



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

NPM No. 144-2012

12 November 2012

ATTY. GOLDWYN V. NIFRAS
Chairman, Bids and Awards Committee (BAC)
BACOLOD CITY
City Hall Building, Bacolod City,
Negros Occidental 6100

Re: Responsiveness of Bids

Dear Atty. Nifras:

This refers to your letter dated 7 August 2012, which we received on 10 August 2012, seeking our opinion on whether a bidder in the "Garbage Collection and Hauling" Project (Project) of the City of Bacolod may be post-disqualified despite the fact that its proposed transfer station is located within a residential area.

It is represented that the Bids and Awards Committee (BAC) of the City of Bacolod conducted a competitive bidding for the Project wherein two (2) bidders were found to be eligible. However, since the bidder with the Lowest Calculated Bid (LCB) failed to qualify, the City of Bacolod has started the post-qualification of the bidder with the 2nd LCB. It is further represented that in the Instructions to Bidders (ITB), bidders are required to present two (2) lots, one located in the north and the other in the south of Bacolod City to be operated as "transfer stations". However, the lot identified by the bidder with the 2nd LCB as its proposed north transfer station was determined to be situated in a residential area, and classified for Residential Use per Certification issued by the City Planning and Development Office of Bacolod City, which Certification likewise declared "[t]hat Under Ordinance No. 216, Series of 1998 the said property was zonified (sic) as Residential Zone. Transfer Stations are not allowed in Residential Zones as per Ordinance 216 series of 1998." It is in this context that you are seeking our opinion on the following issue:

Whether the bidder with the 2nd LCB may be post-disqualified on the ground that its proposed north transfer station is situated in a residential area.

Instructions to Bidders Must be Maintained Unchanged

Before we discuss the issue presented, it must be emphasized that the "Instructions to Bidders" (ITB) "[c]ontains provisions that are to be used **unchanged**."¹ Provisions that supplement, amend, or specify in detail information or requirements in the ITB, which are specific only to the project being procured, should be provided in the Bid Data Sheet (BDS).

¹ Section II, Instruction to Bidders, Philippine Bidding Documents for Goods, 4th Edition, December 2010.

Hence, the change and inclusion of a provision on “transfer stations” in the ITB for the Garbage Collection and Hauling Project of the City of Bacolod should have been included in the BDS, or in the Technical Specifications.


Bid Proposals Must be Prepared to Complete the Project

The conduct of procurement is governed by the provisions, stipulations and conditions embodied in the Bidding Documents, such that requirements that are not written should not be countenanced. It is worthy to stress that the subject matter of the procurement - the collection and hauling of garbage for the City of Bacolod - must be taken, understood and examined in its entirety so that it may be fully delivered, executed and completed. As such, the technical and financial bid proposals to be submitted by a bidder must be truly responsive and complete for the Project to be fully satisfied and accomplished.

Accordingly, although the Bidding Documents for the Project is silent whether the “transfer stations” should be situated in a “residential area/zone” or not, the bid proposals submitted by bidders must be able to completely address and fulfill the goal of the Project, that is, the garbage for the City of Bacolod must be collected and hauled in accordance with the parameters identified in the technical specifications, in terms of manpower requirements; number of dump trucks; schedule and frequency of collection and hauling; site for garbage segregation; site for materials recovery; garbage transfer stations; compliance with environmental and labor laws; adherence to health, safety and sanitation standards; and the like. Simply put, the bid proposals submitted by bidders must be sufficient to complete the full cycle of garbage collection and hauling from the source to its final destination.

Bid Conformity with Existing Laws and Rules

The Certification issued by the City Planning and Development Office of Bacolod City categorically stated that the property identified as “transfer station” is located in a Residential Zone, and that under City Ordinance No. 216 (CO 216), Series of 1998, “transfer stations” are not allowed in Residential Zones. Assuming that the recitals in the Certification are true and correct, and CO 216 was validly promulgated by the City Council of Bacolod in accordance with the requirements of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, the same must be considered and factored in by bidders in the development and preparation of their bids as they are deemed to “[have] **acknowledged all conditions, local or otherwise, affecting the implementation of the contract,**”² and they are presumed to know the laws, rules and regulations affecting the execution of the Project - ignorance of the law excuses no one from compliance therewith.³ Moreover, the ITB provides that:

It shall be the sole responsibility of the Bidder to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to the contract to be bid, including: (a) the location and the nature of this Project; (b) climatic conditions; (c) transportation facilities; and (d) **other factors that may affect the cost, duration and execution or implementation of this Project.**⁴ (Emphasis and underscoring supplied) 

² Clause 6.2(b), *Id.*

³ Article 3, Civil Code of the Philippines.

