

NPM No. 164-2015

22 December 2015

MR. ROLANDO SOTELO

Proprietor

PHIL-ASIA SALES AND SERVICES

288 P. Burgos St., Tanqui

San Fernando City, La Union 2500

Re : Small Value Procurement

Dear Mr. Sotelo:

This refers to your letter seeking clarification on the selective practice of government agencies in procuring fire extinguishers through Small Value Procurement (SVP) under Section 53.9 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

It is represented that certain procuring entities (PEs) refuse to accept the Quotation from suppliers, contractors, or consultants not sent an RFQ in the conduct of Small Value Procurement (SVP) under Section 53.9 for the reason that they are not accredited nor invited suppliers. Thus, the repeal of SVP as a negotiated modality, that allegedly give rise to the practice of "selective" identification of suppliers is being sought.

SVP under Section 53.9 of the revised IRR is a type of negotiated procurement of goods, infrastructure projects and consulting services whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant where the procurement does not fall under Shopping in Section 52 of the revised IRR and the amount involved does not exceed the thresholds prescribed in Annex H of the revised IRR. Pursuant to Section 53.9.1 of the IRR and Item 3 of the Guidelines for Shopping and Small Value Procurement (Guidelines for brevity), the PE shall draw up a list of at least three (3) suppliers, contractors, or consultants of known qualifications which will be invited to submit proposals, in the case of goods and infrastructure projects, or curriculum vitae, in the case of consulting services.

The foregoing rules do not limit the participation only to those invited by the PE. On the other hand, Item 3.d. of the Guidelines mandates PEs to post the RFQs for a period of seven (7) calendar days in the Philippine Government Electronic Procurement System (PhilGEPS) website, website of the PE, if available, and at any conspicuous place reserved for this purpose in the premises of the PE except in cases where posting is excused. The purpose of which is to inform all prospective bidders of procurement opportunities to which they can participate. Moreover, the intent of the rules in requiring PEs to send out at least three (3) RFQs is not to limit the participation to those 3 suppliers who received the RFQ, but to ensure or guarantee that an award can be made.

In view of the above discussion, we likewise clarify that the "list of at least three (3) suppliers, contractors, or consultants" cannot be considered as a form of accreditation because

even those not in the list or those not sent an RFQ may participate in the bidding opportunity. To consider the list as such would contravene the basic principles and tenets of RA 9184 and its revised IRR. Thus, we have stressed in a prior opinion¹ that the creation of an accreditation system is not in accordance with the mandate of the present procurement law as it contravenes the very basic principles of competitive bidding. Such that the establishment of an accreditation system within the agency would limit the participation of bidders only to the accredited suppliers, to the exclusion and prejudice of other bidders in the market.

In sum, PEs, in the conduct of SVP, are required to draw up a list of at least 3 suppliers, contractors or consultants to whom the RFQ will be sent, but suppliers not in the list, that were able to get hold of the information relative to the procurement opportunity may also participate. The list of at least 3 suppliers, contractors or consultants is not a form of accreditation as even those not in the list and were not invited may still participate.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director V

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¹ NPM No. 080-2014, dated 22 October 2014.