

NPM No. 146-2015

27 November 2015

ATTY. ELYJEAN DC. PORTOZA
BOARD OF INVESTMENTS (BOI)
385 Senator Gil Puyat Avenue
Makati City

**Re: Ten (10)-Year Market Presence for Bidders in
IT-Related Procurement**

Dear Atty. Portoza:

This pertains to your electronic mail seeking confirmation from our office as to whether the Government Procurement Policy Board (GPPB) has existing rules requiring a minimum of ten (10)-year market presence for bidders in an Information Technology (IT)-related procurement.

Presently, the GPPB has no existing rules or issuance requiring a minimum of ten (10)-year market presence for bidders in IT-related procurement. The Procuring Entity has the authority and discretion sanctioned by the law to determine what it needs to procure and craft the necessary technical specifications and requirements to eventually satisfy these needs. It must be stressed, however, that in the preparation of the technical requirements, the procuring entity should be able to craft the specifications without curtailing or limiting competition among market operators.

Although specific needs have to be addressed and satisfied, it would be unfair and confiscatory to prospective bidders if the procuring entity will write the specifications in accordance with the features and description of a particular brand or model. In this regard, Section 18 of Republic Act No. 9184 and its associated Implementing Rules and Regulations (IRR) provide that “[s]pecifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.”

Consequently, the identified requirements to be written in the technical specifications must be truly relevant and necessary to address the needs of the procuring entity, and should not be based on parameters that would limit or confine the procurement opportunity to a limited number of market operators or to a specific brand, make or model. Accordingly, once the procurement opportunity is published alongside the identified technical requirements, non-compliance by a bidder with the Technical Specifications would then be a ground for disqualification.¹

¹ NPM 123-2014, 12 November 2014.

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,


for **DENNIS S. SANTIAGO**
Executive Director V

/sdl