



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 07-2012

6 January 2012

MR. JOSE A. SALVADOR, JR.

BAC Chairman

DEPARTMENT OF BUDGET AND MANAGEMENT

REGIONAL OFFICE NO. VII (DBM RO VII)

Sudlon, Lahug, Cebu City

**Re: Attendance of Bidders or their Duly Authorized Representative
During Bid Opening**

Dear Mr. Salvador:

We respond to your letter dated 29 December 2011 requesting for an opinion on whether the presence of the bidder's representative is necessary/required during the bid opening.

As represented in your letter and attached documents, during the bid opening for the supply of security services, one of the bidders was represented by its personnel other than the authorized representative indicated in its Omnibus Sworn Statement (OSS). On the interpretation that Clause 6.2 (h) of Instructions to Bidders (ITB) and Paragraph 2 of the OSS require a Special Power of Attorney for representatives other than those authorized in the OSS, the Bids and Awards Committee (BAC) declared the concerned bidder ineligible. The BAC recommended for the denial of the request for reconsideration filed by the concerned bidder, but the same was disapproved by Head of the Procuring Entity on the reason that the presence of bidder is not required during bid opening, thus, not a factor in considering its eligibility.

As expressly provided in Section 29 of the Implementing Rules and Regulations of Republic Act 9184, bidders or their duly authorized representative **may** attend the opening of the bids. The word "may" when used in a statute is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced.¹ "May" is an auxiliary verb indicating liberty, opportunity, permission, and possibility. Its use in a provision shows that the act is discretionary, not mandatory.² As such, we wish to point out that the attendance of the bidders during bid opening is not mandatory, but merely discretionary or optional.

¹ Berbasal v. Salvador, G.R. No. L-35910, July 21, 1978

² Municipality of Biñan, Laguna v. CA, 219 SCRA 69 (1993)

We wish to clarify that although Clause 6.2 (h) of the ITB and Paragraph 2 of the OSS require a document showing proof of authorization of the designated person, it does not require that the authorized person be the one to attend the bid opening. There is also nothing in the requirement that mandates the authorized person to attend the bid opening.

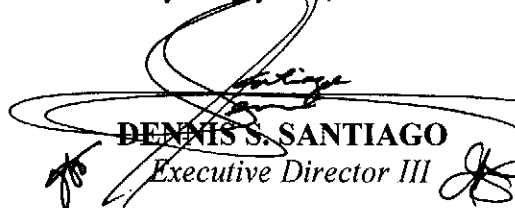
What the requirement dictates, however, is that the signatory to the submitted bid should be the person prescribed or authorized in the OSS. Thus, the relevance of the proof of authorization of the designated person applies only to who is authorized to sign the bid/tender documents. This shows that the duly authorized/designated representative is granted full power and authority to do, execute, and perform any and all acts necessary to represent the concerned bidder.

In this regard, bearing in mind that the attendance of the bidders in the opening of bids is optional, it follows that the afore-stated proof of authorization is not necessary whenever a bidder's representative, other than the one authorized in the OSS, attends the bid opening. As such, we are of the view that it is not necessary for the bidder's authorized representative as reflected in the OSS to attend the bid opening. Corollary to this, the attendance of a representative, other than the one authorized by the bidder in its OSS, is not a ground for disqualification.

We hope our advice sufficiently addresses your concerns. Note that this opinion is being rendered on the basis of the facts and particular circumstances as presented.

Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III