



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

**NPM No. 125-2012**

8 October 2012

**ATTY. JULIANA B. CARBON, CEO VI**  
*General Manager*  
**BACOLOD CITY WATER DISTRICT (BCWD)**  
Corner-Galo-San Juan Streets  
Bacolod City 1600

**Re: Reference to Brand Names**

Dear Atty. Carbon:

We respond to your letter dated 17 August 2012 seeking our opinion on whether a non-unidirectional feature of a water meter is tantamount to making reference to a particular brand name.

As represented, BCWD conducted public bidding for the Supply and Delivery of Seven Thousand (7,000) Pieces of Water Meters. The Technical Specifications, as prepared by the BCWD's Technical Working Group (BCWD-TWG), provided that the water meters to be procured should contain a non-unidirectional feature. Crystalla Glass Art Gallery Enterprises (Crystalla), questioned the technical specifications, alleging that the requirement of a non-unidirectional feature in the water meter is tantamount to favoring a brand name and would thus defeat the purpose of competitive bidding.

Section 18 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provides that "specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements". Thus, as previously opined<sup>1</sup> by this office, any reference to brand names shall not be allowed.

As long as the Procuring Entity (PE) makes no mention of a particular brand name of the goods to be procured and merely requires general specifications, based on relevant characteristics and/or performance requirements, there would be no violation of Section 18 of the IRR.

This office is of the opinion that making reference to the "relevant characteristics and/or performance requirements" of the goods to be procured, as mandated by the Procurement Law and its associated rules, clearly suggests that a description of the desired goods must be made. On the other hand, if the goods are described in such a way as to refer only to a particular brand, or the specifications are "tailor-fitted" to a specific brand, or the

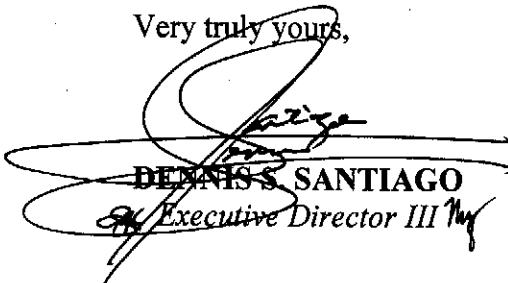
<sup>1</sup>Non-Policy Matter 20-2004 dated 26 February 2004.

relevant characteristics of the goods are prepared to be tantamount to a brand in disguise, then these scenarios fall within the prohibition embodied in Section 18 of the IRR.

All told, this office is of the view that a technical specification in the Bidding Documents providing for a non-unidirectional water meter will only fall within the prohibition under Section 18 of the IRR if such feature is found only in a particular brand and is not available in any other brand. Otherwise, if said feature can be found in other brands, there would be no violation of Section 18 of the IRR. In such a situation, the questioned feature is considered as a "relevant characteristic and/or performance requirement" necessary to describe the water meter sought to be procured.

We hope that 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 given 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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