



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

NPM No. 69-2013

28 June 2013

MR. CESAR ROXAS, O.D.
MTC OPTO-MEDIC, INC. (MTC)
3rd Floor, OHI Bldg., 179 Yakal St.,
San Antonio Village, Makati City

Re: Opening of Bids

Dear Dr. Roxas:

This is in response to your letter dated 22 April 2013, which we received 24 April 2013, seeking clarification on the proper conduct of the opening of bid envelopes of a bidder whose bid was not opened on the scheduled bid opening date because of a declaration of disqualification which was eventually reconsidered by the Bids and Awards Committee (BAC).

It is represented that in a bid conducted by the University of the Philippines (UP) Manila, MTC's bid was not opened on the scheduled bid opening due to a finding of disqualification based on improper sealing of bids. The BAC, however, reconsidered its decision, and MTC's bid was opened in the presence of the Special Bids and Awards Committee (SBAC) Secretariat, two (2) support staffs, and a representative of the Internal Audit Special Services Staff (IASSS). After said bid opening, MTC's bid was declared failed due to some alleged irregularities. It is in this context that you are seeking our opinion on the propriety of the procedure adopted by the UP Manila on opening your bid.

Opening of a Reconsidered Bid

As discussed in a previous opinion¹, in line with Sections 30.1 and 30.2 of the Implementing Rules and Regulations (IRR) Part A of Republic Act No. (RA) 9184², to wit:

[i]f the motion for reconsideration is granted, it is mandatory for the BAC to publicly open the (second) bid envelope of the bidder and, thus, must notify the bidder and other interested parties, such as but not limited to, the other eligible bidders and the observers of the date and time for the opening of the (second) bid envelope.

We wish to note that the same principle finds basis in Sections 30.1 and 30.2 of the revised IRR³ of RA 9184, which reflect the same context provided in Sections 30.1 and 30.2 of the IRR Part A of RA 9184.

¹ NPM No. 043-2007 dated 13 August 2007.

² Also Sections 30.1 and 30.2 of the revised IRR of RA 9184.

Thus, in order to maintain the public character of a bid opening activity, the BAC should open a reconsidered bid under the same circumstances as it opened the bids that were not disqualified, *i.e.*, upon a duly scheduled opening of bid with proper notices to the concerned entities.

Presence of the BAC During Opening of Bids

Sections 12.1, 30.1, and 30.2 of the revised IRR of RA 9184 categorically vests upon the BAC the authority to determine each bidder's compliance with the required documents for purposes of eligibility. This responsibility is given to the BAC considering its discretion and sound judgment borne by the members' unquestionable integrity and procurement proficiency.


On the other hand, Section 14.1 of the same IRR limits the responsibilities of the BAC Secretariat to administrative support functions and primarily ministerial duties. Since the BAC Secretariat is limited to these functions, the conduct of opening and preliminary examination of bids, where discretion and sound judgment is required, cannot be considered as clerical or secretariat in nature; therefore, outside the functions of the BAC Secretariat⁴.

Summary

In sum, it is mandatory for the BAC to publicly open the bid envelopes of the reconsidered bidder, and to notify all interested parties, such as but not limited to the other eligible bidders and the observers, of the date, time, and place for the opening of bids. Likewise, the BAC cannot delegate its authority to open and examine bids preliminarily, which was expressly vested upon it by RA 9184 and its revised IRR, to the BAC Secretariat.

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 situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

//isd5

³ Effective 2 September 2009.

⁴ NPM 003-2005 dated 13 January 2005.