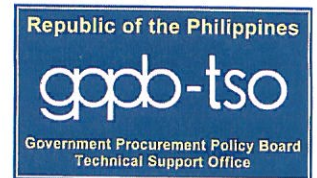




Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 050-2017

20 December 2017

MS. MARITES PANALIGAN
GLOBAL MARKETING & CONSTRUCTION CORPORATION (GMCC)
3/F Westgate Tower, 1709 Investment Drive,
Madrigal Business Park, Ayala Alabang,
Muntinlupa City 1799

Re: Change in Specifications -

Dear Ms. Panaligan:

This refers to your electronic mail (e-mail) seeking clarification about the minimum requirements in the Terms of Reference (TOR). In your e-mail, you attached the letter of the Department of Agriculture (DA), dated 12 December 2016, providing response to the issues you have raised to the DA through a letter, dated 16 November 2016.

Based on your attached letter, it appears that the issue pertains to your proposed downgrading of specifications after the contract was awarded to GMCC. Hence, we assume that your query pertains to the compliance with the minimum requirements based on the TOR of the project and whether you can change the specifications therein after the contract was awarded.

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy matter opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since this office has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, except courts of competent jurisdiction, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity and the Bids and Awards Committee, since these duties and responsibilities fall solely within the ambit of their authority and discretion. In this regard, we shall limit our discussion on the interpretation of relevant procurement rules and regulations pertinent to the issues presented.

We wish to point out that in Non-Policy Matter (NPM) Opinion No. 107-2014¹, we have clarified the matter on changes in specifications, thus:

¹ Citing *Archbishop Fernando R. Capalla, et al. v. The Hon. Commission on Elections/Solidarity for Sovereignty, etc., et al. v. Commission on Elections/Teofisto T. Guingona, et al. v. Commission on Elections, et al./Tanggulang Demokrasya, Inc., et al. v. Commission on Elections, et al.*, G.R. Nos. 201112, 201121, 201127 and 201413, 13 June 2012; and *Agan, Jr. v. Philippine International Air Terminals, Co., Inc.*, G.R. Nos. 155001, 155547 and 155661, 05 May 2003.

An essential element of a publicly bid contract is that all bidders must be on equal footing. Not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, but more importantly, on the contract bid upon. Each bidder must be able to bid on the same thing.

Public bidding will cease to be competitive if Procuring Entities will be permitted to make substantial variance between the conditions under which the bids are invited and the contract executed after the award. In effect, bidders will no longer bid on the basis of the prescribed terms and conditions in the bid documents but will formulate their bid in anticipation of the execution of a future contract containing new and better terms and conditions that were not previously available at the time of the bidding.

...

Section 37.2.3(c) of the revised Implementing Rules and Regulations (IRR) of RA 9184 in relation to Section 25.2(a)(iii) provides that the technical specifications and offer of the winning bidder forms part of the contract. The inclusion of these documents in the contract created an obligation on the part of the contractor to deliver the specific goods that it offered. The General Conditions of Contract (GCC) of the Philippine Bidding Documents (PBDs) for the Procurement of Goods categorically states that the goods to be provided by the contractor to the PE shall be as specified in the Schedule of Requirements and shall conform with the standards mentioned in the Technical Specifications.

Anent the above-cited earlier opinion, we would like to reiterate that public bidding contracts require strict compliance with the specifications or minimum requirements prescribed in the bidding documents. On the part of the Procuring Entity, it cannot make substantial changes in the specifications of the contract, after it was awarded, without violating the principle of competition and fairness. On the other hand, the supplier is similarly duty-bound to comply with the specifications it had indicated in its offer as this forms part of the contract with the Procuring Entity, not to mention that upon which promise or offer, the Procuring Entity based its decision to award the contract.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director