



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

NPM No. 09-2014

31 March 2014

MR. FRANCISCO L. BRIES

Operations Manager

ODIN SECURITY AGENCY, INC.

Unit 411, Sofia Tower, 85 Don A. Roces Ave., Quezon City

Re: Certified True Copy

Dear Mr. Bries:

This is in response to your letter dated 7 March 2014, which we received on 12 March 2014, seeking our opinion on whether the National Housing Authority (NHA) correctly denied your Motion For Reconsideration on the ground that you failed to stamp as "certified true copies" the Copy 1 and Copy 2 of Bid Securing Declaration (BSD), despite our Non-Policy Matter Opinion (NPM) No. 133-2013 dated 27 December 2013.

It is represented that Odin Security Agency, Inc. (Odin) was declared ineligible by NHA on the ground that Copies 1 and 2 of your BSD are neither certified true copies nor bear the signature/initials of its duly authorized representative. It is likewise represented that despite the issuance of this office of NPM No. 133-2013 dated 27 December 2013, the NHA Bids and Awards Committee (BAC) still denied the Motion for Reconsideration of Odin through its letter dated 2 January 2014. It is in this context that you are seeking our opinion on whether the NHA BAC properly denied Odin's Motion for Reconsideration despite the issuance of NPM No. 133-2013.

At the outset, please note that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) have consistently refrained from passing upon decisions of the BAC pertaining to the determination of compliance with the bidding documents for a particular project since the law gives the Head of the Procuring Entity (HOPE) and the BAC the task to make intelligent actions and decisions in the conduct of its procurement activities, consistent with the provisions of existing procurement law and associated rules.

The GPPB and the GPPB-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. Hence, the determination of a bidder's qualification, eligibility and compliance with the requirements for a procurement opportunity lies within the responsibility and discretion of the BAC or the HOPE, as the case may be, of the PE concerned.

Nonetheless, for your guidance, we wish to reiterate our view in NPM No. 133-2013 that submitted documents need not be originals or certified true copies, as the rules recognize

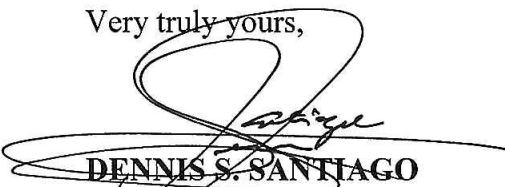
the submission of copies as satisfactory compliance with the requirements. The Omnibus Sworn Statement of the bidder sufficiently certifies that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct.

Moreover, Clause 19.3, Section II, Instructions to Bidders, Philippine Bidding Documents for the Procurement of Goods and Services¹, states that “in the event of any discrepancy between the original and the copies, the original shall prevail”. Hence, the documentary requirements submitted in the original envelope prevails over those submitted in the copies, such that if the document in the original envelope satisfactorily complies with the requirement, the bidder be considered “passed”.

Based on the foregoing, we wish to stress that the GPPB and the GPPB-TSO do not have the authority to decide for or overturn the decision of NHA declaring your agency as “failed”. Nonetheless, the prescribed rules and procedures on Protest Mechanism laid down in Sections 55 and 56 of the IRR of RA 9184 are available should you intend to pursue your case.

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

//rd3

¹ 4th Edition.

Odin Security Agency, Inc.

Unit 411, Sofia Tower, 85 Don A. Roces Avenue, Quezon City
odin_sec_agency1977@yahoo.com

P.O. BOX 3454
Manila, Philippines

Tel. Nos. 491-4033 / 474-6256 / 732-0205
Telefax: 732-0249

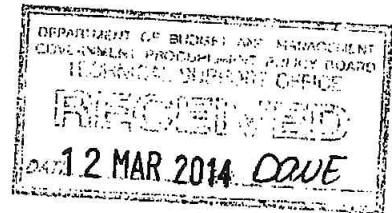
March 7, 2014

ATTY. DENNIS S. SANTIAGO

Executive Director III

GOVERNMENT PROCUREMENT POLICY BOARD

Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City



Dear Sir:

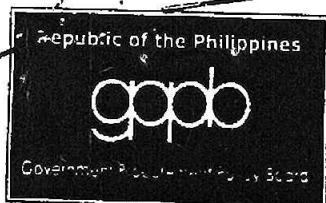
Please allow us to furnish you a copy of the reply letter of National Housing Authority (NHA) denying our Motion for Reconsideration regarding the failure to submit Certified True Copies contrary to your letter dated December 27, 2013 (NPM No. 133-2013).

