



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

NPM No. 31-2014

08 October 2014

MR. PLACIDO Q. URBANES III
General Manager
CATALINA SECURITY AGENCY
626 G. Araneta Avenue,
Quezon City

Re: Bid Evaluation

Dear Mr. Urbanes:

This refers to your letter seeking our opinion relative to the following provision adopted by a Procuring Entity (PE) in the procurement of security services:

“Bids higher than the lowest price by up to Five Thousand Pesos (PhP 5,000.00) shall be considered tied with the said lowest bid price, and the BAC shall apply its non-discretionary tie-breaking procedure to determine the lowest calculated bid.”

We wish to clarify that the cited provision finds no basis in Republic Act No. (RA) 9184 and its associated Implementing Rules and Regulations (IRR). While RA 9184 has given the PE wide discretion in the conduct of their procurement activities, they cannot, however, deviate from the mandatory provisions of the law and the rules.

Based on Section 32 of RA 9184 and its associated IRR, the bids that passed the preliminary examination shall be ranked from lowest to highest in terms of their corresponding calculated prices, as evaluated and corrected for computational errors, to determine the Lowest Calculated Bid (LCB). Further, Clause 28.5 of the Philippine Bidding Documents (PBDs) for the Procurement of Goods provides that the evaluation of bids shall only be based on the bid price quoted in the Financial Bid Form. The superlative nature and meaning of the word “Lowest” dictates that there is no other bidder or participating entity whose bid is lower than the “lowest bid”, regardless of a certain range or window provided in the proposed determination of the LCB under the bidding documents.

RA 9184 and its IRR, including the PBDs for the Procurement of Goods do not sanction or recognize a situation where the PE is allowed to consider as tie the bid prices submitted by bidders, without regard to the differential amounts of their bids, by creating a specific bid price range or window. Aside from this, the proposed approach also defeats the very essence and purpose of competition, as it disincentivizes and discourages willing

suppliers and contractors from participating in public bidding and providing for a competitive bid price proposal to the detriment and disadvantage of the government, and ultimately the people that the government serves.

The word "shall" has always been deemed mandatory¹. Its mandatory acceptance is distinguished from the discretion that is allowed by the use of the word "may"². Hence, the use of the word "shall" in the above-mentioned law, rules, and regulations impose their mandatory nature/character and application.

In this regard, it is our opinion that the above-stated provision in the bidding documents may not be imposed by a PE for it runs counter to competition and existing procurement law, rules, and regulations.

We hope this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

1/17/23

¹ Joseph Peter Sison, et al. vs. Rogelio Tablang, G.R. No 177011, 5 June 2009.

² Buzabal v. Salvador, 84 SCRA 176 citing Dizon v. Encarnacion 9 SCRA 714.