



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

NPM No. 25-2013

27 March 2013

MR. ROGELIO A. ANTENOR
Chairman, Bids and Awards Committee (BAC)
BATANGAS STATE UNIVERSITY (BSU)
Rizal Avenue Extension, Batangas City

Re: Post-disqualification for Non-submission of Additional Documents

Dear Mr. Antenor:

This is in response to your electronic mail dated 22 January 2013, which we received 24 January 2013, seeking our opinion on whether the BSU-BAC could validly declare a bidder post-disqualified for its refusal to submit an Affidavit declaring that they will deliver genuine and authentic products and disclosing its source.

It is represented that Philippine Valiant International Corp. (PVIC) was determined to be the bidder with the Lowest Calculated Bid (LCB) in the public bidding that was conducted by BSU for the "Procurement of Laboratory Equipment for JPLPC Campus Malvar, Lot 1". During the post-qualification of PVIC, the BSU-BAC learned that the former is offering to deliver PASCO Products which are exclusively distributed by Scienstar Corporation, the bidder with the second LCB. It is further represented that the BSU-BAC requested PVIC to submit an Affidavit declaring the fact that the PASCO Products that it proposes to deliver are genuine and authentic, including the disclosure of their source. It is in this context that you are seeking our opinion on whether the BSU-BAC could disqualify PVIC for refusing to submit the required Affidavit.

Post-Qualification Process

The objective of post-qualification under Section 34 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) is to determine whether the bidder complies with and is responsive to all the legal, technical and financial requirements and conditions specified in the bidding documents. During post-qualification, the procuring entity verifies, validates and ascertains all statements made and the documents submitted by the bidder with the LCB or highest rated bid using non-discretionary pass/fail criterion as stated in the bidding documents.¹ These criteria shall consider the legal, technical and financial requirements, such as, but not limited to, the bidder's stated competence and experience, the availability and commitment, and/or inspection and testing of the equipment units to be owned or leased by the bidder, the performance of the bidder in its ongoing government and private contracts, **the goods/product, after-sales and/or maintenance capabilities for the procurement of goods.**² Hence, the verification entailed under the post-qualification stage is not limited to the examination of documents submitted by the

¹ Non Policy Matter (NPM) No. 69-2007 dated 3 December 2007.

² *Id.*

bidder, but includes verification and inspection of the subject equipment *vis-à-vis* the technical specifications specified in the bidding documents.³

In addition, Section 34.2 of the IRR provides that within three (3) calendar days from receipt by the bidder of the notice from the BAC that it has the LCB, the bidder shall submit the following documentary requirements: (a) Tax clearance; (b) Latest income and business tax returns; (c) Certificate of PhilGEPS Registration; and (d) Other appropriate licenses and permits required by law and stated in the Bidding Documents. Failure to submit said documentary requirements on time or a finding against the veracity of such shall be a ground for the disqualification of the bidder and forfeiture of its bid security.

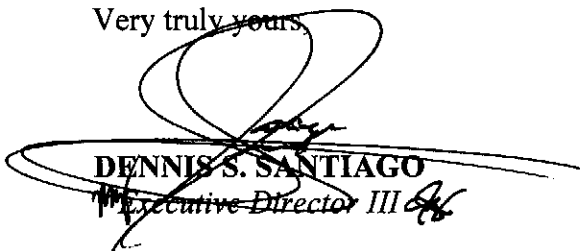
Additional Requirements in Post-Qualification

An Affidavit executed by a bidder disclosing the source of goods and attesting to their genuineness and authenticity is not one of the documents required to be submitted during post-qualification. Nonetheless, as mentioned in our previous opinion⁴, the procuring entity may request for the submission of additional documents from the bidder in support of the information it has provided in the bidding documents. However, non-submission of the additional supporting documents requested cannot be a ground for the bidder's post-disqualification, as a bidder may be post-disqualified only upon ascertainment, validation, and verification of its non-compliance with the legal, technical, and financial requirements of the project as provided in the bidding documents.

In this regard, we are of the view that the BSU-BAC cannot post-disqualify PVIC for non-compliance with the submission of the requested Affidavit attesting to the genuineness and authenticity of the goods it will deliver and disclosing its source. However, as part of post-qualification, BSU can validly inspect and test the products that PVIC proposes to deliver *vis-à-vis* the legal, technical and financial requirements provided for in the bidding documents, to determine its compliance, and post-disqualify PVIC if it fails to meet such requirements.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

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³ NPM 064-2012 dated 25 May 2012.

⁴ NPM 09-2012 dated 12 January 2012.