⁴ Clause 6.4, *Id.*

Consequently, the bid submitted must comply not only with the legal, technical and financial requirements of the Project, but should also conform with the mandate and imposition of existing laws, rules and regulations, including other factors that may affect the execution or implementation of the Project in order that it may be fully completed.

Pre-Bid Conference, an Occasion to Clarify Doubts and Ambiguities

The Pre-Bid Conference shall discuss, among other things, the eligibility requirements and the technical and financial components of the contract to be bid.⁵ This is also the occasion where prospective bidders may point out provisions in the Bidding Documents that may need further explanation. This must be so because bidders are expected to “[have] taken steps to carefully examine all of the Bidding Documents”⁶ and they are “[e]xpected to examine all instructions, forms, terms and specifications in the Bidding Documents”⁷ before they submit their respective bids. Thus, in case of ambiguity or vagueness, such as on the requirements relative to the transfer station, prospective bidders may make use of the Pre-Bid Conference facility as venue to raise clarifications, queries and concerns to clear the cloud of misunderstanding, misinterpretation and wrongful appreciation of certain requirements or provisions contained in the Bidding Documents.

Post-Qualification

Section 34.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184 provides that the bidder with the LCB shall undergo post-qualification in order to determine whether the bidder complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents. During post-qualification, the Procuring Entity (PE) verifies, validates, and ascertains all statements made and documents submitted by the bidder with the LCB using non-discretionary pass/fail criterion. The verification entailed under the post-qualification stage is not limited to the examination of documents submitted by the bidder, but includes inspection of the subject equipment or property *vis-à-vis* the technical specifications specified in the Bidding Documents. Thus, a finding of non-compliance or non-conformity with the legal, technical and financial requirements of the project, which are contained in the Bidding Documents, warrants disqualification.

BAC has Sole Discretion in the Evaluation of Bids

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 functions⁸ under the law. Thus, it cannot impose upon the BAC which bidders should be declared as eligible, which bid should be accepted as the lowest calculated and responsive bid, or to whom should the contract be awarded. We adhere to the view that the functions of the BAC cannot be interfered with by any government agency since these

⁵ Section 22.3, revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

⁶ Clause 6.2(a), Instructions to Bidders, Philippine Bidding Documents for the Procurement of Goods, 4th Edition, December 2010.

⁷ Clause 6.3, *Id.*

⁸ 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.

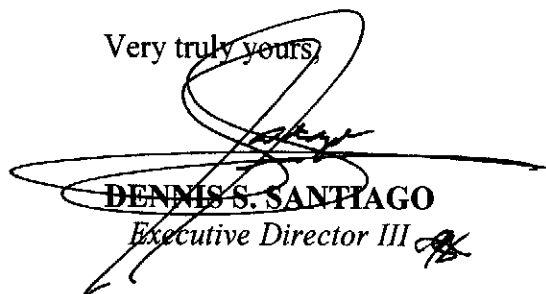
solely fall within their authority as sanctioned by law, but with the concomitant responsibility that they perform such functions with judiciousness, adhering to the principles of transparency, accountability, equity, efficiency, and economy in the procurement process that it carries out for the Procuring Entity.⁹

It bears stressing that matters regarding the interpretation of the requirements provided by the PE in its Bidding Documents and the determination of whether the submitted documents of the bidders comply with such requirements are properly within the domain and prerogative of the PE, specifically the BAC, that is in the best position and most disposed to rule on the matter.

All told, bid proposals must be prepared to responsively and completely address and fulfill the goal of the Project. In that, the bid must comply with all the legal, technical and financial requirements of the Project, including the mandate of existing laws, rules and regulations, and factors that may affect the full execution, implementation and completion of the Project. In case of doubt or ambiguity in any of the provisions in the Bidding Documents, bidders should raise the matter prior to or during the Pre-Bid Conference for clarification, better appreciation and understanding. Non-conformity with the legal, technical and financial requirements contained in the Bidding Documents, including other factors that affect the execution and implementation of the Project, warrants disqualification.

We hope our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situations 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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⁹ NPM No. 87-2012 dated 16 July 2012 citing NPM No. 44-2009 dated 18 August 2009.