

NPM No. 136-2015

27 November 2015

MR. RONNIE G. CHIU

Sales Manager

NATIONAL MANUFACTURING & INDUSTRIAL PRODUCTION CORPORATION

1058 Del Monte Avenue, Quezon City

Re: ISO 9001:2008 and 14001:2004 Compliance

Dear Mr. Chiu:

This is refers to your letter seeking clarification as regards the propriety of requiring the compliance with International Organization for Standardization (ISO) 9001:2008 and 14001:2004 as an eligibility requirement.

As represented, eighteen (18) water districts including the Surallah Water District, Calbayog Water District, and Calumpit Water District set the compliance with ISO 9001:2008 and 14001:2004 as an eligibility requirement purportedly in accordance with Executive Order No. 301, Series of 2004¹. It is in this context that you submit the following issues for inquiry, to wit:

1. Whether a procuring entity is proscribed from requiring additional eligibility requirements such as the ISO certification;
2. Whether the foregoing prescription may be overruled by good faith in compliance with the mandates of EO 301, S. 2004;
3. Other than the Protest Mechanism under Section 55 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR), what other reliefs are available to bidders in case the procuring entity would insist on the imposition of additional eligibility requirements; and
4. Which judicial or quasi-judicial body has jurisdiction to rule on the judiciousness of imposing additional eligibility requirements?

ISO Certification as Additional Eligibility Requirement

We wish to reiterate our position that procuring entities are proscribed from requiring additional eligibility requirements.² As explained in an earlier opinion³, under the revised

¹ Entitled "Establishing a Green Procurement Program for All Departments, Bureaus, Offices and Agencies of the Executive Branch of the Government" issued on 29 March 2004.

² NPM No. 91-2014 dated 28 October 2014.

³ NPM No. 65-2009 dated 17 December 2009.

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IRR of RA 9184, the list of minimum eligibility requirements has been streamlined/simplified, such that only those requirements enumerated in Sections 23.1, 24.1, and 25.1 of the IRR are necessary for purposes of determining the bidders' eligibility.

In addition, we previously opined that under RA 9184 and its IRR, an ISO Certification cannot be included as part of the eligibility requirements, but may be required as part of the technical specifications, provided that it will not be too limiting to be restrictive of competition.⁴

On good faith compliance with EO 301, S. 2004, relied upon by the abovementioned procuring entities to justify their imposition of additional eligibility requirements, the Supreme Court in *The Insular Life Assurance Company, Ltd. v. Asset Builders Corporation*⁵, held that good faith is always presumed, unless contrary evidence is adduced. Likewise, in *Blaquera v. Alcala*⁶, the High Court maintained that every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties. It must be noted, however, that claim of *good faith* in the execution of an act is a matter of presumptive evidence, which may be rebutted when contrary evidence is adduced, as when specific requirements are clearly specified under existing rules and regulations.

All told, a procuring entity cannot set the ISO compliance as one of the eligibility requirements as the list of requirements under Sections 23.1, 24.1 and 25.1 of the IRR is exclusive.

Remedy Apart from Protest Mechanism

It must be emphasized that there are no other available administrative remedy provided in RA 9184 and its IRR aside from the Protest Mechanism embodied in Article XVII and Rule XVII, respectively, which provides the avenue for redress of grievances relative to the decisions of the Bids and Awards Committee (BAC) and the Head of the Procuring Entity (HOPE). The protest mechanism established in the procurement law and its associated rules, provides that decisions of the BAC may be questioned by filing a request for reconsideration; if the BAC denies such request, the decision may be subsequently protested by filing a verified position paper to the HOPE. If the HOPE denies the Protest, then the bidder has the right to file a *Petition for Certiorari* before the Regional Trial Court having jurisdiction over the case. We had the opportunity to discuss this matter in an earlier opinion⁷, as follows:

[I]n the case of *Dimson (Manila), Inc. and Phesco, Inc. v. Local Water Utilities Administration*⁸, the Supreme Court held that “only upon the final resolution of the protest can the aggrieved party be said to have exhausted the available remedies at the administrative level. In other words, only then can he viably avail of the remedy of certiorari before the proper courts. Non-compliance with this statutory requirement, under Section 58 of R.A. No. 9184, constitutes a ground for the dismissal of the action for lack of jurisdiction.”

In connection with this, we refer to the same Supreme Court decision, citing *Carale v. Abarintos*⁹, that “the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but

⁴ NPM No. 37-2014 dated 9 October 2014.

⁵ G.R. No. 147410, 5 February 2004.

⁶ G.R. No. 109406, 11 September 1998.

⁷ Non-Policy Matter Opinion No. 116-2013 dated 27 March 2013.

⁸ G.R. No. 168656, 22 September 2010.

⁹ 336 Phil. 126 (1997).

also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the procuring entity an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.”

From the foregoing, it is only after the bidder has exhausted all the administrative remedies under the Protest Mechanism embodied in Sections 55 and 56 of the IRR of RA 9184 that it may seek the appropriate remedy from the proper courts.

Summary

All told, we wish to emphasize the following:

1. Procuring entities are proscribed from requiring additional eligibility requirements.
2. Good faith compliance with EO 301, S. 2004 is presumed. However, the claim of *good faith* in the execution of an act is a matter of presumptive evidence, which may be rebutted when contrary evidence is adduced, as when specific requirements are clearly specified under existing rules and regulations.
3. The Protest Mechanism under Section 55 of RA 9184 and its IRR is the only administrative remedy available to bidders in order for them to question BAC and HOPE decisions.
4. Only upon exhaustion of all available administrative remedies under RA 9184 and its IRR, and proper motion by the bidder, may courts acquire jurisdiction over the judiciousness of the acts of procuring entities.

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

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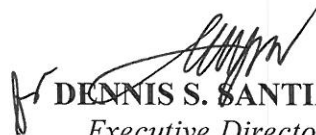
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