NPM No. 28-2011

27 December 2011

ATTY. MARK C. ACOYMO
7 Malusog St., UP Teacher's Village, Quezon City

Re: Modification of Bidding Documents and Submission of Photocopy of Documentary Requirements

Dear Atty. Acoymo:

We respond to your letter dated 19 October 2011 seeking guidance on the following issues:

1. Whether the procuring entity is allowed to modify the terms of the bidding documents by adding minimum technical specifications to the project even though the same were not discussed during the pre-bid conference; and

2. Whether the submission of a photocopy of the certification of manufacturer guaranteeing the availability of all spare parts for the next ten (10) years constitutes compliance with the requirement under Section 25.2 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

As represented, Philippine Medical Systems Inc. (PMSI) is the exclusive local distributor of Toshiba Medical Systems Corporation. It participated in the procurement for seven (7) units of CT Scan Machine for a certain department of the government. During the pre-bid conference, modifications on the minimum technical specifications were agreed upon, but there was no mention or discussion of the technical requirement on Osteo CT and CT Lung Perfusion for CT Scan capabilities, which were then eventually added as a technical requirement by the concerned agency in a supplemental/bid bulletin issued for that purpose.

Modification of the Minimum Terms in the Bidding Documents

As you have noted, Section 22.4 of the IRR of RA 9184 provides that any statement made at the pre-bid conference shall not modify the terms of the bidding documents, unless such statement is specifically identified in writing as an amendment thereto and issued as a supplemental/bid bulletin. Accordingly, the changes or modifications to the bidding documents, specifically, the technical specifications, discussed during the pre-bid conference must be issued through a supplemental/bid bulletin in order for it to take effect.

Moreover, in instances where the procuring entity sees the need to introduce any modifications or amendments to the bidding documents, it may do so *motu proprio* through the issuance of a supplemental/bid bulletin pursuant to Section 22.5.2 of the same IRR. In this wise, revisions in the bidding documents, specifically, on the original technical specifications/requirements, need not be borne out of discussions in the pre-bid conference.

In this regard, it is our considered view that although the technical specifications in the form of Osteo CT and CT Lung Perfusion for CT Scan capabilities were not discussed during the pre-bid conference, the procuring entity concerned is not precluded from requiring the same, provided the appropriate supplemental/bid bulletin is issued within the prescribed time frame.

Compliance with the Requirement on the Authenticity of Submitted Documents

Please be advised that in compliance with the technical requirements prescribed under Section 25.2 of the IRR of RA 9184, bidders are required to submit an Omnibus Sworn Statement which includes a statement that the bidder ensures that each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct.

Based on this, the IRR allows the submission of a copy of the original documents required, provided that the bidder certifies through the Omnibus Sworn Statement that the document submitted is an authentic copy of the original, it is complete, and the information and statements therein are true and correct. It must be stressed, however, that the authenticity of the submitted copy must be verified, validated, and ascertained by the procuring entity during the post-qualification as prescribed in Section 34 of the IRR of RA 9184.

As such, we are of the view that the submission of a photocopy of the required certification of manufacturer guaranteeing availability of all spare parts for the next ten (10) years may be considered sufficient compliance based on the afore-stated rule.

We hope that our advice sufficiently addresses your concern. Should you have further questions, please do not hesitate to contact us.

Very truly yours,

DENNIS S. SANTIAGO
Executive Director III

Copy furnished:

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