

NPM No. 095-2016

15 November 2016

MR. JOSEPH PEDLEY V. BRITANICO
Chairperson, BAC
SOCIAL SECURITY SYSTEM
Luzon South Division 2
SSS Building East Avenue, Diliman, Quezon City

Re: Alternative Bids

Dear Mr. Britanico,

This refers to your letter requesting for a legal opinion on the following matters:

1. Validity of submission of bid envelope containing two bids for the same procurement;
2. Whether it is imperative to inform or notify losing bidder in writing or other means; and
3. Period of disposal of sample items or products for procurement under the possession of the BAC Secretariat.

You mentioned in your letter that in the procurement of 160 sacks of commercial rice by your Office, there were four (4) suppliers who submitted their corresponding bids. However, during the opening and evaluation of bids, one of the envelopes of the bidder contained two bid envelopes with two different bid documents for the same item to be procured. It was also disclosed that both envelopes have bid amounts which may be considered as the lowest and second lowest bid from among the three (3) bidders.

Hence, this inquiry.

Validity of Submitting Alternative Bids

Alternative bid¹ is defined as an offer made by a bidder in addition to or as a substitute to its original bid which may be included as part of its original bid or submitted separately therewith for purposes of bidding. A bid with options is considered an alternative bid regardless of whether said bid proposal is contained in a single envelope or submitted in two (2) or more separate bid envelopes.

Instructions to Bidders (ITB) Clause 14 of the Philippine Bidding Documents is instructive that Alternative Bids shall be rejected in line with the general principle that

¹ NPM 001-2007 dated January 12, 2007

improvement of bids or alternative bids shall not be allowed. This practice defeats the concept of competition among the bidders. The bidder who offers alternate bids has undue advantage over other bidders when he will be allowed to pose two bids, thus eliminating competition.

Notice to Losing Bidder

As to the second issue, it must be noted that RA No. 9184 and its revised IRR do not provide rules for the notification of bidders as to the result of the bid evaluation. However, in the event of post-disqualification of the bidder with the Lowest Calculated Bid (LCB), Section 34.5 of the revised IRR dictates that the BAC shall immediately notify the bidder in writing that it was post-disqualified and the grounds relied upon by the BAC for the disqualification. Relative to this, please be further advised that GPPB issued Circular No. 03-2012 dated 17 August 2012, which provides guidelines on the process of post qualification and notification of bidders determined by the procuring entity to be post-disqualified.

On the other hand, when there is already a recommendation to the HOPE of award of contract to the bidder with the Lowest Calculated and Responsive Bid (LCRB) under Section 37.1.1 of the 2016 revised IRR, the BAC shall notify all other bidders in writing of its recommendation within three (3) calendar days from the issuance of the resolution recommending such award of the contract.

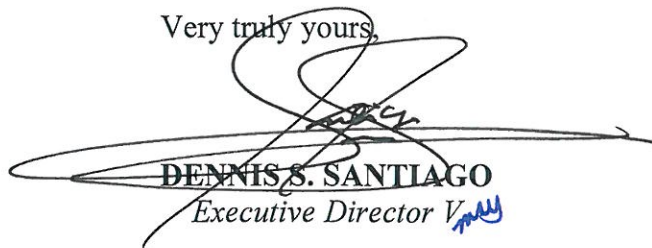
Disposal of Sample/Tested Items or Products

RA 9184 and its revised IRR are silent on the disposal of items or products that has been presented for testing. Nonetheless, please be guided that the items or products tested or supplied for inspection may be returned or disposed provided that an award has already been made and no Motion for Reconsideration has been filed by non-winning bidder or a waiver of such right has been made.

In sum, we reiterate that alternative bids shall be rejected as it defeats the purpose of competition. Further, the 2016 revised IRR requires that when there is already a recommendation to the HOPE of award of contract to the bidder with the LCRB, the BAC shall notify all other bidders, in writing of its recommendation. As regards the disposal of products that has been presented for testing, the same may be returned or disposed provided that an award has already been made and no Motion for Reconsideration has been filed by non-winning bidder or a waiver of such right has been made.

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

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