

NPM No. 135-2017

29 December 2017

MS. CHERYL CALMA
ADVANCE SOLUTIONS, INC.
<cheryl.calma@myasiph.com>

Re: Additional Requirement in the Technical Specifications -

Dear Engr. San Juan:

This refers to your electronic mail requesting clarification on whether certification that the bidder has no pending case may be required in the Technical Specifications.

At the outset, it is noteworthy to emphasize that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) only render policy and non-policy opinions, respectively, on issues pertaining to the interpretation and application of our procurement laws, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from courts having competent jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the Bids and Awards Committee (BAC), since these duties and responsibilities fall solely within the ambit of its authority and discretion as sanctioned by law.¹ Thus, we shall limit our opinion on the applicable law and rules on the matter.

The General Procurement Manual defined “technical specifications” as the physical description of the goods or services, as well as the Procuring Entity’s requirements in terms of the functional, performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. The technical specifications must include the testing parameters for goods, when such testing is required in the contract.

In determining the technical specifications of the goods or services it will procure, the PMO or end-user unit must consider the needs of the procuring entity; the objectives of the project; and the entire procurement at hand, and identify the standards that should be met by the goods or services in terms of function, performance, environmental interface and/or design. Hence, depending on the need of the procuring entity, it may require standards that must be met to conform to the need of the procuring entity.²


In view of the foregoing, a certificate that the bidder has no pending case is not considered as a physical description of the goods or services nor can it be considered as a requirement in terms of functional, performance environmental interface or design requirement to be met by the goods to be manufactured or supplied, or the services to be rendered. Hence, it may not be required to form part of the Technical Specifications.

¹ NPM No. 111-2014, dated 07 November 2014.

² NPM Opinion No. 66-2016 dated 15 November 2016.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular 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


//lrd5