



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 096-2017

29 December 2017

MS. KAYZELLE ANNE M. CARPIO

Account Executive

3/F PPL Building

UN Ave. corner San Marcelino St.,

Paco, Manila

**Re: Non-Inclusion of Supplemental Bid/Bulletin
and Bidding Documents in the Bid Submission -**

Dear Ms. Carpio:

This refers to your letter requesting for opinion on whether failure to include copy of the Supplemental Bid/Bulletin and the Bidding Documents in the bid submission, as part of the Technical and Financial envelopes, may be a ground for disqualification.

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy matter opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We have no authority to dictate to the Procuring Entity how to decide or resolve issues relative to its procurement activities. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, except courts of competent jurisdiction, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity (HoPE) and the BAC, since these duties and responsibilities fall solely within the ambit of their authority and discretion. In this regard, we shall limit our discussion on the interpretation of relevant procurement rules and regulations pertinent to the issues presented.

The Supplemental/Bid bulletin is not Class "A" or "B" eligibility documents provided for under the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Government Procurement Reform Act (GPRA)¹, or part of the technical and financial components of the bids, particularly Section 25.1, which states that:

Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. **The first shall contain the technical component of the bid, including the eligibility requirements under Section 23.1 of this IRR for the procurement of Goods and Infrastructure Projects, and the second shall contain the financial component of the bid.** (Emphasis supplied)

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On the other hand, Section 25.2 of the same IRR enumerated the documents contained in the first envelope (technical and eligibility documents), *to wit*:

a) For the procurement of Goods:

- i) PhilGEPS Certificate of Registration and membership in accordance with Section 8.5.2 of this IRR, except for foreign bidders participating in the procurement by a Philippine Foreign Service Office or Post, which shall submit their eligibility documents under Section 23.1 of this IRR: *Provided*, That the winning bidder shall register with the PhilGEPS in accordance with Section 37.1.4 of this IRR;
- ii) Statement of all Ongoing Government and Private Contracts;
- iii) Statement of SLCC;
- iv) NFCC Computation or committed Line of Credit;
- v) JVA or the Duly Notarized Statement in accordance with Section 23.1(b) of this IRR, if applicable;
- vi) Bid security in the prescribed form, amount and validity period;
- vii) Technical Specifications, which may include production/delivery schedule, manpower requirements, and/or after-sales service/parts, if applicable;
- viii) Omnibus Sworn Statement in accordance with Section 25.3 of this IRR; and
- ix) For foreign bidders claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos, a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item or product.

For the Financial Envelope, Section 25.4 provides that: “[T]he second envelope shall contain the financial information/documents as specified in the Philippine Bidding Documents (PBDs).” Sections 25.2(b) and 25.2(c) of the same IRR provide for the contents of the first envelope for procurement of Infrastructure Projects and Consultancy Services, respectively. To reinforce these provisions of the 2016 IRR, the standardized PBDs for Goods and Infrastructure Projects provide, in Clauses 12 and 13 of Section II or Instruction to Bidders, the documents that must be contained in the first and second envelopes.

We note that failure of the bidder to physically include in its bid the copy of the Supplemental/Bid bulletin and the Bidding Documents is not a ground for disqualification. It bears pointing out, however, that the requirements contained in the Supplemental/Bid Bulletin should be complied with by the prospective bidder; and needless to mention, the offer or bid must be submitted through the Bidding Documents prescribed by the Procuring Entity.


In addition, all the documents required to be contained in the technical and financial envelopes are the legal, technical, and financial eligibility documents that are being prepared, executed and submitted by the bidders. On the other hand, the Supplemental/Bid Bulletin is a document issued by the Procuring Entity to clarify, explain, add or reduce requirements in the Bidding Documents as originally crafted, and compliance thereto by the prospective bidder shall be sufficient. Thus, even if the actual Supplemental/Bid Bulletin is not included in the bid submission of the bidders, the non-inclusion should not be a ground for disqualification.

It is important to note, however, that the Bidding Documents prescribed by the Procuring Entity has to be used and adopted by the prospective bidder, as this provides for standardized bidding forms which prospective bidders must use in accordance with Clause 19 of Section II of the PBDs for Goods and Infrastructure Projects.

Accordingly, there is no legal basis under RA 9184, its IRR and the standardized PBDs that require bidders to attach the copy of the Supplemental/Bid bulletin or the Standard Bidding Documents as part of their submission since they are not one of those documents required to be enclosed in the technical and financial component envelopes in accordance with RA 9184, and its 2016 IRR. The prospective bidder, however, must submit a bid or offer using the Bidding Documents issued by the Procuring Entity for the procurement opportunity.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director *V. mm*

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