



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 31-2015

8 October 2015

ATTY. ARISTEO FRANKLIN M. GARCIA
Bids and Awards Committee Assistant Secretary
SUPREME COURT OF THE PHILIPPINES
Padre Faura Street, Ermita, Manila

Re: Conduct of Clarificatory Meeting with the Bidders

Dear Atty. Garcia:

This refers to your letter seeking our advice on whether the conduct of a clarificatory meeting with the bidders is proper and legal.

As represented, the Bids and Awards Committee for the Construction of the Manila Hall of Justice and the Court of Appeals Buildings in Cebu and Cagayan de Oro (BAC MHOJ/CA Cebu-CDO) conducted bidding for Consultancy Services for the Detailed Architectural and Engineering Design of the Manila Hall of Justice. During the bidding, six (6) out seven (7) prospective bidders were declared ineligible and one (1) was disqualified, thereby resulting in a failure of bidding. In view of this, the BAC MHOJ-CA Cebu-CDO intends to conduct a clarificatory meeting with prospective bidders to emphasize the importance of meeting the eligibility requirements. The notice of said clarificatory meeting shall be included in the Request for Expression of Interest that will be posted and published, and failure to attend the said meeting will not be a ground for disqualification to participate in the procurement. Considering that the conduct of said clarificatory meeting is not provided under Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR), our opinion is being sought on the matter.

We wish to note that Section 3(c) of RA 9184 and its IRR provides that one of the governing principles in government procurement is a *streamlined procurement process* that will uniformly apply to all government procurement activities. To this end, the processes, procedures and requirements have been simplified and rationalized for efficient government procurement. Notably, for the procurement of Consulting Services, a clarificatory meeting before eligibility check is not part of the standardized procurement processes and procedures. After the advertisement and/or posting of the Request for Expression of Interest (REI), the conduct of eligibility checking and shortlisting of consultants shall follow, then only those who are shortlisted will be allowed to secure the bidding documents.

As opposed to the procurement of Goods and Infrastructure Projects, where bidders can discuss the eligibility requirements and request for clarification during the pre-bid conference; in Consulting Services there is no specific procurement activity prior to eligibility checking, where the eligibility requirements can be discussed with the prospective bidders. It is then incumbent upon any interested bidder to comply with all the eligibility

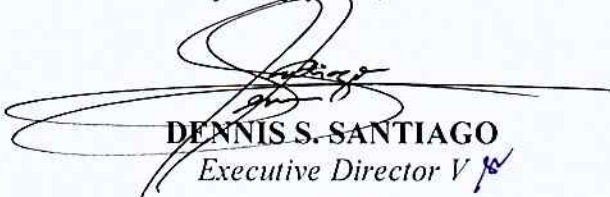
requirements and criteria for the procurement at hand before it submits its eligibility documents to the Procuring Entity (PE).

While the responsibility of ensuring eligibility to participate in a procurement project rests primarily with the bidders, we recognize, however, the good intention of PEs to properly apprise the bidders of the eligibility criteria and requirements through a clarificatory meeting in order to lessen the occasions of failure of bidding. This notwithstanding, the conduct of such clarificatory meeting shall not run counter to any of the principles (*e.g.*, competition, transparency, accountability, etc.) and procedures embodied in RA 9184 and its IRR.

In this regard, it is our considered view that while a clarificatory meeting is not considered part of the standardized bidding procedures for the procurement of consulting services, a PE, who wishes to conduct such clarificatory meeting before eligibility checking, shall ensure that all interested bidders are properly notified and given equal opportunity to participate; the mandatory processes and procedures, including the timelines under RA 9184 and its IRR are not disregarded; and, what has been discussed during the clarificatory meeting shall be binding to both the procuring entity and the bidders, and must be fully recorded through the minutes of the meeting, and made available to the bidders. To address transparency, the procuring entity shall also issue a bid bulletin, containing the details as to the date, time and place of the clarificatory meeting, which must be posted in the PhilGEPS and in the website of the procuring entity.

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

