

**ERC BAC RESOLUTION NO. 09, Series of 2011**

**WHEREAS**, the ERC Bids and Awards Committee (BAC) posted the Invitation to Apply for Eligibility and to Bid for the Procurement of CT/PT Tester with Accessories (Lot 2011-02) in the Philippine Government Electronic Procurement System (PhilGEPS), Daily Tribune newspaper, ERC website and bulletin boards within the ERC Main Office building on 03 June 2011;

**WHEREAS**, the BAC held a Pre-Bid Conference on 10 June 2011;

**WHEREAS**, the BAC issued Bid Bulletin No. 02, Series of 2011 on 13 June 2011, which:

1. Modified and amended provisions of the Bid Documents, specifically Section III – Bid Data Sheet, to include Certification from the Principal Supplier of Warranty and after sales service;
2. Directed Bidders to submit one (1) original (certified true copies) and one (1) copy of the Eligibility and Technical Components and Financial Components of its bid, as stated in Section III. Bid Data Sheet, 20.3; and
3. Instructed the Bidders to submit a completely filled-up form for goods offered from abroad, including column 8 (Unit Price Delivered Duty Paid [DDP]) and column 9 (total price delivered DDP);

**WHEREAS**, during the scheduled Opening of Bids at two o'clock in the afternoon on 23 June 2011, AGP Trading, Inc. (AGP) and DSM Power Line Accessories, Inc. (DSM) submitted their Bid;

**WHEREAS**, among the two (2) bidders, AGP submitted the lower bid of One Million Two Hundred Fifty Thousand Pesos (PhP1,250,000.00) VAT inclusive;

**WHEREAS**, DSM submitted on 24 June 2011 a Motion for Reconsideration requesting for the disqualification of AGP due to its non-submission of the Certification from the Principal Supplier of Warranty and After Sales Service;

**WHEREAS**, the BAC denied the request of DSM with the following details stated in the reply letter:

1. During the opening of bids for the above described item on 23 June 2011 at the Commission's Board Room, the BAC *motu proprio* decided to scrutinize certain documents submitted by AGP;
2. During an executive session, the BAC found that AGP submitted only a sample of the required certification. The BAC agreed then that the actual certification may be submitted during the post qualification of the lowest bidder;
3. The BAC only determines the presence or absence of submitted documents during the bid opening. It is during the post-qualification wherein the BAC will determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents;
4. Subsequently, AGP and DSM were invited back into the Board Room and the said ruling was made known to them before the opening of documents and bids was continued;
5. No objection was raised by DSM before the AGP's bid was opened and disclosed;
6. It was only after AGP's bid was disclosed that the representatives of DSM questioned AGP's participation and qualification;

**WHEREAS**, DSM submitted its second letter for reconsideration dated 04 July 2011 and received by the BAC on 05 July 2011;

**WHEREAS**, the BAC issued a reply letter dated 05 July 2011 to DSM which acknowledges the receipt of their second letter for reconsideration and stated that the said letter

does not comply with the procedure provided under the Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (R.A. 9184) particularly Rule XVII (Protest Mechanism), which states that a protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration;

**WHEREAS**, the seven (7) calendar days from receipt of the BAC's letter denying DSM's request for reconsideration has lapsed on 07 July 2011 and DSM failed to file a protest within the prescribed period;

**WHEREAS**, after the post-qualification conducted by the BAC Technical Working Group (TWG), it was found out that AGP failed to submit the following original document addressed to ERC, as required in the Bid Document and Bid Bulletin No. 02, Series of 2011:

1. Calibration certificate (submitted a sample only);
2. One year warranty certification (submitted a sample addressed to PELCO 1);
3. After sales service and full technical supports (submitted a sample addressed to PELCO 1);
4. Statement as regards compliance to provide training on proper use and operations of the equipment (submitted a sample addressed to PELCO 1); and
5. Certification from the principal supplier of warranty and after sales service (submitted a sample addressed to PELCO 1);

**WHEREAS**, AGP submitted a letter on 22 July 2011, after receiving the Notice of Post-disqualification issued by the BAC on 20 July 2011, requesting for reconsideration of its post-disqualification on the ground that AGP have complied with the needs of the ERC, the supply of the right equipment and that AGP's price is more than 100% lower compared to its competitor, among others;

