



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

**NPM No. 91-2014**

28 October 2014

**P/CS ARNOLD LADEA ALBIS**  
*Chairman, Bids and Awards Committee*  
**PHILIPPINE NATIONAL POLICE (PNP)**  
**REGIONAL OFFICE 5**  
Camp General Simeon A. Ola,  
Legazpi City

**Re: Additional Eligibility Requirements**

Dear Police C/Supt. Albis:

This refers to your letters addressed to specific bidders<sup>1</sup>, which you furnished to us on 17 October 2014. We note that these letters refer to the PNP Regional Office 5 Bids and Awards Committee's (BAC's) imposition for the submission of additional or supplemental documents by prospective bidders participating in the procurement project of PNP Regional Office 5. In your letters, you quoted Sections 17 of Republic Act No. (RA) 9184 and Section 20.1(d) of its revised Implementing Rules and Regulations (IRR) as basis for imposing the submission of additional requirements for eligibility screening.

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) 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. However, it is also our mandate to ensure the proper implementation by Procuring Entities (PEs) of RA 9184, its IRR and all other relevant rules and regulations pertaining to public procurement<sup>2</sup>. In this regard, we shall provide discussion on the interpretation of the procurement law, rules and regulations pertinent to the issue presented.

**Section 17 of RA 9184 (last paragraph)**<sup>3</sup>

Fundamental is the rule that the whole and every part of the statute should be construed together.<sup>4</sup> A certain part of a statute cannot be interpreted on its own without due

<sup>1</sup> Letter to Mr. Ramir B. Barquilla, dated 03 October 2014; Letter to Mr. Ludolfo P. Munoz, dated 07 October 2014; and Letter to Mr. Romeo M. Go, dated 07 October 2014.

<sup>2</sup> Section 63.1(d) of the IRR of RA 9184.

<sup>3</sup> The Procuring Entity may require additional document requirements or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

<sup>4</sup> *National Tobacco Adm. v. COA*, 311 SCRA 755 (1999), citing Ruben Agpalo, *Statutory Construction*, 1986 ed., p.181.

regard to the other parts thereof. In order to harmonize all the provisions of a statute, it is axiomatic that it shall be taken as a whole and not by parts. According to former Associate Solicitor General Ruben Agpalo, the rule is explained in details by the Supreme Court in the case of *Aisporna v. Court of Appeals*<sup>5</sup>, thus:

The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. The meaning of the law, it must be borne in mind, is not to be extracted from any single part, portion or section or from isolated words and phrases, clauses or sentences but from a general consideration or view of the act as a whole. Every part of the statute must be interpreted with reference to the context. This means that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment, not separately and independently.

We note that the last paragraph of Section 17 of RA 9184 gives the PE the right to require additional documentary requirements or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids. Using the rules as discussed above, the meaning of the phrase ***“additional document requirements and specifications”*** must be interpreted with reference to the entire provision of Section 17 and related provisions of RA 9184.

It must be emphasized that Section 17 of RA 9184 provides for the Forms and Contents of Bidding Documents. Necessarily, the provisions embraced therein must be within the context of its title. They should all refer to the forms and contents of Bidding Documents. Further, the cited provision of Section 17 clearly indicates that the purpose of the additional documentary requirements or specifications is to provide necessary information for the bidders to make a responsive bid. The purpose of the requirements and specifications is not to prescribe additional eligibility requirements. Corollary to this, eligibility requirements, though mentioned as part of the Bidding Documents, are governed by different Sections of RA 9184, particularly Sections 23<sup>6</sup> and 24<sup>7</sup>.

Considering the discussions made, it is our considered view that the phrase ***“additional document requirements and specifications”*** mentioned in Section 17 of RA 9184 refers to the contents of the Bidding Documents and not to Eligibility Requirements such that the authority of the PEs to impose additional documents is limited to those which are necessary to enable the bidders to prepare a responsive bid, but not for purposes of imposing the submission of additional eligibility requirements not mentioned under Sections 23 and 24 of the IRR of RA 9184.

