



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 61-2015

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MR. REY A. HERNANDEZ
BAC Secretariat Head
MUNICIPAL GOVERNMENT OF CALABANGA
Camarines Sur 4405
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Re : Disqualification for Failure to State the Brand Name of Offered Product

Dear Mr. Hernandez:

This refers to your electronic mail requesting for legal opinion on whether the Bids and Awards Committee (BAC) can disqualify a bidder for failure to state the brand name of the product that he offers.

Based on your representation, during the bid opening for the procurement of knapsack sprayer, the bidder with the lowest bid as read failed to specify the brand name of the product that it is offering. Instead, only the bill of quantities and the technical specifications are reflected in its bid submission. Hence, this request.

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 matter opinions, respectively, on matters purely pertaining to the interpretation of the procurement law and its associated rules and regulations. We have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since the office 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 sanctioned by law.¹ In this wise, we shall limit our discussion on the interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented.

Preliminary Examination of Bids; Clear Requirements for Compliance

During bid opening, the BAC conducts a preliminary examination of bids using a non-discretionary “pass/fail” criterion to determine compliance with the eligibility and technical requirements stated in the Bidding Documents. Thus, Sec. 30.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, otherwise known as the “Government Procurement Reform Act”, provides that:

The BAC shall open the first bid envelopes of prospective bidders in public to determine each bidder’s compliance with the documents required to be submitted for eligibility and for the technical requirements, as prescribed in this IRR. For this purpose, **the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-**

¹ NPM No. 46-2013 dated 11 June 2013.

discretionary “pass/fail” criterion, as stated in the Instructions to Bidders. If a bidder submits the required document, it shall be rated “passed” for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as “failed”. Otherwise, the BAC shall rate the said first bid envelope as “passed”.

Based on the abovementioned provision, the submitted bid is checked against the list of requirements as stated in the Bidding Documents to determine if all requirements are present. Failure to include any requirement, the bid shall be considered failed. Thus, the Bidding Documents should contain the parameters by which a bid is to be rated “pass” or “fail”.

In this case, to determine whether there is sufficient ground to disqualify a bidder for failure to state the brand name of the product he is offering, the Bidding Documents should clearly and specifically state such a requirement. Simply put, when the Bidding Documents requires that the bidder state the brand name of the product he is offering but fails to do so, he is rated “failed” for he has failed to comply with this specific requirement. However, if the Bidding Documents is silent on this requirement, then the bid shall only be evaluated based on its compliance with the technical specifications provided. The BAC has no basis to rate as “failed” the bidder due to his failure to state the brand name of his offered product because this is not a requirement the bidder is mandated to comply with in the Bidding Documents.

Prohibition for Use of Brand Names

It is important to stress, however, that the use of brand name is prohibited under Section 18 of RA 9184 and its IRR, the procuring entity should not identify a brand name to define its requirements, but shall prepare the technical specifications based on relevant characteristics and performance requirements to address its needs, thus:

SEC. 18. Reference to Brand Names. – Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

As can be clearly divined from Section 18 of the procurement law, the procuring entity is not allowed to refer to a brand name in its technical requirements, or even use the phrase “or its equivalent” in reference to a specific brand name it specifically identified.

Consequently, the “disclosure” of the brand name of the goods to be supplied by the bidder is inconsequential, at best it will be relevant only as a reference, if required to be divulged in the Bidding Documents, for whatever valid and lawful purpose it may serve, e.g., inter-operability with existing goods or fleet. Otherwise, the disclosure or non-disclosure by the bidder of the brand name of the goods it will supply is of no relevance because the procurement law and its associated rules proscribe the use of brand names.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being 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 V *✓*