



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

NPM No. 52-2014

14 October 2014

MR. ROMEO S. PAGALILAUAN
General Manager
REGION SECURITY AND INVESTIGATION AGENCY
37 Diversion Road, Caritan Centro, Tuguegarao City

Re: Sworn Affidavit of No Pending or Previous Adversarial Claim

Dear Mr. Pagalilauan:

We refer to your letter seeking clarification principally on whether it is valid for a procuring entity, specifically the Home Development Mutual Fund (PAG-IBIG), to require as a post-qualification requirement, under Section 29.2 (d) of the Bid Data Sheet (BDS), a Sworn Affidavit stating that the bidder shall have no pending or previous adversarial claim against PAG-IBIG; and to consequently post-disqualify a bidder who has filed such a case against members of PAG-IBIG's Bids and Awards Committee (BAC).

It is represented that Region Security and Investigation Agency (RSI Agency) was post-disqualified for having failed in one of the additional documentary requirements of the BAC provided in Section 34.2 (d) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, and in Clause 29.2 (d) of its Bid Data Sheet (BDS), *Other appropriate licenses and permits required by law and stated in the BDS*. This is for the reason that Pag-IBIG Fund Tuguegarao Office required a Sworn Affidavit stating that the bidder shall have no pending or previous adversarial claim against PAG-IBIG before any judicial or quasi-judicial body or any other tribunal or agency. However, RSI Agency was found to have instituted two (2) separate cases against PAG-IBIG before the Office of the Deputy Ombudsman for Luzon, specifically against the BAC members of PAG-IBIG Regional Office No. 2.

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) only render policy and non-policy opinions, respectively, on issues purely relating to the interpretation and application of our procurement laws, rules, and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from courts having actual jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the BAC, since these duties and responsibilities fall solely within the ambit of its authority and discretion as sanctioned by law.¹

¹ Non-Policy Matter (NPM) No. 46-2013 dated 11 June 2013.

Post-Qualification Process


The objective of post-qualification under Section 34 of RA 9184 and its revised IRR is to determine whether the bidder complies with and is responsive to all the legal, technical and financial requirements and conditions specified in the bidding documents. During post-qualification, the procuring entity verifies, validates and ascertains all statements made and the documents submitted by the bidder with the Lowest Calculated Bid (LCB) or Highest Rated Bid using non-discretionary pass/fail criterion as stated in the bidding documents.²

The post-qualification shall consider the legal, technical and financial requirements, such as, but not limited to, the bidder's stated competence and experience, the availability and commitment, and/or inspection and testing of the equipment units to be owned or leased by the bidder, the performance of the bidder in its ongoing government and private contracts, the goods/product, after-sales and/or maintenance capabilities for the procurement of goods.³ Hence, the verification entailed under the post-qualification stage is not limited to the examination of documents submitted by the bidder, but includes verification and inspection of the subject equipment *vis-à-vis* the technical specifications specified in the bidding documents.⁴

In addition, Section 34.2⁵ of the revised IRR provides that within three (3) calendar days from receipt by the bidder of the notice from the BAC that it has the LCB, the bidder shall submit the following documentary requirements: (a) Latest income and business tax returns; (b) Certificate of PhilGEPS Registration; and **(c) Other appropriate licenses and permits required by law and stated in the Bidding Documents**. Failure to submit said documentary requirements on time or a finding against the veracity of such shall be a ground for the disqualification of the bidder and forfeiture of its bid security.

Additional Requirements in Post-Qualification

In line with the foregoing, we express the view that the provision requiring for a Sworn Affidavit from the bidder in the Bid Data Sheet is not the same as the submission of additional licenses or permits for purposes of post-qualification as sanctioned under Section 34.2 of the revised IRR. An Affidavit executed by a bidder disclosing that it has not filed any case against the procuring entity is neither a license nor permit required by law that can be requested for submission during the post-qualification stage. If the procuring entity shall impose such additional requirement of a Sworn Affidavit under Section 34.2 of the IRR, it is in effect amending the provisions of the revised IRR, an act beyond its jurisdictional authority and power to perform.⁶

In this regard, we opine that the required sworn affidavit attesting to the fact that the bidder has no pending or previous adversarial claim against PAG-IBIG is not a license or permit identified by law that can be required additionally during the post-qualification stage. The contested provision runs counter to RA 9184 and its revised IRR inasmuch as it imposes an additional post-qualification requirement. 

² Non Policy Matter (NPM) No. 69-2007 dated 3 December 2007.

³ *Id.*

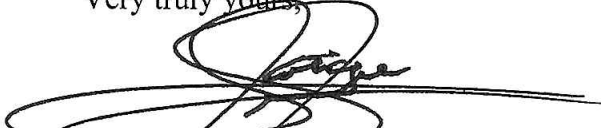
⁴ NPM 064-2012 dated 25 May 2012.

⁵ As amended by GPPB Resolution No. 21-2013 dated 30 July 2013, published in Malaya Business Insight on 21 March 2014.

⁶ NPM 101-2012 dated 13 August 2012.

