

NPM No. 085-2016

15 November 2016

ATTY. ERIC R. CORTES
Chairman, Bids and Awards Committee
DBP LEASING CORPORATION
4/F DBP Bldg. cor. Makati Ave.,
Sen. Gil Puyat Ave., Makati City

Re: Technical Requirements

Dear Atty. Cortes:

This refers to your electronic mail (email) seeking clarification on the proper determination of the Lowest Calculated and Responsive Bid (LCRB) where one bidder offers better specifications than the other bidder.

Background

It is represented that DBP Leasing Corporation (DBP-LC) procured a Healthcare Plan with one of the technical specifications being the Maximum Benefit Limit (MBL) health maintenance coverage ranging from P175,000.00.00 to P250,000. You are at a quandary who should be declared as the LCRB in the following scenarios, all bidders having been post-qualified:

- a. Two bidders submitting the same financial bid price of P590,000.00, but with Bidder A submitting an MBL of P200,000.00, while Bidder B submitting an MBL of P175,000.00; and
- b. Bidder B's financial bid price is P550,000.00 with an MBL of P175,000.00, while Bidder A's financial bid price is P590,000.00 but with a higher MBL of P200,000.00.

In the first scenario, you ask if the bidders should be regarded as having a tie or should the award be given to Bidder A, who submitted a higher MBL than Bidder B. In the second scenario, you ask if Bidder B is the LCRB because its bid price is lower even though its MBL is lower than Bidder A's. Moreover, you ask if the GPPB has a new issuance or update on the guidelines on the use of tie-breaking method.

No Premium for Offers Beyond Minimum

Please note that in the preparation of technical specifications, procuring entities are presumed to have carefully considered the necessity and underlying reason for the procurement of the intended goods. Consequently, *the specifications and other terms in the Bidding Documents shall reflect minimum requirements or specifications required to meet the needs of the procuring entity in clear and unambiguous terms.* As such, the bidders complying with the minimum technical specifications, shall be treated the same way even if one bidder offers higher technical specifications.¹

¹ Non-Policy Matter (NPM) Opinion No. 094-2012 dated 3 August 2012.

In other words, even if a bidder offers superior specifications than the other bidders, such specifications cannot be given weight and considered in the evaluation of bids. A Procuring Entity (PE) cannot consider any offer, for purposes of bid evaluation, above the minimum requirements or specifications provided in the bidding documents.²

We note that in both scenarios, the MBL offered by one bidder is higher than the other bidder but both complied with the minimum specification set by the PE. Please be guided that the higher MBL cannot be considered in evaluating the bids mainly because these run counter to the rules on the use of non-discretionary criteria in Bid Evaluation and Post-Qualification.

In view of the foregoing, we opine that DBP-LC should award the contract to the supplier that complied with the specified minimum technical requirements and offered the lowest price quotation.


Tie Breaking Method

On the other hand, in case there will be a tie between bidders, all those who have passed post-qualification and offered the same financial bid price, the PE must use the tie-breaking method specified in its bidding documents pursuant to GPPB Circular No. 01-2005³. Under Section 3.2 thereof, PEs are required to identify at the onset of the bidding process, and thereafter include in the bidding documents as instruction or a matter of information to prospective bidders, a ready and clear measure to be used in the event two or more of the bidders have been post-qualified as LCRB or HRRB. Alternatively, Section 3.3 thereof provides that the PE may opt to bring the concerned bidders to agree on better selection criteria. In all cases, however, the Circular emphasized that the *measure determined by the PE shall be non-discretionary and non-discriminatory* such that the same is based on sheer luck or chance.⁴

Hence, considering that the appreciation of superior specifications will require discretion among the members of the BAC, we are of the opinion that they cannot be used as measures in any tie-breaking method, which, on the contrary, requires non-discretionary and nondiscriminatory measures that are based on sheer luck or chance. Any preference in favor of the supplier that offered better specifications at the same or higher price would be a blatant violation of the provisions of RA 9184.

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 V

//lrd4 CAO

² NPM 036-2005 dated 31 August 2005.

³ Dated 5 August 2005.

⁴ NPM No. 071-2015 dated 12 October 2015.