



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

NPM No. 118-2014

10 November 2014

MS. GLENDA LEYBLE
TOPMOST DEVELOPMENT & MARKETING CORP.
Q. Abeto Street, Mandurriao, Iloilo City, Iloilo, Philippines

Re: Sealing and Marking of Bids

Dear Ms. Leyble:

This refers to your electronic mail (email) seeking our opinion on Clause 19.1 of the Instruction to Bidders (ITB) of the Philippine Bidding Documents (PBDs) for the Procurement of Goods relative to your disqualification in the bidding for the Supply and Installation of 5 Toner Floor Standing Air-conditioning Units that was conducted by the Civil Aviation Authority of the Philippines (CAAP) on 14 July 2014. Attached to your email are copies of the diagram on the sealing made by qualified bidders approved by the CAAP Bids and Awards Committee (BAC) and the sealing made by the disqualified bidder, respectively.

At the outset, we wish to inform you that we have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since this office 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 Bids and Awards Committee (BAC), since these duties and responsibilities fall solely within the ambit of its authority and discretion sanctioned by the law.¹ In this regard, we shall limit our discussion on the interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented.

We wish to clarify that Clause 19.1 of the ITB of the PBD for the Procurement of Goods merely restates the rules under Section 25.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, which requires that the bids shall be submitted simultaneously in two (2) separate sealed bid envelopes. With regard to the sealing and marking of bids, the appropriate provision of the PBD for the Procurement of Goods is Clause 20.

For your guidance, the following are the established rules in Clause 20:

1. Bidders shall enclose their original eligibility and technical documents described in Instruction to Bidders (ITB) Clause 12 in one sealed envelope marked "ORIGINAL - TECHNICAL COMPONENT", and the original of their financial component in another sealed envelope marked "ORIGINAL"

¹ NPM No. 46-2013 dated 11 June 2013.

- FINANCIAL COMPONENT”, sealing them all in an outer envelope marked “ORIGINAL BID”;
2. Each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as “COPY NO. ___ - TECHNICAL COMPONENT” and “COPY NO. ___ – FINANCIAL COMPONENT” and the outer envelope as “COPY NO. ___”, respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope;
 3. The original and the number of copies of the Bid as indicated in the Bid Data Sheet (BDS) shall be typed or written in indelible ink and shall be signed by the bidder or its duly authorized representative/s.
 4. All envelopes shall:
 - (a) contain the name of the contract to be bid in capital letters;
 - (b) bear the name and address of the Bidder in capital letters;
 - (c) be addressed to the Procuring Entity’s BAC in accordance with ITB Clause 1.1;
 - (d) bear the specific identification of this bidding process indicated in the ITB Clause 1.2; and
 - (e) bear a warning “DO NOT OPEN BEFORE...” the date and time for the opening of bids, in accordance with ITB Clause 21.
 5. If bids are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the bid.

Under these rules, it must be observed that the term used for the sealing and marking of bids is “shall”. This connotes the mandatory nature of the rules as the ordinary signification of the word "shall" is imperative.² For this reason, we have consistently opined that failure to observe the rules on proper sealing and marking of bids may serve as a ground to disqualify a bidder.³

Further, it bears stressing that under Clause 6.1(a), ITB of the PBD for the Procurement of Goods, it is the responsibility of the bidder to take steps to carefully examine all of the Bidding Documents. Consequently, under Clause 6.5 of the same PBD, the Procuring Entity shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the Procuring Entity.

In this regard, it is our opinion that the requirements indicated under Clause 20 of the ITB of the PBDs for the Procurement of Goods shall be strictly complied with by the

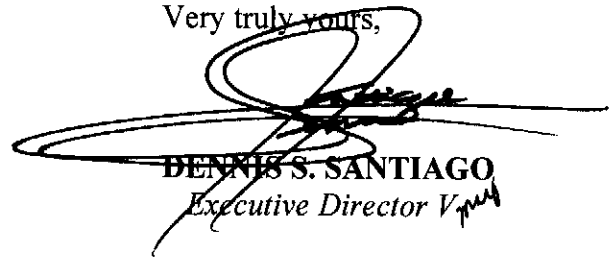
² Diokno v. Rehabilitation Finance Corporation, 91 Phil. 608, 611 (1952).

³ NPM No. 36-2013 dated 10 April 2013 and NPM No. 145-2012 dated 11 November 2012.

prospective bidders; otherwise, it gives basis to the Procuring Entity to disqualify the non-compliant bidder.

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

1/1/25