

NPM No. 126-2017

29 December 2017

MR. VICTOR M. ANGELES

Owner/General Manager

NORTHERN BUILDERS

Km. 131 Carlos P. Romulo Highway,

Brgy. Baras-Baras, Tarlac City

Re: Tailor-Fitting Specifications -

Dear Mr. Angeles:

This refers to your letter seeking our opinion regarding the Terms of Reference of Manila International Airport Authority (MIAA), which allegedly have technical specifications that only a particular brand can comply.

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 opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. 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 Bids and Awards Committee (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.

As explained in our previous opinion¹, Section 18 of Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR), mandate that reference to brand names shall not be allowed and thus, specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. This mandate cannot be circumvented by setting specifications that point out to only one brand of goods or items, though without mentioning the name of the brand. What is prohibited directly is prohibited indirectly.

We previously opined that while Procuring Entities (PEs) can make technical specifications in their bid documents more detailed, they cannot, however, “tailor fit” to a particular brand. We further stated that the inclusion in the bidding documents of such detailed design and technical descriptions that leave the PE no other option but to procure from a particular brand or supplier defeats the very essence and purpose of competitive bidding, and in such a case where a specific brand is necessary, indispensable and justified under the IRR, the applicable alternative modalities of procurement may be utilized.

¹ NPM No. 41-2015 dated 8 October 2015.

It is important to note, however, that although the use of brand names is prohibited in the 2009 revised IRR, under Section 18 of the 2016 IRR of RA 9184, it was clarified that “[R]eference to brand names shall not be allowed except for items or parts that are compatible with the existing fleet or equipment of the same make or brand, and will maintain the performance, functionality and useful life of the equipment.”

Thus, as a rule, specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names, including tailor fitting, is not allowed. But where necessary to maintain the performance, functionality and useful life of the equipment, reference to brand names relative to the existing fleet or equipment is allowed.

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 