



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

**NPM No. 49-2013**

26 June 2013

**MS. HELEN Y. SO**  
*Operations Manager*  
**DEN-TRONIX INTERNATIONAL TRADING**  
c/o #23 Kaliraya Street, Brgy. Doña Josefa,  
Banawe, Quezon City

**Re : Protest Mechanism**

Dear Ms. So:

We respond to your letter requesting for clarification on the following issues:

1. Whether the participating bidders are allowed to raise written or verbal questions as part of the bidding process; and
2. Whether failure to submit a sample indicating the brand name and model can be a ground for disqualification.

As represented, Den-Tronix International Trading (Den-Tronix) has been participating in various bidding activities conducted by the Bureau of Fire Protection (BFP) Regional Offices (ROs). You claim that there were instances in the past when BFP-RO 4A and BFP-RO 5 required participating bidders to submit their sample as early as the pre-bid stage. In one of the bidding activities, Den-Tronix observed that a bidder submitted product samples that do not indicate the brand name and model, but only the year of manufacture and the international standard. In the same bidding, Den-Tronix was disqualified for failing to indicate the reference number of the bidding activity in its surety bond. It is in this context that the aforementioned issues are being raised for clarification.

**Right to Raise Questions**

Under Section 55 of Republic Act No. (RA) 9184 and its revised Implementing Rules and Regulations (IRR), prospective bidders are allowed to question decisions of the Bids and Awards Committee (BAC) at any stage of the procurement process by filing a request for reconsideration within three (3) calendar days from receipt of written notice or upon verbal notification of such decision.

Section 22 of the IRR of RA 9184 also affords bidders the opportunity to raise concerns or clarifications on the requirements, terms, conditions, and specifications stipulated in the bidding documents for the contract to be bid. Questions or clarifications pertaining to

the matters that may be discussed during the pre-bid conference must be raised at least ten (10) calendar days before the deadline set for the submission and receipt of bids.<sup>1</sup>

These provisions in RA 9184 and its IRR clearly grant bidders the opportunity to raise questions as part of the regular bidding process. However, bidders must comply with the requirements mentioned in the applicable sections of the IRR in order that the requests for clarification or reconsideration of a decision are properly received by the BAC and acted upon accordingly.

**Requirements for Submission of Product Sample**

Section 34.3 of the IRR of RA 9184 requires procuring entities to conduct post-qualification to verify, validate, and ascertain all statements made and documents submitted by the bidder with the lowest calculated bid as stated in the bidding documents. The post-qualification process, shall consider the determination of compliance with the requirements specified in the bidding documents, including the verification and/or inspection and testing of goods/product<sup>2</sup>.

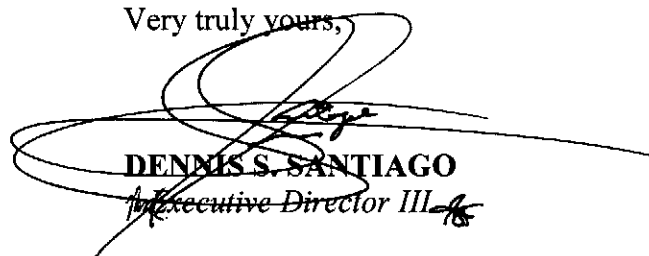
Clearly, the parameters under which product samples are to be evaluated for compliance are determined based on the requirements in the bidding documents for the contract to be bid. Accordingly, in the event that a sample product, indicating its brand and model, has to be submitted, this requirement must be clearly specified in the bidding documents. Absent any clear requirement regarding the matter, the procuring entity has no basis to disqualify the bidder.

**Summary**

In sum, we wish to clarify that bidders may raise concerns or questions as part of the regular bidding process, subject to compliance with the requirements provided in the applicable provisions of the IRR of RA 9184. As regards the submission of product sample, failure to indicate the brand name and model in the product sample may be a ground for disqualification if the bidding documents clearly and specifically mandate that the product sample should bear the brand name and model.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director III*

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<sup>1</sup> Section 22.5.1 of the IRR of RA 9184.

<sup>2</sup> Section 34.3 (b) (iii) of the IRR of RA 9184.