



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 132-2017

29 December 2017

MR. ZALDY ANTIOQUIA

General Manager

Z. ANTIOQUIA CONSTRUCTION

Blk. 2 Lot 22, Oltap Subdivision, Brgy.6, Tanauan City

Re: Legal Opinion for Partido State University

Dear Mr. Antioquia:

This pertains to your letter requesting our office to issue the legal opinion requested by the Board of Regents of Partido State University.

As represented, Antioquia Construction was awarded five (5) contracts by Partido State University (PSU) which caused the extensive preparation of all the necessary manpower, equipment and materials for the implementation of the said projects. Subsequently, you received a Notice of Suspension from PSU causing the stoppage of all transactions despite having deployed personnel to their Caramoan campus. Now, you seek assistance by way of requesting for the issuance of the legal opinion requested by the Board of Regents of Partido State University.

At the outset, we would like to stress that the subject request for opinion has already been responded to through the issuance by the GPPB Technical Support Office (TSO) of the attached Non-Policy Matter (NPM) Opinion No. 016-2017, dated 27 October 2017.

In response to the query on whether the award of all five (5) projects to the same bidder would be improper even if the rules have been diligently and meticulously adhered to and even if that same bidder, after passing the eligibility screening offered the lowest financial bid in all five (5) projects and passed the post qualification process, we respond in the following manner, thus:

[I]t is our considered opinion that a bidder may be awarded several contracts for multiple projects provided that it has been determined to have submitted the Lowest Calculated Responsive Bid in all projects such that it has the legal, technical and financial capability to undertake such multiple projects. In case of approval of such recommendation, the periods prescribed by RA 9184 shall be observed. On the other hand, the recommendation for award of contract may only be disapproved based on valid, reasonable and justifiable grounds provided in Section 41¹ of RA 9184 and its 2016 IRR.

¹ Section 41. Reservation Clause. The HoPE reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations: a) If there is prima facie evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the PAC and any of the

This notwithstanding, we would like to emphasize that the GPPB and its TSO do not have the power nor function to recommend approval nor approve the procurement contracts of Procuring Entities (PEs). Thus, under Section 12 of RA 9184 and its 2016 revised IRR, the bids and awards committee (BAC) shall have the function to recommend award of contracts to the Head of the Procuring Entity (HoPE) or his duly authorized representative, among others. On the other hand, the authority to approve the recommendation to award a contract rightfully belongs to the HoPE², and an opinion and/or approval from the GPPB or its TSO is not a pre-requisite nor a requirement for such award of contract. Accordingly, the GPPB and its TSO cannot dictate upon, decide nor interfere with the functions of the PE, HoPE and BAC, which solely falls within their discretion and authority as sanctioned by the law.

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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bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition; b) If the BAC is found to have failed in following the prescribed bidding procedures; or c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GoP, as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the HoPE; (ii) if the project is no longer necessary as determined by the HoPE; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.