



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

NPM No. 36-2013

10 April 2013

HON. ELADIO H. BANG-UD
Municipal Mayor
MUNICIPALITY OF ASIPULO
Province of Ifugao

Re: Marking of Bids

Dear Mayor Bang-Ud:

We respond to your letter dated 11 February 2013, requesting our opinion on the grounds leading to the disqualification of participating bidders in two (2) procurement activities conducted by the Municipality of Asipulo. Your inquiry relate to the following issues:

- (1) Whether improper marking may be a ground to disqualify a bidder; and,
- (2) Whether a bidder, being a construction company by nature, may participate in the procurement of a vehicle.

As represented, during the bid opening for the procurement of the Dakel Danum to Baculon Farm to Market Road Improvement Project (Project), the Bids and Awards Committee (BAC) of the Municipality of Asipulo declared the five (5) participating bidders¹ disqualified for failing to follow the proper marking of bids as indicated in the Instructions to Bidders (ITB). In another activity, the BAC resorted to simplified canvass after two failed biddings in the procurement of a dump truck. However, the lowest price proposal received was from a construction company as reflected in its Mayor's Permit, and can only issue an Official Receipt as a civil works contractor.

Marking of Bids

For your guidance, the correct procedure to be observed in the submission, sealing and marking of bids can be found in Section 25 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, and Clauses 20.1 and 20.2 of the ITB of the Philippine Bidding Documents (PBDs) for Goods². The BAC is required to adopt these procedures, which are to be used unchanged by Procuring Entities (PEs) in the preparation of

¹ Bidder 1 failed to submit the original eligibility documents marked as original documents. Bidder 2 used the acronym "FMR" instead of writing the complete phrase "Farm to Market Road". Bidder 3 failed to write the identification number of the project on the envelope. Bidder 4 failed to write "DO NOT OPEN BEFORE 2:00 PM" and some of the words were not capitalized. Bidder 5 failed to include "FMR" in the identification number of the project.

² Issued June 2006.

the Bidding Documents.³ Since the rule and the relevant ITB Clauses (Clauses 20.1 and 20.2) use the word “shall”, which connotes command and compulsion, the requirements on sealing and marking of bids are regarded as mandatory. It must be emphasized that acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.⁴

Accordingly, it is our considered view that failure to observe the proper sealing and marking of bids may be a ground to disqualify a bidder.

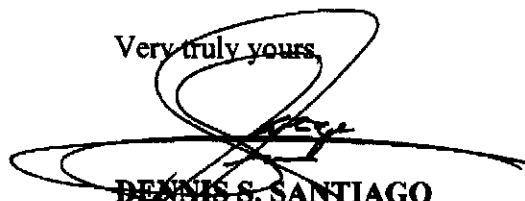
Nature of Bidder's Business

One of the legal documentary requirements in Section 23.1 of the IRR of RA 9184 is the submission of a Mayor's Permit issued by the city or municipality where the principal place of business of the prospective bidder is located. As discussed in an opinion⁵ issued by this office, a Mayor's Permit is in the nature of a business permit which authorizes the person, natural or otherwise, to engage in business or some commercial activity. Thus, a prospective bidder's business as stated in the Mayor's Permit should allow it to legally perform the requirements and obligations of the project and the resultant contract.

Consequently, it is necessary for the BAC to determine whether the Mayor's Permit issued to the construction company authorizes it to engage in the business of supplying/selling dump trucks, such that a finding to the contrary would amount to non-compliance by the bidder and will result to its disqualification.

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 situations 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. 145-2012 dated 13 November 2012.

⁴ Article 5, Civil Code of the Philippines.

⁵ NPM No. 77-2012 dated 27 June 2012.