

NPM No. 128-2016

29 December 2016

MS. LETICIA O. CLEMENTE
BAC Chairperson and City Budget Officer
CITY GOVERNMENT OF BAGUIO
Baguio City

**Re: Post-Qualification Documents;
Period for the Conduct of Competitive Bidding**

Dear Ms. Clemente,

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

1. Whether or not the requirement for the submission of additional documents during post-qualification is proper; and
2. Whether or not the Procuring Entity can proceed with the procurement beyond the three (3) month period.

In your letter, you disclosed that the City Government of Baguio conducted a public bidding for security services for Baguio City Hall and its facilities. It was also mentioned that during post-qualification, the BAC requested the submission of post-qualification documents by the lowest calculated bidder such as (a) SSS, PAG-IBIG and PhilHealth Certification or Clearance; (b) PNP Permit as accredited Security Service Provider; (c) PADPAO Membership Certificate; and (d) DOLE Clearance. The submission of these documents was likewise indicated in the Terms of Reference. You also said that the procurement for this project went beyond the three (3) month period prescribed under the rules.

Hence, this inquiry.

Please be advised that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding of procuring entities since it has no quasi-judicial function under the law. Hence, this office has consistently refrained from passing upon decisions of the BAC or the procuring entities on its procuring activities.

Submission of Additional Documents
During Post-Qualification

We have earlier opined¹ that the authority of Procuring Entities in imposing additional documentary requirements during competitive bidding stage is recognized. However, these

¹ NPM 123-2014 dated November 12, 2014

documentary requirements are limited only to those sanctioned by the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 in support of the information it has provided in the Bidding Documents. These include the latest income and business tax returns and other appropriate licenses and permits required by law and stated in the Bidding Document pursuant to Section 34.2 of the revised IRR of RA 9184.

Applying the same in the case at hand, the City Government of Baguio may require the submission of documentary requirements as stated in the Bidding Documents provided that the same are licenses or permits which are required under the law. Thus, if part of the post-qualification requirements of the City Government of Baguio includes the submission of clearances, permits or certifications issued by the different agencies of the government, the same should be appropriate licenses and permits required under the law and not merely to aid the Procuring Entity or the BAC in verifying the eligibility of the bidder.

Further, we note that the additional documents being prescribed are those that would ensure compliance with labor laws and social legislations. In this regard, we refer you, for proper guidance, to GPPB Circular No. 01-2008, dated 7 March 2008, clarifying the rules regarding the adoption of additional eligibility and technical documents to ensure compliance with labor laws and other social legislation.

Period on Procurement Activities

As regards the period for procurement activities, Section 38 of RA 9184 and its 2016 revised IRR is instructive. Hence, the procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the Procuring Entity.

The mandatory nature of the periods under RA 9184 was likewise recognized by the Honorable Supreme Court in the case of *Jacomille v. Abaya, et al.*², where it was held that “[t]he different periods provided by RA 9184 within which certain stages of the procurement process must be completed is not merely directory but mandatory.” Thus, it concluded that such non-compliance with the period will certainly affect the validity of the bidding process.

Nonetheless, Section 65.1 (b) of RA 9184 and its revised IRR provide that awarding of contracts beyond the prescribed period of action may be recognized for justifiable causes. In this regard, we explained in our earlier opinion³ that although the periods of action under RA 9184 and its IRR are mandatory in character, penal sanctions or liability will not set in against the concerned public officers provided that valid and reasonable, and justifiable causes exist to warrant a delay in the contract extension. Thus, in a related opinion, we stated that the PE may still award the contract even beyond the three-month period, provided that the failure was due to justifiable causes, and provided further, that the bid security of the bidder remains valid.

In this view, should the Procuring Entity decide to extend the periods on procurement, it must show and provide compelling, sufficient, valid, reasonable, and justifiable cause for such extension. Such valid justification, however, will only free officials from penal sanction or liability, but not from applicable administrative and civil sanctions or liabilities under existing laws, rules and regulations.

² G.R. No. 212381, 22 April 2015

³ NPM 010-2012 dated January 16, 2012

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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