



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

NPM No. 17-2013

27 March 2013

HON. ARMANDO C. RUIZ

Assistant Secretary

DEPARTMENT OF EDUCATION (DEPED)

2/F Dorm II, DepEd Complex, Meralco Ave.,
Pasig City

Re : PCAB License for Joint Venture; Offer of Discount

Dear Assistant Secretary Ruiz:

This refers to the letter of the Honorable Assistant Secretary dated 14 March 2013 seeking opinion on some issues encountered during an ongoing procurement for infrastructure project.

As represented, during the opening and preliminary examination of bids, one of the bidders participating as a joint venture was declared ineligible for non-submission of a joint PCAB license. The decision of the Bids and Awards Committee (BAC) to disqualify said bidder is based on Non-Policy Matter (NPM) Opinion No. 007-2011¹ and Section 38 of Republic Act (RA) 4566, otherwise known as the "Contractor's License Law".

The request for reconsideration submitted by the bidder relies on Instructions to Bidders (ITB) Clause 24.6 of the Philippine Bidding Documents for Procurement of Infrastructure Projects (PBDs), which provides that submission of the documents required under ITB Clauses 12.1(a)(i) to 12.1(a)(vi), including the PCAB License, by any of the joint venture partner constitutes compliance.

Moreover, the BAC found that another bidder offered a discount using the Bid Form prescribed in the PBDs as follows:

(b) We offer to execute the Works for the Contract in accordance with the Bid and Bid Data Sheet, General and Special Conditions of Contract accompanying the bid;

The total price of our Bid, excluding any discounts offered in item (d) below is: **[bid price]**² B

¹ Dated 10 March 2011.

² Actual value intentionally omitted in the letter.

The discounts offered and the methodology for their application are:
[percentage] of the Total Bid Price³;

The BAC noted, however, that while the bid price, as read during the bid opening, matched the bidder's declaration of its costs for the project stated in its submitted program of works and detailed estimates, these same documents did not indicate the discount being offered. Hence, the BAC is of the view that there is discrepancy between the bidder's financial bid form and the program of works and detailed estimates.

It is based on these representations that opinion on the following issues are being sought:

1. Whether it is sufficient for joint venture partners to submit their respective individual Philippine Contractors Accreditation Board (PCAB) license and registration in lieu of a joint PCAB license.
2. Whether the discount to the bid price offered by a bidder using its Bid Form may be considered valid despite its non-indication in other documents of the bid.
3. Whether the afore-mentioned discount, if valid, should be considered in the computation and ranking of bid prices during the detailed evaluation.

PCAB License Requirement

We wish to reiterate the view of this office espoused in NPM Opinion No. 007-2011 that joint venture bidders are required to submit a Joint License issued by PCAB in compliance with the requirement for a "valid PCAB license and registration" under Section 23.1(a)(iv) of the revised Implementing Rules and Regulations (IRR) of RA 9184 and ITB Clause 12.1(a)(iv) of the PBDs.

As we have explained in NPM Opinion No. 007-2011, Section 38 of RA 4566 prohibits two or more contractors from jointly submitting a bid without first securing a Joint License to engage or act in the capacity of such a joint venture. In this regard, in the case of a joint venture bidder, when the IRR and the ITB require the submission of a "valid PCAB license and registration", it pertains to the Joint License issued by PCAB as provided in Section 38 of RA 4566. This position is accentuated by the fact that the requirement is not only the submission of a PCAB license, but a "valid" PCAB license, the import of which is the submission of a PCAB license that is compliant with existing laws and rules, including Section 38 of RA 4566.

Accordingly, we wish to clarify that the provisions found in Section 23.1(b) of the IRR and ITB Clause 24.6 of the PBDs, to the effect that submission of the required technical and financial eligibility documents by any of the joint venture partners constitutes compliance, should be read alongside Section 38 of RA 4566.

Emphasis must be made that Section 23.5.2.3 of the IRR provides that persons/entities enumerated in Section 23.5.2.1 of the IRR may participate in public bidding if it has been issued a license by the PCAB to engage or act as a contractor, which necessarily includes a

³ Actual value intentionally omitted in the letter.

joint venture bidder. Thus, for joint venture bidders to be engaged as a contractor, a Joint License issued by PCAB pursuant to Section 38 of RA 4566, and not the PCAB license and registration individually issued to each joint venture partner, must be submitted.

In this regard, we are of the considered view that the failure of the joint venture bidder to submit a Joint License may be a ground for its disqualification despite the submission of the individual licenses of each joint venture partner.

Offer of Discount

The Bid Form prescribed in the PBDs is part and parcel of the bidder's bid documents, and provides a list of declarations and undertakings with respect to its bid and the procurement activity. Of particular relevance to the issue at hand is the statement of the bidder's total bid price in the Bid Form, including the application of discounts offered and the corresponding methodology for its application. Through this facility, the bidder may indicate any discount to be applied against its specified total bid price.


Discounts stated in the Bid Form allow bidders to itemize the application of discounts that are not yet reflected in the amounts specified in its bill of quantities and detailed estimates, *vis-a-vis* the program of works, as there could be a situation that the decision to offer a discount came long after these amounts have been prepared, finalized and reflected in the bid documents, and changing the entries may be too cumbersome and time consuming for the bidder.

Hence, it is our view that indicating an offer of discount in the Bid Form can be validly considered even though the financial documents included in the bid do not contain or indicate any reference to such discount. In relation to this, it is worthy to stress that the bidder's bid must be appreciated as a whole or in its totality to include all the legal, technical and financial representations, submissions and proposals of the bidder.

Computation of Discount

As mentioned in the discussion above, discounts may be offered and reflected on the Bid Form. In which case, discounts can be considered when computing for the total calculated bid price, as can be gleaned from ITB Clause 27.4 of the PBDs and Section 32.2.4 of the IRR.

Although the Honorable Assistant Secretary is correct in his observation that Section 32.2.4 of the IRR does not mention the word "discount", it does not mean that discounts are not to be considered in the computation of the bidder's total calculated bid price. As a matter of fact, discounts and its corresponding percentage and computation are recognized to support a lower bid price proposal that is beneficial and advantageous to government, provided that the legal and technical components of the bid are fully compliant with the requirements of the project.

In this regard, we are of the opinion that discounts offered, through the Bid Form should be included and considered in the computation and ranking of bid prices during the detailed bid evaluation. 

Summary

In sum, we wish to reiterate the following opinions on the issues mentioned above:

1. The failure of the joint venture bidder to submit a Joint License issued by PCAB may be a ground for its disqualification despite the submission of the individual PCAB licenses of each joint venture partner.
2. Indicating a discount in the Bid Form can be validly considered even though the financial documents in the bid do not contain or indicate any reference to such discount.
3. Discounts offered through the Bid Form should be included and considered in the computation and ranking of bid prices during the detailed bid evaluation.

We hope our advice 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 you have other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III 

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