



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 004-2016

18 March 2016

MR. WALTER S. SAN DIEGO
Sr. Admin. & Gen. Services Officer, Construction & Maintenance Division
CLARK DEVELOPMENT CORPORATION (CDC)
Clark Freeport Zone, Philippines

Re: Compliance with Technical Requirements

Dear Mr. San Diego:

This refers to your electronic mail (email) requesting for our opinion on the attached Motion for Reconsideration filed by your bidder, Multi-line Building Systems, Incorporated (Multi-line).

Based on the attached document, Multi-line was declared ineligible because its Certificate of Tax Clearance has expired last October 28, 2015, which was prior to the bidding for "Rehabilitation/Installation of Fire Alarm System" on November 10, 2015. Multi-line filed its Motion for Reconsideration with the Bids and Awards Committee (BAC) contesting the eligibility of the remaining eligible bidder, J.S. General Contractor for non-submission of the: 1) List of its Materials Engineer(s) to be assigned to the contract to be bid, with their complete qualification and experience data; and 2) The certification of availability of equipment from the equipment lessor/vendor for the duration of the project, which are both required to be submitted as part of the technical requirements in the first envelope.

We wish to note that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) only render policy and non-policy opinions respectively, on issues purely relating 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 under the law. Likewise, the GPPB and the GPPB-TSO do not have the authority to decide for and in behalf of a procuring entity, nor dictate upon the procuring entity how to decide relative to its procurement activities. Hence, this office has consistently refrained from passing upon decisions of the BAC or even by the Head of the Procuring Entity (HOPE) relative to the application of and compliance with Republic Act (RA) 9184 and its revised Implementing Rules and Regulations (IRR). It is in this wise that we shall limit our discussion on the relevant provisions of the procurement law, rules and regulations pertinent to the issue presented.

At the outset, it bears stressing that an essential element of a publicly bid contract is that all bidders must be on equal footing. Not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, *but more importantly, on*

the contract bidden upon. Each bidder must be able to bid on the same thing.³ Thus, the bidding documents⁴ shall contain all information on the project necessary for the prospective bidders to properly prepare a responsive bid.⁵ The bidding document issued by the procuring entity contains all the specific requirements, limitations and parameters of the procurement at hand, as determined by the procuring entity.⁶ The specifications and other terms in the Bidding Documents shall likewise reflect the minimum requirements or specifications required to meet the needs of the procuring entity in clear and unambiguous terms.⁷ Consequently, the BAC determines the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the bidding documents, and their submission of the technical and financial proposals based on the requirements of the procuring entity.

Under the IRR of RA 9184, a bidder must comply with the minimum specifications, such as the identification of the Materials Engineer¹⁰ for the project. As for the Certification of Availability of equipment from the equipment lessor/vendor for the duration of the project, which supports the list of contractor's equipment units, it is a specific technical document under Section 25.2(b)(iii)(3) of the IRR of RA 9184, which cannot be dispensed with. Accordingly, both requirements are part of the technical bid and non-submission of which is a ground for disqualification of the bidder.

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 *DS*

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³ *Commission on Audit v. Link Worth International, Inc.*, G.R. No. 182559, 13 March 2009, citing *Agan Jr. v. PIATCO*, 450 Phil 744 (2003).

⁴ Bidding documents refer to the documents issued by procuring entity as the bases for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the infrastructure projects, goods, and/or consulting services required by the procuring entity.⁴

⁵ *Philippine Sports Commission v. Dear John Services, Inc.*, G.R. No. 183260, 4 July 2012.

⁶ NPM 004-2006, 17 March 2006

⁷ Section 17.2, IRR of RA 9184.

¹⁰ Section 25.2(b)(iii)(2), IRR of RA 9184.