



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Avenue, Ortigas Center,
Pasig City, Philippines 1605

NPM No. 035-2005

August 05, 2005

DIR. DOMINADOR M. GAMBOA
Director II, Procurement and
Supply Management Services
Head, Bids and Awards Committee Secretariat
House of Representatives

**Re : Misrepresentations in and Insufficiency of Required
Information in Documentary Submissions**

Dear Director Gamboa:

This refers to your letter dated 28 June 2005 which we received on 29 June 2005, requesting for opinion/resolution on the issues raised therein relative to the implementation of Republic Act 9184 (R.A. 9184) and the relevant provisions of its Implementing Rules and Regulations Part A (IRR-A). The specific issue is put in this wise:

Whether or not bidder's apparent failure to disclose all relevant information required by the procuring entity constitutes sufficient ground for disqualification.

The issue refers to the document required by the procuring entity as an eligibility requirement, containing a declaration of all the bidders' ongoing and completed government and private contracts. Having submitted the required document, the bidder passed the eligibility check and was determined and declared as the Lowest Calculated Bidder. However, during Post-Qualification, the Technical Working Group (TWG) learned of other information regarding the bidder's other projects which, incidentally, were not declared in the document. Thus, the question as to the policy consideration regarding this case is raised.

We first dwell on the possible grounds for disqualification of a bidder, as may be appropriate in different stages of the procurement process:

Eligibility Check, Preliminary Examination of Bids and Post-Qualification

During eligibility check, the Bids and Awards Committee (BAC) determines if each prospective bidder is eligible to participate in the bidding by examining the

completeness of each prospective bidder's eligibility requirements¹ or statements against a checklist of requirements, using a non-discretionary "pass/fail" criteria. Hence, if a prospective bidder submits the specific eligibility document required, it shall be rated "passed" for that particular requirement; otherwise, it shall be rated "failed."²

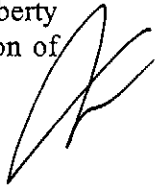
Stated differently, in this stage of the bidding process, the question of qualification (or disqualification) of a bidder is anchored on the determination of the completeness (or incompleteness) of the documentary submissions. This involves a non-discretionary procedure that does not, as yet, entail a detailed, extensive or thorough examination of the documents to validate or ascertain their genuineness or the truthfulness of the contents therein.

Thereafter, a Bid Evaluation shall be conducted to determine the Lowest Calculated Bid (LCB). This is done by checking the submitted documents in the Technical Proposals and in the Financial Proposals, in that order, against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criteria. The bidder who fails to submit the required document, or submits for that matter an incomplete or patently insufficient document shall be considered "failed" for the particular requirement. After evaluation of the financial proposal, the bid with the lowest price shall be identified as the LCB.³

Clearly, the evaluations of both the Technical and the Financial Proposals are basically achieved through the simple procedures of determining the presence or absence of the documentary requirements and the compliance thereof and its contents to the requirements of the law and of the procuring entity.

Post qualification on the other hand is the stage where the bid proposals or the submissions of the Lowest Calculated Bidder, in the case of Goods and Infrastructure Projects, or the Highest Rated Bidder, in the case of Consulting Services, are subjected to a more detailed verification and validation. This procedure purports to establish the genuineness of the documents submitted and the veracity of the contents thereof. Under this procedure, the BAC is given freedom, bound only by relevancy to the procurement and good reason, to undertake any lawful means to verify or validate details of the requirements.

However, the BAC in so verifying or validating the details of the documentary submissions of every bidder, shall not be allowed to accept or require the submission of additional documents or information to complete an otherwise deficient submission or accomplish what could have been achieved by the bidder if the submissions were sufficient or not misrepresented. During the post-qualification, the BAC is not at liberty to receive proofs to remedy a failing bid due to insufficiency or misrepresentation of information required, as it will amount to a prohibited modification of bids.



¹ As contained in the Instruction to Bidders (Bidding Documents)

² Section 2, Implementing Rules and Regulations Part-A of RA 9184.

³ See Section 32, Ibid.

Misrepresentation or Insufficiency in the Submissions

It may well happen that while a bidder may have passed eligibility check and the preliminary examination of bids, the documents submitted and/or the contents thereof may not be responsive to the requirements of the procuring entity. This is possible when, on the face of these documents, the compliance of the bidder may not be readily deduced. For this reason, the present bidding procedure allows the validation and verification of the documents during the post-qualification stage.

Thus, should such procedure uncover any misrepresentation or insufficiency made in the submitted requirements, statements or documents, the procuring entity shall consider the said bidder as disqualified.⁴ The documents or requirements in which any misrepresentation is made or where there is insufficiency of required information is non-compliant. As a logical consequence, any document, although submitted, not being responsive to the requirement set by the procuring entity, does not sufficiently serve its cause and is therefore reduced to a mere scrap of paper that could not give any more value for purposes of the bidding procedure. Thus, by legal fiction, the non-complying document is deemed as not submitted – a situation that implies the necessary disqualification of the concerned bidder.

This view proves consistent with prevalent procurement policies as it tends to sustain the fairness of the bidding procedures and ensure that bidders do not trifle, at will or otherwise, with procurement rules by resorting to any untruthful or insufficient and non-responsive representations. This also provides more objectivity in the determination of awardees of government procurement contracts as it deals only with bidders who comply with the requirements of law and of the procuring entity.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

⁴ For eligibility requirements, see Section 23.4, Ibid.