

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

**NPM No. 53-2013**

26 June 2013

**MR. PETER GO CHENG**  
*Sales Manager*  
**JODAR COTTAGE INDUSTRIES (JCI)**  
1576-1582 E. Remigio Street,  
Sta. Cruz, Manila

**Re : Imposition of Additional Eligibility Requirement in the Invitation to Bid**

Dear Mr. Cheng:

We respond to your letter dated 14 February 2013 seeking our opinion on the legality, extent, and applicability of providing in the Invitation to Bid (IB) that a bidder should not have been previously penalized by the procuring entity in relation to its bids or contracts therewith.

As represented, the IB issued by the National Food Authority-Regional Office in Isabela (NFA) for its public bidding for the Supply and Delivery of 50-kg Capacity, Brand New, Food Grade, Tubular Type, Woven, Polypropylene Empty Sacks for Palay (Project) contains a provision that the bidder should not have been penalized by the NFA for more than four (4) times within the last five (5) years in relation to its bids or contracts with NFA. JCI questioned the validity of said provision as it is of the view that the guidelines on blacklisting of bidders issued by the Government Procurement Policy Board (GPPB) adequately addresses the concern on entertaining notorious bids. JCI also claims that the requirement is vague considering that the provision does not clarify what constitutes "penalty". Furthermore, JCI argues that the NFA Bids and Awards Committee (BAC) exceeded its authority since the additional imposition of disqualification is not part of the functions of the BAC under Section 12.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184.

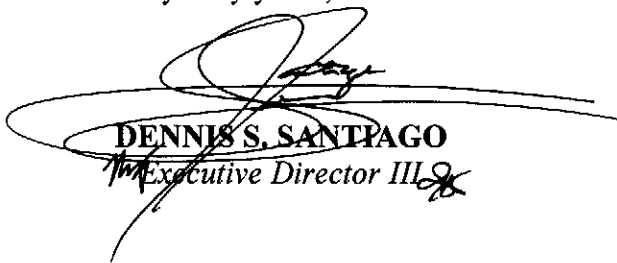
Aside from the fact that the contested provision is not among the statements provided in the standard form of an IB under the Philippine Bidding Documents (PBDs) for the Procurement of Goods, closer scrutiny of the contested provision leads to the observation that the NFA intended to impose additional regulation in determining a bidder's eligibility to participate in the Project.

In a previous opinion<sup>1</sup> issued by this office, we clarified that procuring entities are proscribed from requiring additional eligibility requirements because the list of minimum eligibility requirements has been streamlined/simplified such that only those requirements enumerated in Sections 23.1, 24.1, and 25.1 of the IRR of RA 9184 are necessary for purposes of determining a bidder's eligibility.

In this regard, we are of the view that the contested provision runs counter to RA 9184 and its IRR inasmuch as it imposes an additional eligibility requirement; and to the PBDs for the Procurement of Goods, inasmuch as it does not conform to the standard form of the IB.

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*

//lsd3

---

<sup>1</sup> Non Policy Matter No. 21-2012 dated 16 February 2012.