We hope that this opinion issued by the GPPB-TSO 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 there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

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Section III. Bid Data Sheet

ANNEX A-1

Bid Data Sheet

ITB Clause	
1.1	The Pag-IBIG Fund - Tuguegarao Branch Office
1.2	<p>The lot(s) and reference is/are:</p> <p><u>Tuguegarao Branch Office</u></p> <ol style="list-style-type: none"> 1. Four (4) Janitors 2. Three (3) Drivers 3. Two (2) Utility Workers <p><u>Cauayan Branch Office</u></p> <ol style="list-style-type: none"> 2. One(1) Janitor <p><u>Solano Branch Office</u></p> <ol style="list-style-type: none"> 3. One(1) Janitor
2	<p>The Funding Source is:</p> <p>The Government of the Philippines (GOP) through the Pag-IBIG Fund Corporate Budget for the first year in the amount of One Million Four Hundred Thirty One Thousand Pesos (P1,431,000.00) only.</p> <p>The name of the Project is: Provision of Janitorial and General Support Services for Tuguegarao, Cauayan and Solano Branch Offices for the three (3) year period Y2014 to Y2017.</p>
3.1	No further instructions.
5.1	No further instructions.
5.2	None of the circumstances mentioned in the ITB Clause exists in this Project. Foreign bidders, except those falling under ITB Clause 5.2(b), may not participate in this Project.
5.4	The Bidder must have completed, within the period specified in the Invitation to Bid and ITB Clause 12.1(a)(iii), a single contract that is similar to this Project, equivalent to at least fifty percent (50%) of the ABC within three(3) years prior to the deadline for the submission and receipt of bids.
7	No further instructions.
8.1	Subcontracting is not allowed.
8.2	Not applicable.
9.1	The Pag-IBIG Fund, Tuguegarao Branch will hold a pre-bid conference for this Project on <u>JANUARY 3, 2014</u> at <u>9:00AM</u> at the Conference Rm, 2nd Flr Pag-IBIG Fund, Tuguegarao Branch

	<p>form with respect to total amount of security; or</p> <p>3. Bid Securing Declaration (Please refer to Bid forms)</p>
18.2	The bid security shall be valid until MAY 16, 2014 or one hundred twenty (120) calendar days from the date of the opening of bids.
20.3	Each Bidder shall submit one (1) original and one (1) copies of the first and second components of its bid.
21	<p>The address for submission of bids is</p> <p>THE BIDS & AWARD COMMITTEE Pag-IBIG Fund Tuddao Building, Balzain, Tuguegarao City 3500, Cagayan.</p> <p>The deadline for submission of bids is on or before 9:00AM based on Pag-IBIG Fund's fingerscan machine on JANUARY 16, 2013.</p>
24.1	<p>The place of bid opening is the Conference Rm, Pag-IBIG Fund - Tuguegarao Branch Office, Tuddao Bldg., Balzain, Tuguegarao City, Cagayan.</p> <p>The date and time of bid opening is JANUARY 16, 2013 at 9:00AM.</p> <p>Note: All Bidders are required to come on or before the scheduled time. Bidders are advised to officially register their time of arrival with the Guard on Duty. Official clock to be used shall be the fingerscan machine located at the Cash Section at the Ground floor of Pag-IBIG Fund -Tuguegarao Branch.</p>
24.2	No further instructions.
27.1	No further instructions.
28.3	The goods are grouped in a single lot and the lot shall not be divided into sub-lots for the purpose of bidding, evaluation, and contract award.
28.3(b)	Once the bid documents are opened, no modification is allowed.
28.4	No further instructions.
29.2(a)	No further instructions.
29.2(b)	<p>Each bidder should submit tax returns filed through the Electronic Filing and Payments System (EFPS).</p> <p>NOTE: The latest income and business tax returns are those within the last six months preceding the date of bid submission.</p>
29.2(d)	<p>Sworn affidavit stating the following provision :</p> <p>That the bidder shall have no pending or previous adversarial claim against Pag-IBIG Fund before any judicial or quasi-judicial body or any other tribunal or agency.</p>
32.4(g)	No further instructions.

	and receipt of bids.
7	No further instructions.
8.1	Subcontracting is not allowed.
8.2	Not applicable.
9.1	The Pag-IBIG Fund, Tuguegarao Branch will hold a pre-bid conference for this Project on <u>JANUARY 3, 2014</u> at <u>2:00pm</u> at the Conference Rm, 3 rd Floor, Pag-IBIG Fund, Tuguegarao Branch Office, Editha Tuddao Building, Balzain Road, Tuguegarao City.
10.1	The Pag-IBIG Fund's address is: Pag-IBIG FUND Tuguegarao Branch Office Editha Tuddao Building, Balzain Road, Tuguegarao City, Cagayan Romel Baliuag or Mariecon Pascual, BAC Secretariat Tel Nos. (078) 844-1448, 844-2285 or 844-5622 Telefax No. (078) 846-3634
12.1(a)	No further instructions.
12.1(a)(i)	"No other acceptable proof of registration is recognized."
12.1(a)(iii)	The statement of all ongoing and completed government and private contracts shall include all such contracts within three (3) years prior to the deadline for the submission and receipt of bids. The copy of the following shall be attached: 1. Notice of Award and/or Contract issued by the Owner 2. Certificate of accomplishments signed by the owner or authorized representatives 3. Certification of Satisfactory Performance from Client/s.
13.1	No additional requirements.
13.1b	No further instructions.
13.2	The ABC is Two Million Eight Hundred Eight Thousand Pesos (P2,808,000.00) only for the period of one (1) year. Any bid with a financial component exceeding this amount shall not be accepted.
15.4(a)(iii)	No incidental services are required.
15.4(b)	Not applicable No incidental services are required.
16.1(b)	The Bid prices for Goods supplied from outside of the Philippines shall be quoted in Philippine Pesos.
16.3	Not Applicable.
17.1	Bids will be valid until <u>MAY 16, 2014</u> or one hundred twenty (120) calendar days from the date of the opening of bids.

	<p>and Guards Supervision Division/SOSIA.</p> <ul style="list-style-type: none"> ■ Certificate of Membership with the Philippine Association of Detective and Protective Agency Operators, Inc. (PADPAO). ■ Sworn affidavit stating the following provision : "That the bidder shall have no pending or previous adversarial claim against Pag-IBIG Fund before any judicial or quasi-judicial body or any other tribunal or agency."
32.4(g)	No further instructions.

