



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 005-2016

18 March 2016

ENGR. ROBERTO L. CO

Chairperson, Technical Working Group

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR)

ENVIRONMENTAL MANAGEMENT BUREAU (EMB)

DENR Compound, Visayas Avenue, Diliman, Quezon City

Re: Incomplete Omnibus Sworn Statement

Dear Engr. Co:

This refers to your mail seeking clarification on whether it is proper for the EMB Bids and Awards Committee (BAC) to accept the bidder's proposal notwithstanding the latter's failure to provide Item No. 9 of the Omnibus Sworn Statement as it was not stated in EMB's bidding documents.

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.*¹ Thus, the BAC shall furnish in the bidding documents², particularly the Invitation to Bid, all information on the project necessary for the prospective bidders to properly prepare their bids in order to give fair and equal opportunity to bid.³

Thus, the bidders are expected to examine all instructions, forms, terms and specifications in the Bidding Documents. The Omnibus Sworn Statement prescribed in the Philippine Bidding Documents is part and parcel of the bidder's bid, and being a standard form under the existing rules, it should conform with the template provided by the GPPB. This is in accord with the requirement under Section 6.2 of the revised Implementing Rules and Regulations of Republic Act (RA) 9184 that the use of standard forms, once issued by the GPPB, shall be mandatory upon all procuring entities.⁴

Additionally, Instruction to Bidders (ITB) Clause 12.1(b)(iii) requires that the first envelope shall contain, among others, a sworn statement in accordance with Section 25.2(a)(iv) of the IRR of RA 9184 and using the form prescribed in Section VIII. (Bidding Forms) of the Philippine Bidding Documents. On the other hand, ITB Clause 19.1 mandates

¹ *Commission on Audit v. Link Worth International, Inc.*, G.R. No. 182559, 13 March 2009, citing *Agan Jr. v. PIATCO*, 450 Phil 744 (2003).

² 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.²

³ *Philippine Sports Commission v. Dear John Services, Inc.*, G.R. No. 183260, 4 July 2012.

⁴ NPM No. 037-2015, dated 8 October 2015.

bidders to submit their bids through their duly authorized representative using the appropriate Forms provided in Section VIII. Bidding Forms on or before the deadline for submission of bids. And under ITB Clause 19.2, Forms mentioned in ITB Clause 19.1 must be completed without any alterations to their format, and no substitute Form shall be accepted.

Accordingly, failure of the bidder to comply with the Form and content of the prescribed Omnibus Sworn Statement despite its being included in the Philippine Bidding Documents, particularly Section VIII thereof, is a cause for the bidder's ineligibility or disqualification.

Be that as it may, since the bidders would normally refer to the bidding documents developed by the procuring entity for information on the preparation of their bids, including the use of the accompanying template or Form that they will use, which may include inaccurate content or some omissions, in this case a mistake in the content of the Omnibus Sworn Statement, the bidders could not be blamed if they were not able to submit the correct and updated Form. In other words, if the fault is attributable to the procuring entity, particularly on its failure to include the correct Omnibus Sworn Statement template, the bidder should not be faulted or made to suffer for using such Form provided by the procuring entity through the bidding documents sold or distributed to the bidders.

All told, failure of the bidder to comply with the prescribed Omnibus Sworn Statement is a cause for the bidder's disqualification, unless the mistake was committed due to the procuring entity's failure to provide the correct and updated form of the Omnibus Sworn Statement in its bidding documents.

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

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