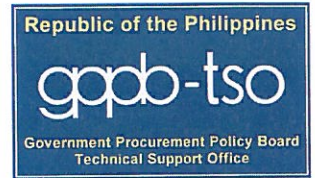




Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 134-2016

29 December 2016

MS. ANNABELLE C. ECHAVEZ
Regional Director
DEPARTMENT OF BUDGET AND MANAGEMENT (DBM)
REGIONAL OFFICE (RO) IX
N.S Valderosa St. Pettit Barracks,
Zamboanga City

Re: Submission of Tax Clearance; Bid Modification

Dear Regional Director Echavez:

This refers to your electronic mail (e-mail) seeking our opinion regarding the submission of tax clearance.

As represented, the bid opening for your procurement of security services was originally scheduled on 14 September 2016. However, it did not push through due to lack of quorum of the Bids and Awards Committee (BAC). In view of this, the BAC posted in the PhilGEPS website, a notice of postponement of the bid opening that was rescheduled on 20 September 2016. For this bidding, the lone bidder submitted a tax clearance that has an expiration date of 16 September 2016, although it submitted its latest tax clearance on 19 September 2016 or a day before the rescheduled bid opening.

It is further represented that one of the BAC Members did not sign the resolution recommending award of contract to the lone bidder on the reason that the bid bulletin posted for the project only postponed the bid opening and did not state that additional documents may be accepted. Instead, said BAC member recommended to declare a failure of bidding due to non-compliance with the mandatory period set under the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. However, in your opinion, you can still award the contract to the lone bidder considering that the deferment of the bid opening was due to the absence of quorum of BAC at the time of the original schedule for bid opening. Hence, this request for opinion.

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. 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, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity and the Bids and Awards Committee, since these duties and responsibilities fall solely within the ambit of their authority

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and discretion. In this regard, we shall limit our discussion on the interpretation of relevant procurement rules and regulations pertinent to the issues presented.

Submission of Tax Clearance

The submission of Tax Clearance, as one of the eligibility requirements under Section 23.1(a)(iii) of the IRR of RA 9184 is imposed by virtue of Executive Order (EO) No. 398¹, series of 2005, to prove full and timely payment of taxes by the bidder desiring to participate in bidding activities of the government. In a previous opinion², we stated that the Tax Clearance must be valid and existing at the time it is submitted to BAC. In a more recent opinion³, we had the occasion to discuss the submission of a valid Tax Clearance and the obligation to renew and update the same, thus:

“EO 398 requires that a bidder should not have any tax liability with the Government from the time of submission of its bid up to the time of contract award. Accordingly, bidders are required to secure and submit a valid Tax Clearance issued by the BIR as proof of compliance with the requirements of EO 398. In the event that the submitted Tax Clearance expires prior to award of contract, the bidder is obligated to renew and update its Tax Clearance.”

In this regard, we would like to emphasize that for purposes of complying with the eligibility requirements under Section 23.1(a)(iii) of the IRR of RA 9184, the Tax Clearance must be valid and existing at the time it is submitted to the BAC, that is, on or before the deadline for the submission of bids. In case the Tax Clearance expires prior to award of contract, the bidder is obligated to renew and update its Tax Clearance.

Bid Modification

Section 26 of RA 9184 and its IRR provide the rules on bid modification, thus:

“A bidder may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. Where a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked to its original bid and marked as a “modification,” thereof, and stamped “received” by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened.”

Clearly, the rules allow bid modification if the same was done before the deadline for the submission and receipt of bids and it was made in accordance with the requirements prescribed by RA 9184 and its IRR.

Based on your representation, the bid opening for your procurement of security services was rescheduled without extending the period for the submission. Thus, bidders can no longer submit additional documents after the lapse of the deadline for the submission of bids, if the purpose is to modify the previously submitted bids as this would violate the rules on bid

¹ Directing Timely and Complete Payment of Taxes as a Precondition for Entering Into, and as a Continuing Obligation in Contracts with the Government, Its Departments, Agencies and Instrumentalities, (12 January 2005).

² NPM No. 48-2013 dated 26 June 2013.

³ NPM 002-2016 dated 18 March 2016.

modification. However, for Tax Clearance purposes, we note the obligation of a bidder under EO 398 whereby, in the event that the submitted Tax Clearance expires prior to award of contract, it is required to renew and update its Tax Clearance.

To elucidate the matter, if a bidder submitted an expired Tax Clearance as part of its bid, it can cure the defect by submitting before the deadline for the submission and receipt of bids a renewed and updated Tax Clearance in the form of bid modification submitted in accordance with Section 26.1 of the IRR of RA 9184. If the renewed and updated Tax Clearance, however, was submitted after the applicable deadline, it cannot be accepted to correct the error of submitting an expired Tax Clearance. On the other hand, if the Tax Clearance was valid at the time it was submitted to the BAC, but later on expired before award of contract, a renewed and updated Tax Clearance may still be accepted even if the submission was made after the deadline for submission and receipt of bids because it will not be considered as a bid modification but a recognition of the bidder's obligation under EO 398 to renew and update its Tax Clearance.

In this regard, it is our considered view that a renewed and updated Tax Clearance may be accepted even after the deadline for the submission of bids, not for purposes of modifying its previously submitted bids, but in recognition of the bidder's obligation under EO 398 to renew and update its Tax Clearance.

Rescheduling of Bid Opening

On a final note, we would like to inform you of the new provision pertaining to rescheduling of bid opening under the 2016 Revised IRR of RA 9184⁴. Section 29 thereof provides that in case the bids cannot be opened as scheduled due to justifiable reasons, the BAC shall take custody of the bids submitted and reschedule the opening of bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the PhilGEPS website and the website of the Procuring Entity concerned.

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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⁴ Published on 29 August 2016 and took effect on 28 October 2016.