



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 061-2017

21 December 2017

LOCAL GOVERNMENT UNIT OF SANTA MARIA, ROMBLON
<lgustamariaromblon@yahoo.com>

Re: Elective Official as Bidder; Expired PCAB License -

Dear Sir/Madam:

We respond to your electronic mail inquiring on the following, *to wit*:

- (1) Can a firm owned and/or managed by an elective official who is not the Head of the Procuring Entity (HoPE) participate in the procurement process as a bidder; and
- (2) If upon opening of the bids, it was found out that the PCAB License is expired, should the BAC declare automatic failure or should they continue to open the financial proposal?

Elective Official as Bidder

As a general rule, an entity owned and/or managed by an elective official can participate in the procurement opportunities of government provided that it complies with all the requirements prescribed under the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Government Procurement Reform Act, except in the procuring entity where the elective official serves. The prohibition against a firm owned and managed by an elective official participating in the procurement within the elective official's agency on the ground of conflict of interest is anchored on Section 3(i) of Republic Act No. 6713 or the *Code of Conduct and Ethical Standards for Public Officials and Employees*, *to wit*:

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.

Similarly, Section 89 of the Local Government Code provides that:

SECTION 89. Prohibited Business and Pecuniary Interest. –

- (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:

(1) Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;

...

(b) All other prohibitions governing the conduct of national public officers relating to prohibited business and pecuniary interest so provided for under Republic Act Numbered Sixty-seven thirteen (R.A. No. 6713) otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" and other laws shall also be applicable to local government officials and employees.

Presence of conflict of interest contravenes the principle of extending equal opportunity and fairness to market operators. As can be gleaned from the aforementioned provisions, there exists a conflict of interest when an enterprise owned and/or managed by an elective official participates in a procurement activity of any government entity where a public official or employee involved in the procurement process is at the same time a board member, officer or substantial owner of that business.

Nonetheless, the participation of entity owned and/or managed by an elective official in other procuring entities are still subject to Section 47 of RA 9184 and its 2016 Revised IRR, which provides for the rules on disclosure of relations and conflict of interests of bidders. More particularly, Section 47.2(d) of the 2016 Revised IRR, which is likewise reiterated in the Generic Procurement Manual (GPM), and the Philippine Bidding Documents (PBDs) provides 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 PE regarding the bidding process.¹

In view of the foregoing, the firm owned and/or managed by an elective official, cannot participate in the procurement process as a bidder in their own procuring entity. It can participate in other procuring entities, but still subject to the disclosure of relations and conflict of interest provisions of RA 9184 and its 2016 Revised IRR.

Expired PCAB License

For purposes of determining the eligibility of bidders, Section 23.1(a)(vi) of the 2016 IRR of RA 9184 requires a valid Philippine Contractors Accreditation Board (PCAB) License or Special PCAB License in case of Joint Ventures, and registration for the type and cost of the contract to be bid in the case of procurement of Infrastructure Projects.

Please be advised that Section 23 of the IRR of RA 9184 requires all eligibility requirements to be "complete" and "sufficient". It must contain all the information required, and must comply with the requirements set out in the bidding documents at the time of the deadline for the submission and opening of bids. The determination of eligibility of the bidder

¹ Non-Policy Matter Opinion No. 113-2015 dated 3 November 2015.

shall be through an examination of the completeness of each bidder's eligibility requirements or statements against a checklist of requirements using a non-discretionary "pass/fail" criterion. In this regard, we reiterate our previous opinions that a **PCAB license** as an eligibility requirement for the procurement of infrastructure projects **should be valid at the time of the deadline for the submission and opening of bids**,² if it is not so, the bidder shall be declared ineligible and will be disqualified.

Summary

In sum, we wish to reiterate the following:

- (1) The firm, owned and/or managed by an elective official, who is not the HoPE, can participate as a bidder in government procurement, except in his/her own agency, subject to the disclosure of relations and conflict of interest provisions of RA 9184 and its 2016 IRR; and
- (2) The PCAB license should be valid at the time of the deadline for the submission and opening of bids, otherwise, the bidder will be disqualified.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular 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 *ms*

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² NPM Nos. 049-2016 and 050-2016 dated 3 October 2016 citing NPM Nos. 103-2015 dated 13 October 2015 and 071-2013 dated 2 August 2013.