



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

NPM No. 132-2014

18 November 2014

MR. VITTORIO C. LADERO
POWERKING INDUSTRIES CORPORATION
476 EDSA, Caloocan City

Re: Technical Specifications and Conduct of Pre-Bid Conference

Dear Mr. Ladero:

This refers to your letter seeking our opinion on whether the Procuring Entity (PE) has the discretion not to provide the Technical Specifications of the project to be procured; and whether interested bidders who have not purchased the Bidding Documents are not allowed to attend and ask inquiries during the pre-bid conference.

It is represented that Powerking Industries Corporation (Powerking) requested the PE for a copy of the Technical Specifications of the goods to be procured as the Bidding Documents are not downloadable from the website. In response to the request, the PE allegedly asserted that it is given the discretion to provide the Bidding Documents only to interested bidders who paid the non-refundable bidding document fee. Hence, Powerking purchased the Bidding Documents to determine if it will be able to comply with the required Technical Specifications. Upon determination that it cannot comply with the Technical Specifications, Powerking requested for the return of the amount paid, but this was denied by the PE. It is in this context that you seek the opinion of this office relative to the above-mentioned issues.

Posting of Bidding Documents in PhilGEPS and PE's Websites

Pursuant to Section 17.5 of the IRR of RA 9184, it is mandatory for the PE to post the Bidding Documents in PhilGEPS¹ and in its website. The provision further states that prospective bidders may download the Bidding Documents from any of the said websites, provided that bidders shall pay the fee for the Bidding Documents upon submission of their Bids. Since the Technical Specifications form part of the Bidding Documents, the PE should post the complete set of Bidding Documents at the PhilGEPS and its own website.

The use of the word "shall" makes the posting of the Bidding Documents at the PhilGEPS and PE's websites mandatory. The word "shall" means ought to, must, obligation used to express a command or exhortation used in laws, regulations or directives to express what is mandatory.³ In common or ordinary parlance, the term "shall" is a word of command.

¹ NPM No. 011-2010 dated 22 April 2010.

³ NPM No. 37-2012 dated 19 April 2012, *citing* Baranda vs. Gustilo, 165 SCRA 757 (1988).

one which has a compulsory meaning, and is generally imperative or mandatory, unless the contrary intent appears.⁴

Aside from promoting transparency, this policy also encourages competition and efficiency because it gives prospective bidders the opportunity to determine at the earliest possible time whether they can comply with the requirements of the project and the PE.

Thusly, the PE should make the complete Bidding Documents, including the Technical Specifications, available to all prospective bidders. It is likewise the responsibility of the PE to make the Bidding Documents available and accessible in PhilGEPS and in its own website, and payment of the downloaded Bidding Documents may come later at the time of bid submission.

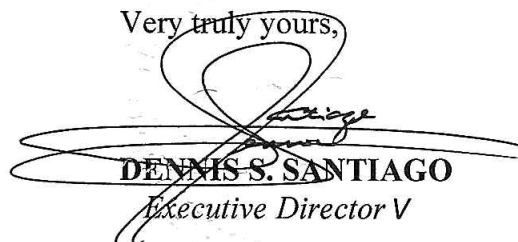
On the other hand, since the act of purchasing Bidding Documents connotes a *bona fide* interest to participate in the procurement activity, the BAC was given the authority and discretion to allow or not to allow those who did not purchase bidding documents to raise questions during the Pre-Bid conference.⁵ This policy was adopted to address the experience of PEs of having to respond to queries and requests for clarification, during the pre-bid conference, from entities that do not have any genuine intention to participate in the procurement activity.

Attendance of Bidders during Pre-Bid Conference

Section 22.3 of the IRR of RA 9184 clearly provides that the PE may limit the opportunity to raise and submit written queries or clarifications only to those who have purchased the Bidding Documents, by clearly indicating such rule in the Invitation to Bid. This notwithstanding, the PE or the BAC cannot limit the attendance or presence of those who are interested to witness the procurement activity. After all, competitive bidding, pursuant to the principles of transparency and accountability, must remain open and public. The duty of the BAC, to achieve orderly proceedings, is to manage and maintain the procurement proceedings within limits and boundaries that keep it open to be witnessed by the interested public.

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



⁴ *Id.*, citing *Gonzales vs. Chavez*, 205 SCRA 816 (1992).

⁵ Section 22.3, IRR of RA 9184.