



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

NPM No. 102-2013

20 December 2013

DR. EDUARDO LAPUZ JR.
Vice Chairman, Bids and Awards Committee
DEPARTMENT OF AGRICULTURE (DA)
REGIONAL FIELD UNIT III (RFU3)
City of San Fernando, Pampanga

**Re : Modifying or Adding to the Statements in the
Invitation to Bid; Exercising the Reservation
Clause**

Dear Dr. Lapuz:

We write in reference to your letter dated 11 October 2013, which we received on 8 November 2013, requesting for clarification on the following questions:

1. Whether procuring entities are not allowed to modify or add to the conditions stated in the Philippine Bidding Documents¹ (PBDs), particularly the Invitation to Bid.
2. Whether the Reservation Clause under Section 41 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184 is exercised exclusively by the Head of the Procuring Entity (HOPE).
 - a) At what stage in the procurement process can the Reservation Clause be invoked?
 - b) Is it exercised by the HOPE only after the recommendation of the Bids and Awards Committee (BAC) through a resolution prior to contract award?

As represented, DA-RFU3 published an Invitation to Bid for the procurement of 1,200 pieces of laminated sacks. The Invitation to Bid includes a statement that "all envelopes shall be duly signed in the sealed overlaps or flaps by the bidder or duly authorized representative in order to maintain the integrity of the documents". It also contains the reservation clause provided under Section 41 of the IRR of RA 9184. During the opening of bids, only the bid of one of the two bidders who submitted bids was opened because the other

¹ Issued by the Government Procurement Policy Board through GPPB Resolution 06-2010 dated 17 December 2010.

bidder's outer envelope enclosing the technical and financial envelopes was unsigned and not properly sealed. The bidder filed a motion for reconsideration arguing that the PBDs, which was adopted for the bidding documents for the procurement project, only require that the original and copies of the bid be signed and does not require the same for the envelope where the technical and financial components are enclosed.

Modifying or Adding to the Invitation to Bid

Per Section 6 of RA 9184 and its IRR, the Government Procurement Policy Board (GPPB) is mandated to pursue the development of generic procurement manuals and standard bidding forms, the use of which shall be mandatory upon all procuring entities once issued. Accordingly, the GPPB developed PBDs for the Procurement of Goods, Infrastructure Projects, and Consulting Services, the latest of which was issued through GPPB Resolution 06-2010 dated 17 December 2010, and are now for mandatory use by procuring entities.

We wish to note that although procuring entities are required to use the Invitation to Bid format in the PBDs for its procurement activities, the Invitation to Bid contains notes in italics allowing procuring entities to insert any necessary information it deems relevant to the procurement project. It goes without saying, however, that such information must conform to the Instructions to Bidders and, in particular, to the relevant information in the Bid Data Sheet of the Bidding Documents.

Clause 20.3 of the PBDs for the Procurement of Goods provides that the original and copies of the envelopes containing the technical and financial components of the bid shall be signed by the bidder, but is silent whether the same should be done with the single envelope where all the envelopes containing the original and copies of the technical and financial components of the bid are enclosed.

As such, it is our considered view that the instruction that "all envelopes shall be duly signed in the sealed overlaps or flaps by the bidder or duly authorized representative in order to maintain the integrity of the documents" may be considered an additional information that procuring entities may validly include in the Invitation to Bid inasmuch as it is not contrary to the provisions of the PBDs.

Exercising the Reservation Clause

Section 41 of RA 9184 and its IRR bestows upon the HOPE, *i.e.*, the head of the agency or her duly authorized representative, the right to reject any and all bids, declare a failure of bidding, or not award a contract in the following situations: (a) there is prima facie evidence of collusion; (b) the BAC is found to have failed in following the prescribed bidding procedures; or (c) for any justifiable and reasonable ground where the award of contract will not redound to the benefit of the government.


It should be noted that RA 9184 and its IRR do not qualify at what stage of the procurement process the Reservation Clause may be exercised by the HOPE, nor do they limit its exercise only upon recommendation of the BAC. However, it can be inferred from the rights enumerated, that the Reservation Clause can no longer be exercised after an award of contract has been made in accordance with Section 37 of RA 9184 and its IRR, and the conditions provided under Section 37.1.4 of the IRR have been met.



Based on the foregoing, we wish to clarify that the exercise of the Reservation Clause exclusively belongs to the HOPE. It may be exercised by the HOPE (a) whenever she determines that any of the situations allowing its application provided in Section 41 of RA 9184 and its IRR exists, (b) without need of prior recommendation from the BAC, and (c) at any stage of the procurement process, but not later than after the conditions provided in Section 37.1.4 of the IRR of RA 9184 are met.

We hope that this opinion issued by the GPPB-TSO 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 there be other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS LORNE S. NACARIO
Officer-in-Charge