



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

NPM No. 111-2014

7 November 2014

MR. VICENTE G. ROXAS
President and Chairman of the Board
V.G. ROXAS Co., INC.
Unit 9 ANPN Plaza, 1240 EDSA,
Balintawak, Quezon City

Re: Post-Qualification; Protest Mechanism

Dear Mr. Roxas:

This refers to your letter seeking opinion on the alleged irregularities that you observed in a bidding conducted by Tarlac State University (TSU) for the procurement of various engineering equipment, thus:

1. Period of post-qualification exceeded the maximum limit of 30 days;
2. TSU failed to notify the bidder with the Lowest Calculated Bid (LCB) to submit documents for post-qualification; and
3. Notice of post-disqualification was given 70 days after the opening of bids.

As represented, V.G. Roxas Co., Inc. was identified as the bidder with the LCB. After waiting for 69 days, you called the BAC Secretariat of TSU on 08 September 2014 to inquire about the result of the bidding and to ask why you have not been notified to submit documents for post-qualification. In response, you were told verbally that your bid was disqualified for its failure to meet the technical specifications though it is your assertion that you indicated "Comply" in each of the requirement and there was no further requirement to submit samples. The Notice of Post-Disqualification was given after your inquiry, which is 70 days after the bid opening. Hence, this request for opinion.

We wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) only renders policy and non-policy opinions, respectively, on issues pertaining to the interpretation and application of our procurement laws, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions or investigatory powers under the law. Moreover, we 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.¹

¹ NPM No. 46-2013 dated 11 June 2013.

In this regard, we shall limit our discussions on the relevant provisions of the procurement law, rules and regulations pertinent to the issues presented.

Lowest Calculated Bid

On the matter of the bidder being identified as having the LCB, we wish to reiterate that the lowest bid “as read” during bid opening shall not be automatically considered as the LCB until this is confirmed during detailed bid evaluation, following the steps enumerated in Section 32.2 of the revised IRR of RA 9184, that it remains to be the lowest bid from among all the bids that have been evaluated and corrected for computational errors. If the result of the detailed evaluation reveals otherwise, such that the lowest bid “as read” during bid opening is different from the lowest bid during bid evaluation, the latter shall be considered as the LCB and not the former.²

Hence, the bidder with the lowest bid “as read” during bid opening may not necessarily be the bidder with the LCB after the conduct of a detailed bid evaluation by the BAC of all the bids found to be eligible during preliminary examination of bids. As such, it is only when the bidder has been determined to have submitted the LCB after detailed bid evaluation, will it receive notification from the BAC of such fact and be requested to submit the required documents for purposes of post qualification under Section 34.2 of the revised IRR.

Period for Post-Qualification

Under Section 34.8, the post-qualification process shall be completed in not more than seven (7) calendar days from the determination of the Lowest Calculated Bid; however, in exceptional cases, the post-qualification period may be extended by the Head of the Procuring Entity (HOPE), but in no case shall the aggregate period exceed thirty (30) calendar days.

It is implicit in Section 65.1(b) of the IRR of RA 9184 that post qualification process beyond the prescribed period of action may be recognized for justifiable causes, such that, penal sanctions or liability will not set in against the concerned public officers provided that, valid, reasonable, and justifiable causes exist to warrant a delay in the procurement process.³ Nonetheless, we wish to stress the mandatory character of the period of action required under the rules such as the above-cited period for post qualification.

In this wise, we wish to clarify that the application of mandatory periods under the IRR of RA 9184, such as the seven (7) calendar day and thirty (30) calendar day periods mentioned in Section 34.8, must be complied with. Should the BAC decide to extend the period, it must show and provide compelling, sufficient, valid, reasonable, and justifiable cause for such extension; however such valid justification will only free officials from penal sanction or liability, but not from applicable administrative and civil sanctions or liabilities under existing laws, rules and regulations.⁴

² NPM No. 57-2014 dated 15 October 2014.

³ NPM Nos. 152-2012 dated 14 December 2012 and 57-2013 dated 26 June 2013.

⁴ *Ibid.*

Hence, if the bidder was determined to have submitted the LCB after the detailed bid evaluation, the BAC shall notify such bidder and request for the submission of the required post qualification documents then complete the post qualification process within the prescribed period of 7 days, which may be extended to a period, the aggregated of which must not exceed 30 days.

Protest Mechanism

In case a bidder intends to question the decision of the BAC at any stage of the procurement process, *e.g.*, post-disqualification, a request for reconsideration with the BAC may be filed within three (3) calendar days upon receipt of written notice or upon verbal notification under Section 55.1 of the revised IRR of RA 9184, and the BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. In this regard, any question regarding the decision of the BAC at any stage of the procurement process, the protest mechanism provided in Section 55 of RA 9184 and its IRR may be utilized to protect the rights of a bidder recognized under the procurement law and its associated IRR.

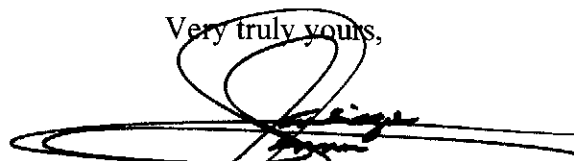
Summary

All told, we wish to clarify the following:

1. A bidder cannot be considered as the bidder with the LCB during bid opening even if its bid "as read" is the lowest among all bids, unless such bidder received a notice from the PE that after bid evaluation, it was determined that it submitted the LCB;
2. The application of mandatory periods under the IRR of RA 9184, such as the periods for bid evaluation and post-qualification indicated in Sections 32.4 and Section 34.8, respectively, must be complied with; and
3. For any question regarding the decision of the BAC at any stage of the procurement process, the protest mechanisms provided in Rule XVII of the revised Implementing Rules and Regulations (IRR) of RA 9184 may be utilized to protect the rights of a bidder recognized under the procurement law and its associated IRR.

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