#### **Section 20.1(d) of the IRR of RA 9184**

With regard to Section 20.1(d) of the IRR of RA 9184, we wish to emphasize that the term ***“criteria for eligibility screening”*** refers to the ***eligibility criteria*** specifically

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<sup>5</sup> G.R. No. 39419 promulgated on 12 April 1982, citing *Araneta s. Concepcion*, 99 Phil. 709; *Tamayo v. Gsell*, 35 Phil. 953; *Lopez v. El Hogar Filipino*, 47 Phil. 249; *Chartered Bank v. Imperial*, 48 Phil. 931; and *People v. Polmon* 86 Phil. 350; 82 C.J.S., Section 345, pp. 699-700.

<sup>6</sup> Eligibility Requirements for the Procurement of Goods and Infrastructure Projects.

<sup>7</sup> Eligibility Requirements and Short Listing for Consulting Services.

mentioned in Sections 23.5 and 24.3 of the same IRR. These eligibility criteria identify the persons, whether natural or juridical, who are eligible to participate in competitive bidding in terms of legal, technical and financial requirements of the PE. Apart from this, Sections 23.5 and 24.3 of the IRR of RA 9184 also permits certain allowable changes in the legal and technical criteria, thus:

1. Foreign bidders may be allowed to participate in competitive bidding in the instances mentioned in Sections 23.5.1.2, 23.5.2.2 and 24.3.3;
2. Prospective bidder for the procurement of goods may submit the requirements mentioned in Section 23.5.1.3 (2<sup>nd</sup> par.) instead of the Single Largest Completed Contract, upon PE's determination of the presence of the conditions mentioned therein; and
3. For the procurement of infrastructure project, the PE may require the submission of another track record as agreed upon by the Government of the Philippines and the foreign government / foreign or international financial institution.

As such, during Pre-procurement Conference, the participants, led by the BAC, shall review, modify and agree on the eligibility criteria, specifically on whether they will avail of the allowable changes as discussed above. Hence, Section 20.1(d) of the IRR of RA 9184 give the PE the authority to determine the applicable eligibility criteria, as allowed by the rules, to be used in each particular bidding project, but not to impose the submission of additional eligibility requirements not mentioned under Sections 23 and 24 of the IRR of RA 9184.

### **Additional Eligibility Requirements**

At this juncture, we would like to clarify that it is our consistent opinion that PEs are *proscribed* from requiring *additional eligibility requirements*. The list of minimum eligibility requirements under the IRR of RA 9184 has been streamlined/simplified, such that only those requirements enumerated in Sections 23.1, 24.1, and 25.1 of the IRR are necessary for purposes of determining bidder's eligibility. The rationale for this is to allow greater participation, enhance competition among prospective bidders, and reduce transaction costs.<sup>8</sup>

On the other hand, we *recognize the authority* of PEs in imposing *additional documentary requirements* during competitive bidding stage, but *only those that are sanctioned by the IRR of RA 9184*, including but not limited to the following:

1. A duly notarized Secretary's Certificate attesting the authority of the signatory as the duly authorized and designated representative of the corporation, partnership or joint venture must be attached to the Omnibus Sworn Statement<sup>9</sup>;
2. Any other document related to the financial component of the bid as stated in the Bid Data Sheet may be required from the bidder to be included in the 2<sup>nd</sup> envelope comprising the financial component of the bid<sup>10</sup>; and

<sup>8</sup> NPM No. 65-2009 dated 17 December 2009.

<sup>9</sup> Section 25.2 of the IRR of RA 9184.

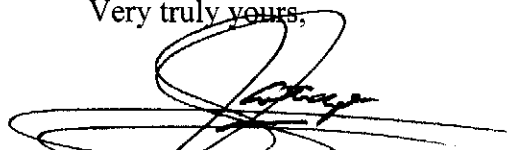
<sup>10</sup> Clause 13.1 of the Philippine Bidding Documents for the Procurement of Goods and Infrastructure Projects in relation to Section 25.3 of the IRR of RA 9184.

3. Other appropriate licenses and permits required by law and stated in the Bidding Documents may be required from the bidder who has the Lowest Calculated Bid or Highest Rated Bid for purposes of post qualification<sup>11</sup>.

All told, PEs cannot impose additional eligibility requirements other than those mentioned in Sections 23.1, 24.1, and 25.1 of the IRR, but may impose other additional documentary requirements when allowed under the IRR of RA 9184 such as those instances mentioned above.

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



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<sup>11</sup> Section 34.2 of the IRR of RA 9184.