

NPM No. 093-2017

29 December 2017

MS. MAUREEN CAMILO

Sr. Material Planning Supervising Procurement Officer

AUTHORITY OF THE FREEPORT AREA OF BATAAN

GF Administration Building, Luzon Avenue

Freeport Area of Bataan, Mariveles

Bataan

Re: Reference to Brand Names -

Dear Ms. Camilo:

This refers to your electronic mail (e-mail) requesting for clarification on the following matters:

1. Whether the procuring entity can indicate a brand name in the purchase of a transformer related to the upgrading of the Power Distribution System;
2. The documents or certifications needed to be prepared as attachment for the supplemental/bid bulletin.

In your e-mail, it was represented that you have a project related to the upgrading of Power Distribution system and the procuring entity has existing brand of transformer which it intends to procure in relation to the project at hand.

Reference to Brand Names-

Relevant to your inquiry is Section 18 of Republic Act No. (RA) 9184, the Government Procurement Reform Act, where it is specifically mandated that “[s]pecifications for the procurement of Goods shall be based on relevant characteristics, and/or performance requirements. Reference to brand names shall not be allowed.” In an earlier opinion, we maintained that the quoted provision of the IRR must be complied with to the letter since it provides an absolute prohibition as regards reference to brand names. It is prudent for the Procuring Entity to judiciously prepare its "technical specifications" so that it is bound (including the bidders) by the technical parameters of the item to be procured rather than by its brand.

On the other hand, Section 18 of the 2016 revised Implementing Rules and Regulations (IRR) of RA 9184 recognized circumstances where reference to brand names may be allowed, that is, “[f]or items or parts that are compatible with the existing fleet or equipment of the same make and brand, and to maintain the performance, functionality and useful life of the equipment.”

In the present case, if the Power Distribution System will admit of no other Transformer as substitute or replacement, as when the System will not perform or function in the same manner if the same brand of Transformer is not installed, then the procurement of the same brand of Transformer currently installed in the System may be initiated. However, if the Power Distribution System will run even if a different kind or brand of Transformer is installed, the exception as provided in Section 18 of the 2016 IRR shall not applied.

Documents for Supplemental/Bid Bulletin -

As to the second query, please take note that Supplemental/Bid Bulletins may be issued upon the procuring entity's initiative for purposes of clarifying or modifying any provision of the Bidding Documents.

Accordingly, Supplemental/Bid Bulletin is necessary only when there are clarifications in the provisions of the bidding documents. In addition, in procuring items or parts of an existing equipment, the Procuring Entity need not attach Documents or Certifications to Supplemental/Bid Bulletins. It is the Bidder that would provide supporting documents in its Bid as part of its compliance with the Technical Specifications required by the Procuring Entity, to prove that the part/s or items/s offered are compatible with the PE's existing fleet or equipment.

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. 

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