



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 37-2015

8 October 2015

MR. JOSE ANTONIO SOLER

President

SUMMA WATER RESOURCES INC. (SUMMA)

369 Dr. Sixto Antonio Avenue, Maybunga, Pasig City

Re: Eligibility Documents

Dear Mr. Soler:

This refers to your letter seeking our opinion relative to Summa's disqualification from bidding by the Bids and Awards Committee (BAC), City Government of Dumaguete, Negros Occidental on the following grounds:

1. Failure to attach the Audited Financial Statements and Net Financial Contracting Capacity;
2. The Omnibus Sworn Statement submitted did not include paragraph 9 from the sample form.

It is represented that Summa filed a motion for reconsideration on account of it being a newly established corporation. It is in this context that you are seeking guidance from this office for the consideration of the BAC in rendering their decision on the matter.

At the outset we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) do not have the authority to decide for and on behalf, or overturn a decision of a procuring entity. The GPPB is a quasi-legislative body mandated to formulate and amend the IRR. It has no quasi-judicial powers and functions; hence, it cannot investigate and ascertain the existence of facts, hold hearings, and exercise discretion of a judicial nature over actual controversies with regard to the conduct of bidding by procuring entities. Thus, we wish to clarify that the GPPB and the GPPB-TSO cannot dictate to the procuring entity how to decide or resolve issues, nor pass upon the validity of such decisions, relative to its procurement activities.¹

Absence of Eligibility Documents

Section 23.1(a) of the revised Implementing Rules and Regulations (IRR) of Republic Act (R.A.) 9184 provides, in part, that:

¹ NPM No. 118-2013, dated 26 December 2013.

For purposes of determining the eligibility of bidders using the criteria stated in Section 23.5 of the IRR, only **the following documents shall be required** using the forms prescribed in the Bidding Documents:

...

Financial Documents

vi) The prospective bidder's **audited financial statements**, showing, among others, the prospective bidder's total and current assets and liabilities stamped "received" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two (2) years from the date of bid submission.

vi) The prospective bidder's computation for its **Net Financial Contracting Capacity (NFCC)**. (Emphasis supplied)

Under Section 30.1 of the IRR of RA 9184, the BAC utilizes a non-discretionary "pass/fail" criterion in the examination of bids, such that a bidder is rated "passed" for every complying documentary requirement submitted, and "failed" if it does not include any requirement or otherwise submits an incomplete or patently insufficient document.

Accordingly, if the bidder failed to submit any of the eligibility documents, such as the AFS and NFCC, the same shall warrant the bidder's disqualification from bidding.

Non-compliance with the prescribed form of Omnibus Sworn Statement

We refer to NPM No. 121-2014 dated 12 November 2014, which provides in part that:

Bidders are expected to examine all instructions, forms, terms and specifications in the Bidding Documents. The Omnibus Sworn Statement prescribed in the Philippine Bidding Documents is part and parcel of the bidder's bid, and being a standard form under the existing rules, it should then conform to the template provided by the GPPB. This is in accord with the requirement under Section 6.2 of the Implementing Rules and Regulations of Republic Act (RA) 9184 that the use of standard forms, once issued by the GPPB, shall be mandatory upon all procuring entities.

Additionally, Instruction to Bidders (ITB) Clause 12.1(b)(iii) requires that the first envelope shall contain, among others, sworn statement in accordance with Section 25.2(a)(iv) of the IRR of RA 9184 and **using the form prescribed in Section VIII. Bidding Forms** of the Philippine Bidding Documents. Similarly, ITB Clause 19.1 mandates bidders to submit their bids through their duly authorized representative **using the appropriate forms provided in Section VIII. Bidding Forms** on or before the deadline for submission of bids. And under ITB Clause 19.2, **forms mentioned in ITB Clause 19.1 must be completed without any alterations to their format**, and no substitute form shall be accepted.

From the foregoing, failure of the bidder to comply with the prescribed Omnibus Sworn Statement template despite this being included in the Philippine Bidding Documents, particularly Section VIII thereof, is a cause for the bidder's ineligibility or disqualification.

We hope that 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 there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director

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