



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

NPM No. 64-2012

25 May 2012

ENGR. ROLYN Q. ZAMBALES

OIC-Director

OFFICE OF PROJECT DEVELOPMENT SERVICES (OPDS)

DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT

A. Francisco Gold Condominium II,

EDSA cor. Mapagmahal St., Diliman, Quezon City

Re: Validity of the grounds for post-disqualification

Dear Engr. Zambales:

We respond to your letter dated 4 May 2012 requesting for opinion whether the grounds cited by the Bids and Awards Committee (BAC) of the Municipality of Sigma, Province of Capiz, are valid grounds for post-disqualification of the bidder with the Lowest Calculated Bid (LCB).

As represented, Program Management and Technical Resources Corporation (Promatech), in joint venture with Up-town Industrial Sales Inc. (Up-town), emerged as the bidder with the LCB, for the procurement of Heavy Equipment (Backhoe) by the Municipality of Sigma, Capiz. Subsequently, the BAC issued a letter requiring Promatech to submit additional documents on the basis of which the former "will conduct Post-Qualification to verify/validate the veracity of all documents submitted"¹. During post-qualification, the BAC sought to inspect the subject equipment, a crawler type Liu Gong Brand backhoe with Giant 70 breaker, but was informed that it was not at the inspection site. Instead, Promatech presented another equipment, a Powerplus backhoe and Alicon breaker, which it claimed to have almost the same specifications as that of the subject equipment.

The BAC decided not to proceed with the inspection, because primarily, the equipment is not available. Instead, it filed a Post-Qualification Evaluation Report indicating a "non-responsive" finding on Promatech's compliance with technical specifications. Thereafter, a notice of post-disqualification² was sent to Promatech, stating that there was misrepresentation on its part. It is in this context that you are seeking our opinion on whether the BAC's decision on disqualifying Promatech is valid.

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) has no jurisdiction to rule over actual controversies relative to the conduct of the bidding

¹ Letter of BAC to Promatech dated 12 March 2012.

² See Letter dated 27 March 2012.

process, considering that it has no quasi-judicial functions under Republic Act (RA) No. 9184. The determination of the legality and/or validity of the actions and decisions of the BAC including contracts emanating therefrom is not within the express mandate of the GPPB³.

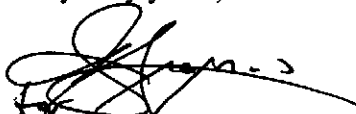
However, for your guidance, reference to the rules on post-qualification proceedings under RA 9184 is called for. As stated in our previous opinion⁴, the objective of post-qualification under Section 34 of RA 9184 is to determine whether the bidder complies with and is responsive to all the legal, technical 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 LCB or highest rated bid using non-discretionary pass/fail criteria as stated in the bidding documents.

These criteria 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 goods⁵. Hence, the verification entailed under the post-qualification stage is not limited to the examination of documents submitted by the bidder, but includes inspection of the subject equipment *vis-à-vis* the technical specifications specified in the bidding documents.

Based on the foregoing, we opine that the act of the procuring entity in verifying, validating, and ascertaining the conformity of the goods/equipment to be delivered with the technical specifications is in accordance with the verification of technical requirements mandated under the rules for post-qualification. If, on the scheduled date of inspection, the bidder fails to present the subject equipment for examination or evaluation without justifiable cause, the BAC has the prerogative to declare the bidder post-disqualified for failure to comply with the requirements. Ultimately, the BAC is the proper authority to determine whether the bidder with the LCB passes or fails the criteria for post-qualification based on its responsiveness to the requirements and conditions as specified in the Bidding Documents.⁶

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular circumstances as represented. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

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³ NPM 002-2011 dated 2 March 2011.

⁴ NPM 69-2007 dated 3 December 2007.

⁵ *Id.* (emphasis supplied).

⁶ Section 34, IRR of RA 9184.