In this regard, may we again asked for your opinion if NHA's decision on declaring us failed by non-submission of Copy Nos. 1 and 2 (please find attached your own opinion) as stamped "Certified True Copy" is conforming with the Procurement Rule and also contrary to our submitted Omnibus Sworn Statement certifying under oath that *Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct.*

Thank you for your prompt attention on the matter.

Very truly yours,


FRANCISCO L. BRIES
Operations Manager



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

NPM No. 133-2013

27 December 2013

MR. FRANCISCO L. BRIES
Operations Manager
ODIN SECURITY AGENCY, INC. (ODIN)
Unit 411, Sofia Tower,
85 Don A. Roces Ave., Quezon City

Re : Failure to Submit Certified True Copies

Dear Mr. Bries:

We respond to your electronic mail dated 20 December 2013 seeking our opinion on the propriety of the decision of the Bids and Awards Committee (BAC) of the National Housing Authority (NHA) to disqualify Odin Security Agency for its failure to stamp copies of its submitted technical documents as "certified true copies".

It is represented that during the Opening of Bids for the procurement of security services, the BAC disqualified Odin "because although [your] first or original copy contained the original, notarized copies of the Bid Securing Declaration, Omnibus Statement, Secretary's Certificate, etc., forming part of the bid's Technical Documents, the BAC found the second and third copy of the same, similar documents as non-complying because they were not stamped as 'certified true copies'." It is in this regard that you seek our opinion on whether the BAC was correct in disqualifying you for not stamping "certified true copies" for Copy 1 and Copy 2 of the bid documents.

Considering that the subject matter of your request is an ongoing procurement activity where you have a pending request for reconsideration, we shall refrain from making a categorical statement as to the validity of the BAC's action so as not to pre-empt its authority to decide on your concern.

Nonetheless, for your guidance, we refer you to a previous opinion¹ where we addressed a similar concern as follows:

[T]he Procuring Entity (PE) cannot require the submission of originals or certified true copies as even the procurement rules allow the submission of copies as sufficient compliance with the requirements. This is clear in the

¹ NPM 133-2012 dated 19 October 2012.


AK
Dec 11/13/14

revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, where the prospective bidder or its duly authorized representative must submit a Sworn Statement in the form prescribed by the Government Procurement Policy Board (GPPB).

Section 25.2(a)(iv) of the IRR provides that a prospective bidder or its duly authorized representative is required to submit a Sworn Statement in the form prescribed by the GPPB, certifying under oath, among other things, that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct.

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 LORNE S. NACARIO
Officer-in-Charge



OFFICE OF THE PRESIDENT
NATIONAL HOUSING AUTHORITY

January 2, 2014

MR. FRANCISCO L. BRIES

Operations Manager
Qdin Security Agency, Inc.
Unit 411 Sofia Tower, 85 Don A. Rocas Ave.
Quezon City

Dear Mr. Bries:

This resolves your motion for reconsideration on BAC-1's declaration of your bid documents as "non-complying" and thus rated "Failed" in the recently concluded public bidding of the project: Procurement of Security Services – Batches II (Reference No. 2013-099) and III (Reference No. 2013-100), on the ground that Copies 1 and 2 of your Bid Securing Declaration are not certified true copies neither do they bear the signatures/initials of your duly authorized representative.

This fact is undisputed and is even admitted in your motion for reconsideration. You contend, in substance, that there is no specific instruction in the bidding documents to stamp/mark as certified true copies of photocopied documents of Copies 1 and 2.

We call your attention to Clause 19.4 of the Instructions to Bidders (ITB), which provides:

"19.4. The bid, except for unamended-printed literature, shall be signed, and each and every page thereof shall be initialed, by the duly authorized representative of the Bidder."

In relation thereto, Clause 20.3 of the same ITB likewise provides:

"20.3. The original and the number of copies of the Bid as indicated in the BDS shall be typed or written in indelible ink and shall be signed by the bidder or its duly authorized representative."

Under Section 30, Rule IX of the Implementing Rules and Regulations of RA 9184 (Preliminary Examination of Bids), the BAC's function is merely to determine each bidder's compliance with the required documents for submission. For this purpose, the BAC is mandated to check the submitted documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion, as stated in the Instructions to Bidders. Regrettably, you

FROM : NHA BAC

FAX NO. : 9298016

3 Mar. 2014 3:50PM P2

failed to comply with the requirements under Clauses 19.4 and 20.3 of the ITB, hence, your "failed" rating.

