NPM No. 26-2015

8 October 2015

MS. ARLYN SABLON
Representative
PRINCE VALIANT INTERNATIONAL CORPORATION
R8, 3rd Floor, Gurrea Building,
#59 Rizal St., Lapaz, Iloilo City

Re: Bid Security

Dear Ms. Sablon:

This refers to your electronic mail seeking our opinion on the denial of your Motion for Reconsideration by the Bids and Awards Committee (BAC) of Aklan State University (ASU) in relation to the procurement of research laboratory equipment for the College of Industrial Technology, College of School of Veterinary Medicine, and College of Fisheries and Marine Sciences.

A perusal of the documents submitted shows that ASU-BAC denied your request to reverse the decision to disqualify you on the ground that you failed to submit two forms of Bid Security as stated in the Invitation to Bid and discussed during the Pre-Bid Conference.

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) render policy and non-policy opinions respectively, on matters purely pertaining to the interpretation of the procurement law and its associated rules and regulations. We have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since the office has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from courts having actual jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the BAC, since these duties and responsibilities fall solely within the ambit of its authority and discretion sanctioned by law.[1] In this wise, we shall limit our discussion on the interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented.

GPPB Resolution No. 25-2013 dated 30 August 2013 amended Section 27.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, which reads as follows:

[1] NPM No. 46-2013 dated 11 June 2013.

> The procuring entity shall indicate in the Bidding Documents the acceptable forms of bid security that **bidders may opt to use**, which shall include the Bid Securing Declaration provided in Section 27.5 of this IRR and at least one (1) other form, the amount of which shall be equal to a percentage of the ABC in accordance with the following schedule … (Emphasis ours)

To clarify this amendment, GPPB Circular No. 01-2014, dated 23 May 2014, was issued to explain that Procuring Entities are given the option to identify two (2) forms of bid security, *i.e.*, 1) the Bid Securing Declaration (BSD); and 2) another form of bid security (*i.e.*, cash or cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit, surety bond, or a combination thereof). Consequently, the prospective bidder shall submit only one (1) form of bid security and is given the option to choose either a BSD or the form of bid security indicated by the Procuring Entity in the Bidding Documents. Accordingly, the ***prospective bidder is required to post only one (1) form of bid security***.

At this juncture, we wish to emphasize our previous opinion[2] that ***bidders are not required to post two (2) forms of bid security***. It is the Procuring Entity that is mandated to include the BSD as an acceptable form of bid security, and at least one (1) of the forms provided for under the rules. The bidder is then given the discretion and choice to submit one (1) form of bid security.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being 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 V

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[2] NPM No. 021-2014, dated 17 June 2014.