

NPM No. 051-2017

20 December 2017

MR. ROMMEL BOCO

Bids and Awards Committee (BAC) Member

LOCAL GOVERNMENT OF LORENTE EASTERN SAMAR

Municipal Hall, Lorente, Eastern Samar 6803

Re: Request for Quotation; Employees' Cooperative -

Dear Mr. Boco:

This refers to your electronic mail (e-mail) requesting our opinion on the following:

1. Whether it is allowed to acknowledge an e-mailed quotation for Small Value Procurement (SVP); and
2. Whether a cooperative is eligible to participate in the procurement activities of a Local Government Unit (LGU) if some of its members are also members of the Bids and Awards Committee (BAC).

Request for Quotation (RFQ) for SVP -

The *Consolidated Guidelines for the Alternative Methods of Procurement*, Annex "H" of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Government Procurement Reform Act, prescribes the procedures for the conduct of SVP modality of Negotiated Procurement. Under this mode, the end-user unit shall submit a request for quotation to the Bids and Awards Committee (BAC), indicating the technical specifications, scope of work, terms of reference, Approved Budget for the Contract (ABC) and other terms and conditions, which will serve as the basis of the BAC in preparing the corresponding RFQ.¹

In the preparation of the RFQ, the manner by which the price quotations are to be submitted shall also be prescribed as part of the terms and conditions, *i.e.*, sealed or open quotation. Further, the RFQ shall also indicate whether the quotation shall be received in person or through other means such as registered mail, facsimile or e-mail. We note that affording bidders more options on the means of sending quotations, *e.g.*, by electronic means, will encourage more competition among market participants and will enable the procuring entities to effectively use modern technology to facilitate procurement. This notwithstanding, the question on whether a quotation sent *via* e-mail is acceptable depends on whether such means of sending quotation is specifically allowed in the RFQ for the project.

¹ Section V.D.8.(b)(i) and (ii) of the Consolidated Guidelines for the Alternative Methods of Procurement.

In this regard, we wish to clarify that a quotation sent *via* e-mail may be acknowledged, considered and accepted by the BAC, provided that such means of sending quotation is specifically allowed in the corresponding RFQ for the project.

Employees' Cooperative -

In a previous opinion,² we explained that employees' cooperatives are disqualified from participating in the procurement within their agencies because it poses undue advantage in terms of access to information, which are generally not available to outside bidders, based on the following grounds:

1. One of the governing principles of government procurement is competitiveness, which means extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. Equal opportunity demands same level of playing field where no single bidder acquires undue advantage on the procurement process whether in the dissemination of information, evaluation of bids, or award of contract, among others;
2. The Generic Procurement Manual (GPM)³ and the Philippine Bidding Documents (PBDs)⁴ state that there exists a general conflict of interest if a bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another bidder or influence the decisions of the Procuring Entity regarding the bidding process⁵; and
3. Based on the provision of Section 3(i)⁶ of Republic Act (RA) No. 6713 or the *Code of Conduct and Ethical Standards for Public Officials and Employees*. it appears that there exists a conflict of interest when a cooperative participates in a procurement activity of any government entity where a public official or employee who is involved in the procurement process is at the same time a board member, officer or substantial owner of that cooperative.

This notwithstanding, we emphasized that the determination of the existence of a conflict of interest that will lead to the disqualification of a bidder is essentially and primarily lodged with the BAC of the Procuring Entity.⁷

In this regard, it is our considered view that a cooperative, whose members are also part of the BAC of an LGU, shall not be allowed to participate in the procurement activities of such LGU because such participation will run counter to the principles of competition, in terms of access to information that are generally not available to outside bidders, and it will

² NPM 142-2014, dated 10 December 2014.

³ Volume I, p.64.

⁴ Clause 4.1(d) of the Instruction to Bidders (ITB) of the PBDs for the Procurement of Goods and Infrastructure Projects.

⁵ Incorporated as part of Section 47.2(d) of the 2016 Revised IRR of RA 9184.

⁶ Conflict of interest arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.

⁷ NPM No. 34-2009 dated 14 July 2009.

create a conflict of interest that is prohibited by the provisions of RA 6713, the 2016 Revised IRR of RA 9184, GPM and PBDs. To reiterate, however, the determination of the existence of a conflict of interest that will lead to the disqualification of a bidder is essentially and primarily lodged with the BAC of the Procuring Entity.

Summary -

All told, we wish to clarify the following matters regarding your concerns:

1. A quotation sent *via* e-mail may be acknowledged, considered and accepted by the BAC, provided that such means of submitting quotation is specifically allowed in the corresponding RFQ for the project; and
2. Guided by the provisions of RA 6713, the 2016 IRR of RA 9184, GPM and PBDs, if the members of a cooperative are also part of the BAC of an LGU, it will not be eligible to participate in the procurement activities of such LGU because of undue advantage in terms of access to information and presence of conflict of interest. Note, however, that the determination of the existence of conflict of interest is lodged with the BAC of the Procuring Entity.

We hope this opinion issued by 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 V

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