



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

NPM No. 27-2013

27 March 2013

HON. EFREN Q. FERNANDEZ
Assistant Secretary
Chairperson, Bids and Awards Committee (BAC)
DEPARTMENT OF NATIONAL DEFENSE (DND)
Camp General Emilio F. Aguinaldo, Quezon City

Re: Extension of Period for Submission of Post-Qualification Documents

Dear Assistant Secretary Fernandez:

We respond to the Assistant Secretary's letter dated 4 March 2013, seeking our opinion on whether a Procuring Entity (PE) may validly accept the post-qualification documentary requirements enumerated under Section 34.2¹ of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 from the bidder with Lowest Calculated Bid (LCB) submitted beyond the three-day reglementary period, in cases when delay is due not to its fault but to the fault of the issuing government entity.

In a previous opinion², we had the occasion to discuss the extension of the period for submission of Tax Clearance, to wit:

[T]he use of the term "shall" in requiring the submission of Tax Clearance within three (3) calendar days from determination of Highest Rated Bid or LCB creates a mandatory imposition upon the bidder, failure to comply with which results in disqualification. In addition, the categorical statement under the Philippine Bidding Documents that the said period is non-extendible concretizes the policy that such requirement should be complied within the fixed period of three (3) calendar days.

This notwithstanding, note that it is implicit in Section 65.1(b) of the IRR of RA 9184 that post evaluation process beyond the prescribed period of action may be recognized for justifiable causes, such that, although the period of action required under the rules are mandatory in character, penal sanctions or

¹ Within three (3) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Bid or Highest Rated Bid, the bidder shall submit the following documentary requirements to the BAC:

- 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 the above requirements on time or a finding against the veracity of such shall be ground for the forfeiture of the bid security and disqualify the bidder for award.

² NPM No. 152-2012 dated 14 December 2012.

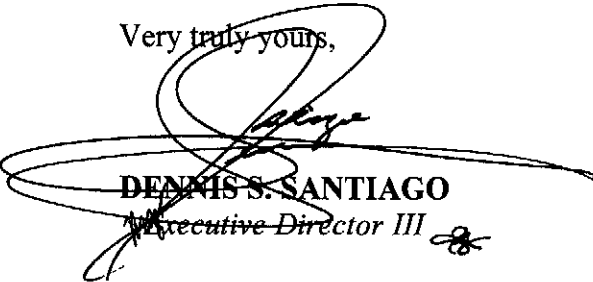
liability will not set in against the concerned public officers provided that, valid, reasonable, and justifiable causes exist to warrant a delay in the process.³ However, we wish to stress that it is the PE's responsibility and accountability to determine the existence of justifiable causes that led to the delay.⁴

In this wise, we wish to clarify that extension of mandatory periods under the IRR of RA 9184, such as the three (3) calendar day period under Section 34.2 thereof, is prohibited. Should the PE decides to extend the same, it must show and provide compelling, sufficient, valid, reasonable, and justifiable cause for such extension. Elsewise put, the burden lies upon the PE to provide credible and legal bases to justify the extension. Such valid justification, however, will only free the concerned officials from penal sanction or liability, but not from applicable administrative and civil sanctions or liabilities under existing laws, rules and regulations.

Based on the foregoing, we wish to reiterate that the three (3) calendar day period under Section 34.2 of the IRR is mandatory and should not be extended. In case DND accepts the post-qualification documentary requirements beyond the reglementary period, it must show that there is a compelling, sufficient, valid, reasonable, and justifiable cause for such extension, so that penal sanction or liability will not set in. We wish to stress, however, that applicable administrative and civil sanctions or liabilities may still be imposed against the concerned officials.

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 No. 10-2012 dated 16 January 2012.

⁴ NPM No. 14-2008 dated 8 August 2008.