

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



**NPM No. 127-2012**

10 October 2012

**ATTY. KAREN JOY H. VALENCIA-BALA**

*Attorney-at-Law*

2627 Lamayan Street, Sta. Ana, Manila

**Re: Ground for Disqualification**

Dear Atty. Bala:

We respond to your letter dated 16 August 2012 requesting our opinion on whether AVM Bernardo (AVM) may be deemed to have satisfied the “clean track record in the supply, delivery and installation of the goods after sales service” requirement as stated in the matrix of eligibility requirements of the National Tobacco Administration (NTA), if the allegations on AVM’s poor performance in its past projects are found to be true and authentic by the NTA Bids and Awards Committee (BAC).

It is represented that the NTA BAC wrote a letter<sup>1</sup> to our office seeking our advice on whether the allegations of poor performance and existing accountabilities for past projects with another government agency raised against a qualified bidder may be used by the Procuring Entity (PE) as grounds for disqualification based on Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR). Consequently, this office has issued NPM No. 102-2012<sup>2</sup> wherein we opined that the NTA BAC cannot disqualify or prevent a bidder from participating in any procurement activity on the basis of unfounded allegations made by another bidder. Nonetheless, prudence dictates that the NTA BAC should check the veracity of the claims made against a bidder, and verify, validate, and ascertain if the bidder satisfies all the legal, technical, and financial requirements prior to making an award, in order to protect NTA’s interest and avoid any delay in the implementation of its contract. It is in this context that you are challenging the eligibility of AVM for being awarded the project despite the information provided by FNC Food and Beverages Machinery and Technology Services, Inc. (FNC).

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) only render policy and non-policy opinions respectively, on issues purely relating 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<sup>3</sup> under the law. Thus, it

<sup>1</sup> Dated 24 July 2012.

<sup>2</sup> Dated 14 August 2012.

<sup>3</sup> Quasi-judicial is defined as the term applied to the actions or discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature. (See Agpalo, Philippine Administrative Law 1999 Ed., p. 216 citing *Lupangco v. CA*, 160 SCRA 848, series of 1988.

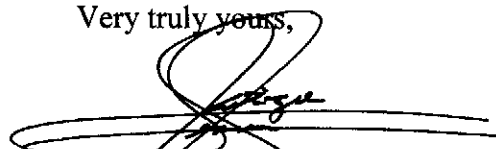
cannot impose or recommend to the BAC which bidders should be declared as eligible, which bid should be accepted as the lowest calculated responsive bid, and to whom the contract should be awarded. We adhere to the position that we cannot, nor any other government agency, authority or official, encroach 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 as sanctioned by law, for as long as the BAC performs its concomitant responsibilities and functions with judiciousness, adhering to the principles of transparency, accountability, equity, efficiency, and economy in the procurement process that it carries out for the PE.<sup>4</sup>

However, we note that RA 9184 and its IRR imposes to the PE, specifically through the BAC, the duty and the obligation to verify, validate and ascertain that the bid subject of post-qualification has satisfied the legal, technical and financial requirements for the specific procurement activity, including all attending circumstances that would warrant the determination of the eligibility, capacity and capability of a bidder to perform the contract. It bears stressing that the documents submitted and the representations made by a bidder, *e.g.*, a clean track record in the supply, delivery, installation of the goods and after-sales service, which could not have been verified by the BAC during the preliminary examination of bids considering that the mechanism involved at this stage is a "pass/fail" criterion, may be authenticated and verified during the post-qualification stage<sup>5</sup>. It is only after the BAC has verified, validated, and ascertained that the bidder with the lowest bid passes all the criteria for post-qualification that the BAC should declare the bidder to have the Lowest Calculated and Responsive Bid (LCRB), and recommend the award of the contract thereto.

Considering the foregoing, and as adequately discussed in NPM No. 102-2012, the PE, through its BAC, is in the best position to determine the truthfulness and authenticity of the allegations made by a bidder against another bidder. Nonetheless, we wish to emphasize that only upon proper verification, validation and ascertainment of the documents submitted and the representations made that the winning bidder is legally, technically and financially responsive should the PE proceed with the awarding and execution of the contract with the bidder having the LCRB. Conversely, if the PE, through the BAC, determines that the bidder whose bid is subject to post-qualification fails to satisfy any of the legal, technical and financial requirements, then the former must refrain from awarding the contract and the latter should be disqualified.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular circumstances presented, and may not be applicable to a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
Executive Director III

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<sup>4</sup> NPM No. 87-2012 dated 16 July 2012 citing NPM No. 44-2009 dated 18 August 2009.

<sup>5</sup> NPM No. 07-2006 dated 5 April 2006.