NPM No. 134-2015

27 November 2015

MR. DENNIE T. DY
Authorized Representative
REDDOT IMAGING PHILIPPINES, INC.
1817-25 España cor. Prudencio St.,
Sampaloc, Manila

Re: Use of Gartner's Magic Quadrant as Part of Technical Specifications

Dear Mr. Dy:

This refers to your letter requesting our opinion relative to the use of Gartner's Magic Quadrant as part of the technical specifications.

As represented, the procurement project subject of this request for opinion pertains to the Supply, Delivery, Installation, Configuration, Testing, Commissioning, Training and Maintenance of E-Classroom for Various Public Elementary and Secondary Schools under FY 2015 DepEd Computerization Program (DCP), Batches 29 to 33. On 7 August 2015, the Bids and Awards Committee (BAC) II of the Department of Education (DepEd) Procurement Service issued Bid Bulletin No. 1, clarifying that under the Section on Technical Specifications, the term "branded" for host PCs and Laptops is defined specifically as those brands included in the latest Gartner's Magic Quadrant for Global Enterprise Desktops and Notebooks. On 19 August 2015, RedDot Imaging Philippines, Inc. sent a comment pertaining to the cited provision of Bid Bulletin No.1 and requested that it be removed from the Technical Specifications. However, the DepEd Procurement Service BAC II, through a letter dated 24 August 2015, replied that it will retain the requirements in the Technical Specifications. Hence, this request for opinion.

At the outset, we wish to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) render policy and non-policy opinions, respectively, on matters pertaining to the interpretation of the procurement law and its associated rules and regulations. The GPPB and its TSO have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since our offices have 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 BAC, since these duties and responsibilities fall solely within the ambit of its authority and discretion sanctioned by law.[1] In this wise, we shall limit our

[1] NPM No. 46-2013 dated 11 June 2013.

discussion on the interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented.

We wish to inform you that we have clarified the matter in NPM No. 26-2004, dated 8 March 2004. We stated that the standards provided by Gartner Inc., may be used as a guide in developing technical specifications for various procurements but the term "Gartner Standard" cannot be expressly included or specifically stated in defining the technical requirements and in determining compliance with the technical specifications. We explained our opinion in the following manner, thus:

> "Since only few software companies comply with *"Gartner Standard"*, it clearly excludes the rest who may desire to participate in the bidding, thereby defeating the concept of competition.
>
> One of the governing principles of RA 9184 is to ensure competitiveness among all private contracting parties. By requiring a specific brand or a particular standard pertinent only to a certain software or program developer as yardstick, either for a product or a set of standards, will cater to the disadvantage of the bidders whose products, although not of the same brand name, can equally comply with the procuring entity's desired output."

In addition, requiring a specific brand included in a limited pool of market operators indirectly circumvents the provision of Section 18 of Republic Act (RA) No. 9184, which requires that the specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements, and prohibits reference to brand names; and in that regard, a requirement that specifically states that the goods to be supplied are "branded".

Based on the foregoing, it is our considered view that the requirement that brands should be those included in the latest Gartner's Magic Quadrant for Global Enterprise Desktops and Notebooks cannot be specifically indicated in the technical specifications of the bidding documents as it runs counter to the very essence and principle of competition and to the prohibition against reference to brand names. We wish to reiterate that for the procurement of goods, specifications shall be based on relevant characteristics and/or performance requirements and not on a specific brand or "branded" goods.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being 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