**WHEREAS**, the BAC issued a reply letter dated 25 July 2011 stating that the BAC resolved to deny AGP's request for reconsideration of its post-disqualification and reiterated its ground for AGP's post-disqualification particularly the submission of sample documents;

**WHEREAS**, AGP submitted its second letter for reconsideration dated 28 July 2011;

**WHEREAS**, the BAC issued a reply letter dated 29 July 2011 to AGP which acknowledges the receipt of their second letter for reconsideration and stated that the said letter does not comply with the procedure provided under the Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (R.A. 9184) particularly Rule XVII (Protest Mechanism), which states that a protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration;

**WHEREAS**, the seven (7) calendar days from receipt of the BAC's letter denying AGP's request for reconsideration has lapsed on 02 August 2011 and AGP failed to file a protest within the prescribed period;

**WHEREAS**, the BAC TWG proceeded with the post-qualification of DSM, which submitted a bid of Two Million Five Hundred Eighty Thousand Pesos (PhP2,580,000.00) VAT inclusive;

**WHEREAS**, after the post-qualification conducted by the BAC TWG, it was found out that:

1. DSM submitted a sample Calibration Certificate for a type PVT200A, PONOVO CT/PT testing equipment which is different from what it offers. In its Technical Proposal, DSM stated that it is offering a PONOVO, type PCT200Ai CT/PT testing equipment; and
2. In the submitted sample Calibration Certificate, one of the technical parameters of the tested object indicates a CT Measurement Ranges of 0.2% and 0.5%. This is contrary to the ERC requirement of a 0.02% CT Measurement Accuracy;

**WHEREAS**, DSM submitted a letter on 12 August 2011, after receiving the Notice of Post-disqualification issued by the BAC on 05 August 2011 (received on 10 August 2011), requesting for reconsideration of its post-disqualification on the ground that:

1. The PCT200AI CT/PT Tester that DSM offered to ERC is the English model of the PCT200A, which is the Chinese model of PONOVO PCT (Potential and Current Transformer) Test Sets; and
2. The 0.2% and 0.5% stated in the calibration certificate is the accuracy class of the current transformers used in the calibration test and not the measurement accuracy of the test equipment;

**WHEREAS**, the BAC issued a reply letter dated 16 August 2011 stating that the BAC resolved to deny DSM's request for reconsideration of its post-disqualification and reiterated its (ERC BAC) ground for its (DSM) post-disqualification as stated in ERC's letter dated 05 August 2011 particularly the submission of a sample Calibration Certificate and discrepancies in the said certificate;

**WHEREAS**, the seven (7) calendar days from receipt of the BAC's letter denying DSM's request for reconsideration has lapsed on 24 August 2011 and DSM failed to file a protest within the prescribed period;

**WHEREAS**, Section 35.1 of the Revised Implementing Rules and Regulations of Republic Act 9184, also known as the Government Procurement Reform Act, provides that:

Section 35. Failure of Bidding

35.1. The BAC shall declare the bidding failure when:

x                      x                      x

- c) All bids fail to comply with all the bid requirements or fail post-qualification, or, in the case of consulting services, there is no successful negotiation; or

x                      x                      x;

**NOW, THEREFORE**, We, the Members of the Bids and Awards Committee, hereby **RESOLVE**, as it is hereby **RESOLVED**, to declare a failure of bidding for the Procurement of CT/PT Tester with Accessories.

**RESOLVED** at the ERC Main Office, Pasig City, and this 31<sup>st</sup> day of August 2011.



**ISABELO JOSEPH P. TOMAS II**

Chairman



**NIMROD M. PAÑARES**

Vice Chairman

**MARIANO D. GARCIA**

Member



**LEGARIO L. GALANG, JR.**

Member



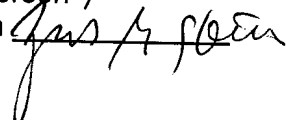
**DELIA B. CASTA**

Member

Approved by:

**ZENAIDA G. CRUZ-DUCUT**

ERC Chairperson *quater*

Approved on 

SEP 05 2011

JGG/MCB