ARN Builders (ARN) used the factor of K=10 instead of K=15 as required under the new 2016 IRR of R.A. 9184

After evaluating the Motion for Reconsideration of ARN Builders (ARN), the BAC found it to be meritorious and justifiable.

The computation of NFCC done by ARN using the K=10 which is P1,836,829,991.64 is still compliant with the NFCC requirement under RA 9184 which is at least 100% of the ABC of P200,000,000.00. More so, if their NFCC computation uses K=15 it will now be P2,785,014,856.64. Whether ARN will use the K=10 or K=15 factor, the NFCC requirement will be complied with.

In NPM 008-2014, the Government Procurement Policy Board (GPPB) ruled that -

"During preliminary examination of bids, the BAC shall examine the NFCC computation submitted by the bidder based on a non-discretionary "pass/fail" criterion. Bidders shall be deemed

compliant with the requirement if the submitted NFCC computation is at least equal to the ABC; xxx."

In view of the foregoing and consistent with the ruling of the GPPB, the BAC hereby reconsiders its decision. Thus, the Motion for Reconsideration submitted by ARN is hereby **granted**.

c. R.U AQUINO CONSTRUCTION & DEVELOPMENT CORP.

Issue: The Eligibility, Technical and Financial Components were not submitted during the submission and opening of bids.

Section 26.1 of the R.A 914 Revised IRR provides that -

"A bidder may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. Where a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked to its original bid and marked as a "modification," thereof, and stamped "received" by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened." (emphasis supplied)

Also, the Government Procurement Policy Board (GPPB) in its NPM 151-2012 states that -

"Section 26.1 of the IRR, x x x, prohibits bidders from modifying their bid, through the submission of new or additional documents after the deadline for submission, receipt and opening of bids, to support its eligibility or qualification as this constitutes an improvement of bids; and is violative of the rule that bids must be submitted complete on the date, time and place for the submission of bids.

D]uring the pendency of the request for reconsideration, the movant-bidder is barred from submitting new or additional documents as this

action constitutes modification, enhancement or improvement of the bids."

Thus, to grant the request of R.U Aquino to accept the newly-submitted first envelope which contains the Eligibility/Technical Components and second envelope which contains the Financial Components would certainly tantamount to improvement and/or modification of bids which is prohibited under the afore-quoted provision of R.A. 914 IRR.

The BAC maintains its findings in rating R.U. Aquino as "FAILED". The Motion for Reconsideration submitted by R.U Aquino is hereby **denied**.

d. GRANBY TRADING AND CONSTRUCTION

Issue:

1. In computing the NFCC, bidder used the factor of K=10 instead of K=15; and

When the BAC noticed that Granby was using the K=10 factor instead of K=15, the BAC was constrained to rate them as "FAILED." However, after review of the pictures taken during the submission of bids, the BAC found the veracity of Granby's allegation that their company used K=15 as the factor and not the K=10. Thus, the BAC found that the NFCC of Granby is P2,291,819,948.86 and it uses K=15 although K=10 was reflected in their NFCC. This is in compliance with an NFCC requirement which is at least equal to 100% of the ABC of the project.

To reiterate, NPM 008-2014, the Government Procurement Policy Board (GPPB) ruled that -

"During preliminary examination of bids, the BAC shall examine the NFCC computation submitted by the bidder based on a non-discretionary "pass/fail" criterion. Bidders shall be deemed compliant with the requirement if the submitted NFCC computation is at least equal to the ABC; xxx."

The BAC therefore rated Grandby for this requirement as "PASSED."

Issue:

2. Preliminary Conceptual Design Plans were submitted separately from the Technical/Eligibility Components.

After reviewing the pictures taken during the bid opening, the BAC found that the Conceptual Design Plans were deemed part and parcel of the Eligibility/Technical Components as it was attached and bound to each folder of the said components. Also, the BAC discovered that the Conceptual Design Plans were properly marked and sealed.

