



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

NPM No. 102-2012

14 August 2012

DR. CRISTINA C. LOPEZ
Chairman, Bids and Awards Committee (BAC)
NATIONAL TOBACCO ADMINISTRATION (NTA)
Scout Reyes Street, corner Panay Avenue
Quezon City

Received by: [Signature] 8/14
Atty. ROBERTO X. AMORAS
NTA-BAC

Re: Grounds for Disqualification

Dear Dr. Lopez:

This is in response to your letter dated 24 July 2012 requesting our advice on whether the allegations of poor performance and existing accountabilities for past projects with another government agency raised against a qualified bidder may be used by the Procuring Entity (PE) as grounds for disqualification based on Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR).

As represented, NTA conducted public bidding for a project¹ which was participated by FNC Food and Beverages Machinery and Technology Services, Inc. (FNC) and AVM Bernardo (AVM). FNC failed to meet the minimum eligibility requirements while AVM qualified and passed the post-qualification evaluation. On 17 July 2012, NTA BAC received a letter from FNC, through its counsel, requesting for the disqualification of AVM based on allegations of the latter's poor performance in past projects and its existing accountabilities to the City of Mandaue for unpaid rental obligations. It is in this context that NTA BAC seeks guidance on the effect of such allegations on the evaluation of AVM.

We wish to inform you that post-qualification involves the determination on whether the bidder with the Lowest Calculated Bid (LCB) complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents.² It is during this stage that the Procuring Entity (PE) should verify, validate and ascertain all the statements made and documents submitted by the bidder with the LCB using non-discretionary criteria covering the legal, technical and financial requirements.³ Section 34.4⁴ of the IRR of RA

¹ Supply, Install, Commission Machines and Equipment, Chilling and Cold Storage Rooms for the NTA AgriPinoy Tobacco Farmers Food Processing and Trading Center.

² Section 34.1 of the IRR of RA 9184.

³ Section 34.3 of the IRR of RA 9184.

⁴ If the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid, and recommend to the Head of the Procuring Entity the award of contract to the said bidder at its submitted bid price or its calculated bid price, whichever is lower or, in the case of quality-based evaluation procedure, submitted bid price or its negotiated price, whichever is lower.

9184 is clear that when the bidder passes all the criteria for post-qualification, then its bid should be declared as the Lowest Calculated Responsive Bid.

As discussed in a previous opinion⁵, award is given to the lowest competitive bid which passes post-qualification. As mentioned in your letter, considering that AVM is neither blacklisted by the NTA nor appearing in the registry of blacklisted bidders of the GPPB, the NTA BAC has no reasonable ground to disqualify AVM in the post-qualification evaluation when none exist. It bears stressing, though, that NTA BAC is not precluded from verifying the allegations made by FNC against AVM on its alleged poor performance and existing accountabilities and, eventually, from post-disqualifying AVM if such allegations are confirmed to render it legally, technically, and financially unqualified to perform the project.

Based on the foregoing, we are of the opinion that the NTA BAC cannot disqualify or prevent a bidder from participating in any procurement activity on the basis of unfounded allegations made by another bidder. Nonetheless, prudence dictates that the NTA BAC should check the veracity of the claims made against a bidder, and verify, validate, and ascertain if the bidder satisfies all the legal, technical, and financial requirements prior to making an award, in order to protect the NTA's interest and avoid any delay in the implementation of its contract.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented, and may not be applicable to a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

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⁵ NPM No. 16-2006 dated 7 November 2006.