

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

NPM No. 120-2014

10 November 2014

MS. MAYLENE B. VILLANUEVA
Vice President for Legal Affairs and Human Resources
ENDURE MEDICAL, INC.
17 A Belvedere Tower, San Miguel Ave.,
Ortigas Complex, Pasig City

Re: Forms of Bid Security; Protest Fee; Statement of All Completed Contract; and Special Conditions of the Contract

Dear Ms. Villanueva:

This refers to your letter seeking our opinion on various matters.

1. In submitting bid security, whether the bidder is given a choice to submit either a Bid Securing Declaration (BSD) or at least one other form prescribed by the Procuring Entity (PE), or the bidder should submit both;
2. In a bidding where partial bids are allowed, whether the protest fee should be based on the Approved Budget for the Contract (ABC) of the item subject of the protest or the total ABC for the project;
3. Whether the PE can still require the submission of statement of all completed contracts; and
4. Whether the BAC can impose a requirement in the Special Conditions of the Contract (SCC) that should be complied with during post qualification.

As represented, Endure Medical, Inc. (Endure) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. Endure is licensed by the Food and Drug Administration to import and distribute medical devices, disposables and instruments, and all forms of finished pharmaceutical products. It is also represented that the corporation participates in competitive biddings for the procurement of various medicines, medical supplies and medical equipment requirements of the Government of the Philippines through different PEs. It is in this light that you raised the above-mentioned queries.

Forms of Bid Security

We wish to inform you that the Government Procurement Policy Board (GPPB), through its Chairperson, DBM Secretary Florencio B. Abad, issued GPPB Circular No. 01-

2014¹ to clarify GPPB Resolution No. 25-2013² relative to the forms of bid security that bidders may submit during public bidding. As stated under Section 3.2 of the aforesaid Circular, the prospective bidder shall be given the option to post a Bid Securing Declaration (BSD) **OR** any other form of bid security indicated by the PE in the Bidding Documents.

Therefore, the bidders cannot be required by the PE to submit both BSD and another form of bid security. As you correctly pointed out, imposing this requirement is not only onerous but will also defeat the very essence and purpose for allowing the submission of BSD as an alternative form of bid security.

Basis of Protest Fee in a Procurement Allowing Partial Bids

Under Section 55.3³ of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the payment of non-refundable fee shall be based on the applicable ABC range. The amount or percentage varies from 0.10% up to 0.75% depending on the amount of the ABC and the range to which it belongs.

In case of bidding that allows partial bid, where the bidders are allowed to bid in one (1) lot or in all of the lots, each item or lot is intended to be evaluated and awarded separately. This presupposes that in the Annual Procurement Plan (APP) of the PE, each item or lot has separate ABCs that allow the PE to have a separate contract for each item or lot. These ABCs shall then be treated as separate and distinct from other ABCs for each of the lot.

In conjunction with this separate treatment of ABCs in procurement activities where bidders are allowed to be in 1 lot or in all of the lots, we previously opined that the basis for the computation of Single Largest Completed Contract (SLCC) and Net Financial Contracting Capacity (NFCC) shall be the ABC for the lot to which the bidder intends to participate.⁴

Hence, applying the same principle in computing the protest fee for procurement where partial bids are allowed, the applicable ABC range shall be total ABC of the item/s or lot/s that is subject of the protest. If the bidder submits a bid for only 1 lot and intends to file a protest, the reference amount in determining the protest fee shall be the ABC of that particular item or lot only.

Statement of all Completed Contracts

The requirements of submitting a statement of all completed government and private contracts has already been excluded from the list of eligibility requirements under Section 23.1(a)(iii) of the revised IRR of RA 9184 by virtue of GPPB Resolution No. 29-2012⁵. Hence, the requirements to establish the technical (eligibility) competence of a prospective bidder (aside from the PCAB License Registration for Infrastructure Projects) are as follows:

¹ Dated 23 May 2014.

² Dated 30 August 2013.

³ As amended by GPPB Resolution No. 05-2012 dated 30 March 2012.

⁴ NPM No. 123-2013 dated 27 December 2013, NPM No. 076-2013 dated 08 August 2013.

⁵ Issued on 23 November 2012 and published on 09 September 2013.

1. Statement of the prospective bidder of all its ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid; and
2. Statement identifying the bidder's single largest completed contract similar to the contract to be bid.

It cannot be overemphasized that PEs are proscribed from requiring additional eligibility requirements because the list of minimum eligibility requirements under the revised IRR of RA 9184 have been streamlined such that only these eligibility requirements are necessary for the purpose of determining the bidders' eligibility.⁶ Therefore, requiring a statement of all completed contracts, which is not one of the enumerated eligibility requirements under the IRR of RA 9184, constitutes an additional eligibility requirement proscribed by the rules.

Special Conditions of Contract (SCC)

In general, only modifications for specific project or contract details as amendments to the General Conditions of Contract (GCC) should be provided in the SCC⁷ of the relevant Philippine Bidding Documents (PBDs). On the other hand, if modifications refer to the bidding procedures, they should be presented in the Bid Data Sheet (BDS) as amendments to the Instruction to Bidders (ITB).⁸

Post-qualification is the stage in the bidding process where the goods and products (in case of procurement of goods) may be subjected to inspection and testing for verification, validation and ascertainment as to whether they meet the minimum requirements set by the procuring entity. The criteria to be used for post-qualification shall be stated in the PBDs, particularly in the ITB and BDS. These inspection and testing requirements should not be confused with the inspection and testing requirements provided for under the GCC and SCC of the PBDs. The former is a requirement to determine if the Lowest Calculated Bid is responsive to the technical specifications of the PE, while the latter is a requirement to determine the acceptability of the goods being delivered in compliance with the technical specifications included in the contract. Further, the former is conducted before the award of contract while the latter presupposes that the contract has already been awarded.

Hence, inspection and testing among other requirements that shall be complied with during the post-qualification process shall be indicated in the ITB and BDS, and not in the GCC and SCC.

Summary

In sum, we wish to clarify the following matters relative to your concerns:

1. The prospective bidder shall be given the option to post a BSD **OR** any other form of bid security indicated by the PE in the Bidding Documents

⁶ NPM No. 79-2013 dated 20 September 2013.

⁷ Preface of Philippine Bidding Documents for the Procurement of Goods; for Infrastructure Projects; and for Consulting Services.

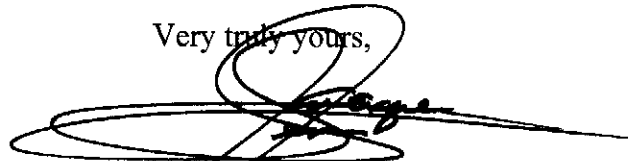
⁸ *Ibid.*

and they cannot be required by the PE to submit both BSD and another form of bid security;

2. In determining the protest fee for a procurement where partial bids are allowed, the applicable ABC range shall be total ABC of the item/s or lot/s that is subject of the protest;
3. PEs are proscribed from requiring the prospective bidders to submit additional eligibility requirement such as the statement of all completed contracts; and
4. Requirements that the bidders must comply with during the post qualification process must be indicated in the ITB and BDS and not in the GCC and SCC.

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 V

1/17/23