The BAC would took notice of the required size of the blue printed plans (24"x36") and which cannot possibly included or inserted in the Eligibility/Technical Components.

The BAC finds merits to the motion of Granby and the same is hereby **granted**.

e. New Kanlaon Construction, Inc.

Issue: Whether or not the documents submitted were only improperly sealed, thus, should not be rejected.

Section 20.2. of the Philippine Bidding Documents (PDS) provides that -

"Each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as "COPY NO. ___ - TECHNICAL COMPONENT" and "COPY NO. ___ - FINANCIAL COMPONENT" and the outer envelope as "COPY NO. ___," respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope." (underscoring supplied)

It was reiterated under Bid Bulletin No. 1 that -

"x x x. The aforementioned five (5) envelopes with the corresponding documents inside (Original, Copy 1, Copy 2, Copy 3 and Copy 4) each duly sealed, signed and marked shall be enclosed in one single envelope or carton also duly sealed, signed and marked." (underscoring supplied)

After careful review of the pictures taken during the opening of bids, the BAC found that New Kanlaon has no slightest intention to seal the documents that they submitted because of the following:

1. The bag where the documents were placed was not closed or sealed. Although at the top, there was a bond paper, however, it was attached only to the envelopes and not to the bag itself. Clearly, the purpose was for marking only and not for sealing;
2. The documents were visible. In fact, it can be determined that six (6) envelopes were submitted instead of the required five (5) documents;
3. The six (6) documents were simply removed by your representative from the bag without detaching anything (tape, stapler, paste or similar means for sealing);
4. The bag can easily be inserted by other documents. Thus, security, sanctity and integrity of the documents was compromised.

For all the foregoing, the BAC resolved that the documents submitted by New Kanlaon was clearly not sealed. Being unsealed, the BAC ruled to reject it. This is in accordance with Section 25.9. R.A. 9184 IRR which provides that -

"Unsealed or unmarked bid envelopes shall be rejected. x x x."

The Government Procurement Policy Board (GPPB) in its NPM NO. 145-2012 held that -

"x x x.

Clauses 20.1 and 20.2, Section II. ITB of the PBD for Goods use the word "shall", which connotes command and compulsion. It is a basic legal

construction that where words of command such as "shall," "must," or "ought" are employed, they are generally and ordinarily regarded as mandatory.

Accordingly, x x x these mandatory provisions give the BAC enough bases to disqualify the bidder in the event the procedures that is, marking and sealing of bids, contained therein are not observed. Acts which are executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."

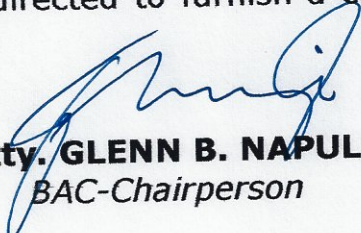
Thus, there is NO sufficient basis to set aside and/or reverse the BAC's decision in not accepting the documents for being unsealed. Hence, the request of New Kanlaon to accept and open the bid documents is hereby **denied**. Instead, in compliance with Section 25.9, the same is hereby rejected.

WHEREFORE, the MCIAA BAC hereby resolved that the motion/request for reconsideration of the bidders as discussed above are ruled as follows:

- | | |
|---|------------------|
| A. Verzontal Builders, Inc. | - DENIED |
| B. ARN Builders | - GRANTED |
| C. R.U Aquino Construction and Development Corp. | - DENIED |
| D. Granby Trading and Construction | - GRANTED |
| E. New Kanlaon Construction, Inc. | - DENIED |

Accordingly, the continuation of the opening of the documents of **ARN Builders** and **Granby Trading and Construction** is set on **April 7, 2017 at 2:00 o'clock in the afternoon in the MCIAA BAC Office.**

The BAC Secretariat is hereby directed to furnish a copy of this order to each of the bidders.


Atty. GLENN B. NAPULI
BAC-Chairperson