



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

NPM No. 94-2013

19 December 2013

MS. BEATRIZ D. SAWAL

Chairperson, Bids and Awards Committee

JOSE R. REYES MEMORIAL MEDICAL CENTER

Rizal Avenue, Sta. Cruz, Manila

Re: Disqualification of Bidders

Dear Ms. Sawal:

This is in response to your letter dated 7 November 2013 seeking clarification on the issue of whether the procuring entity can disqualify a bidder in the following instances:

- (1) When a bidder failed to include government contracts in its "statement of all its ongoing and completed government and private contracts" as provided in the Bid Data Sheet (BDS) of its Bidding Documents for the project; and
- (2) When the bidder posted its bid security, in the form of a surety bond, in an amount that is less than the amount provided in the BDS of its Bidding Documents for the project as prescribed by the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

As represented, the Jose R. Reyes Memorial Medical Center (JRRMMC) conducted a public bidding for security services which was concluded on 4 November 2013. In line with the said public bidding, certain bidders were disqualified and have prompted to file requests for reconsideration, pursuant to the protest mechanism under the revised IRR of RA 9184. It is through these requests for reconsideration that the issues above mentioned were raised.

At the outset, we wish to note that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) are not in the position to decide for and on behalf of a procuring entity, nor can it overturn a decision of the procuring entity. The GPPB and its TSO have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, and thus, cannot dictate to the BAC which bidders should be declared as eligible or disqualified. In this wise, we shall limit our response to a clarification on the interpretation of the applicable provisions of Republic Act No. (RA) 9184 and its revised Implementing Rules and Regulations (IRR) relative to the request. *AK*

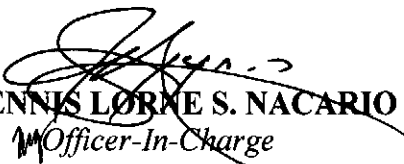
As provided in Section 30.1 of the IRR of RA 9184, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary “pass/fail” criterion. If a bidder submits the required document, it shall be rated “passed” for that requirement, and rated “failed” if no document is submitted or if the document submitted is **incomplete** or **patently insufficient**.

Thus, when the Bidding Documents directs bidders to submit a “statement of all its ongoing and completed government and private contracts”, the submitted document must contain a complete list of all the bidder’s ongoing and completed contracts both with government and private entities, together with all other information required in the Bidding Documents. In the same light, the amount of the bid security submitted must be sufficient as to the form and amount specified in the IRR of RA 9184 and the Bidding Documents.

In view of the foregoing, we wish to stress that the BAC, in line with its function of determining the eligibility of prospective bidders, conducting the evaluation of bids and undertaking post-qualification, is in the position to rate bidders as having “passed” or “failed” in complying with the requirements in the Bidding Documents in accordance with the provisions of RA 9184 and its IRR.

We hope that 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 further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS LORNE S. NACARIO
Officer-In-Charge