Foregoing considered, your Motions for Reconsideration for Batches II and III are denied.

Very truly yours,

~~PROJEAN R. KAMPITAN~~
Assistant General Manager
Chairperson, Bids and Awards Committee-1



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

NPM No. XX-2014

31 March 2014

MR. KATAMBAYAN S. CELINO
Vice President, Power Engineering Services
NATIONAL POWER CORPORATION (NPC)
Quezon Avenue corner BIR road, Diliman, Quezon City

Re: Clarification on GPPB Policy Matter PM 03-2012

Dear Mr. Celino:

This is in response to your letter dated 4 March 2014, seeking clarification on the applicability of Department of Labor and Employment (DOLE) Department Order No. 18-A, Section 9(b)(ii) wherein the administrative fee in service agreements should not be less than ten percent (10%) of the total contract cost in connection with GPPB PM 03-2012.

It is represented that NPC's procurement of janitorial services is currently put on hold pending the resolution of the issue on the applicability of DOLE Department Order 18-A as NPC did not include the administrative fee of 10% of the total contract cost in its procurement following the said GPPB PM 03-2012. However, a prospective bidder raised that, upon its clarification from DOLE on the matter, the latter stated that:

Any service contract executed and entered into which is a result of a bid that does not include the standard administrative fee of not less than 10% even if considered as the lowest calculated and responsive bid, is in violation of Department Order 18-A. The Lowest Calculated and Responsive Bid shall automatically include the standard administrative fee of not less than 10% of the total contract cost as required by the Department Order 18-A.

It is true that in our Policy Matter opinion no. 03-2012, the GPPB expressed reservations on the requirement under DOLE DO 18-A for the imposition of the standard administrative fee of not less than ten percent (10%) of the total contract cost for service agreements since it appears to conflict with Section 31 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR). This is for the reason that it results in the imposition of a floor in bid prices, which clearly runs counter to the procurement in said Section 31 that "there shall be no lower limit to the amount of the award".¹ We then respectfully requested DOLE to revisit, reconsider and re-examine Section 9(b)(ii) of DOLE DO 18-A to conform and harmonize with the provisions of Section 31 of RA 9184.

Nevertheless, pending the reply of and resolution of the matter with DOLE, we reiterate our previous non-policy matter opinion² that:

¹ PM No. 03-2012, dated 30 November 2012.

² NPM No. 29-2013, dated 27 March 2013.



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

NPM No. XX-2014

31 March 2014

MR. FRANCISCO L. BRIES

Operations Manager

ODIN SECURITY AGENCY, INC.

Unit 411, Sofia Tower, 85 Don A. Roces Ave., Quezon City

Re: Certified True Copy

Dear Mr. Bries:

This is in response to your letter dated 7 March 2014, requesting our opinion on the decision of the National Housing Authority (NHA), denying your Motion For Reconsideration regarding your failure to submit Certified True Copies contrary to our Non-Policy Matter opinion No. 133-2013 dated 27 December 2013.

It is represented that you were declared ineligible by NHA on the ground that Copies 1 and 2 of your Bid Securing Declaration (BSD) are not certified true copies and neither do they bear the signature/initials of your duly authorized representative. Your Motion for Reconsideration was likewise denied despite our opinion on the matter. It is for this reason that you ask again for the propriety of the decision of the BAC in denying your request for reconsideration.

At the outset, although it is one of the mandates of the GPPB to ensure the proper implementation of the procurement rules and procedures, the GPPB opts not to interfere with the decisions made by the procuring agency in its actual conduct of procurement proceedings since the law gives the BAC and the head of the procuring agency, the task to make intelligent actions and decisions in the conduct of its procurement activities, consistent with the provisions of existing procurement laws. Hence, this office has consistently refrained from passing upon decisions of the BAC pertaining to the determination of compliance with the bidding documents for a particular project.

The 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. Hence, the determination of a bidder's qualification, eligibility and compliance with the requirements for a procurement opportunity lies within the responsibility and discretion of the BAC of the procuring entity concerned.

Nonetheless, we stand with our previous opinion abovementioned that the procuring entities cannot require the submission of originals or certified true copies as even the procurement rules allow the submission of copies as sufficient compliance with the requirements. The Sworn Statement sufficiently certifies that each of the documents