Republic of the Philippines
gppb
Government Procurement Policy Board

TECHNICAL SUPPORT OFFICE

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

NPM No. 043-2005

October 7, 2005

BIDS AND AWARDS COMMITTEE
Leyte Normal University
Tacloban City

Re : Interpretation of Section 17.7.1 of the Implementing Rules and Regulations Part A of Republic Act 9184 and Clarification on the Use of Standard Forms and the Philippine Bidding Documents

Dear Messrs./Mmes.:

This refers to the letter[1] of Ms. Rutchelle B. Enriquez, dated 03 October 2005, raising several concerns arising from the use of the Philippine Bidding Documents (PBDs) and the Sample Forms issued by this office, namely:

1. Effect of non-compliance with Section 17.7.1 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act 9184 (R.A. 9184); and

2. Conflicts between the PBDs and the Sample Forms.

We wish to express at the outset that this opinion is being issued to clarify the foregoing issues and not to adjudicate on the merits of the facts presented in Ms. Enriquez's letter.

Interpretation of Section 17.7.1 of the IRR-A of R.A. 9184

Section 17.7.1 of the IRR-A puts on focus the instruction to bidders to execute a sworn statement attesting to the responsibilities provided in the said provision and submit the same as an annex to the technical proposal. However, it is clear in Section 25.3 of the IRR-A that such documentary requirement is not included as part of the

[1] Received by this office on 06 October 2005.

minimum required technical information/documents unless so required under items 10[2], 15[3], or 9[4] thereof.

From the cursory reading of the foregoing rules arises the question on whether the Bids and Awards Committee (BAC) may disqualify a bidder for failing to submit the documentary requirement under Section 17.7.1 of the IRR-A as an annex to its technical proposal.

Generally, failure of a bidder to submit the documentary requirement referred to in section 17.7.1 of the IRR-A does not result to such bidder's disqualification. Notice should be taken of the fact that the documentary requirement under Section 17.7.1 is a responsibility imposed by the IRR-A upon the bidders and not upon the procuring entity. This is because the repercussions of a bidder's inability to comply with the responsibilities enumerated under Section 17.7.1 of the IRR-A operate not against the interest of the procuring entity but the bidder itself. This is supported by the fact that the subject documentary requirement is mandated to be submitted as a mere annex to the technical proposal and cannot therefore be considered as an integral part thereof that is subject to the non-discretionary "pass/fail" criterion used in determining compliance.

However, when the procuring entity requires in the bidding documents, the submission of the documentary requirement mentioned in Section 17.7.1 of the IRR-A it, in effect, recognizes the importance of a bidders' manifestation that it has observed the responsibilities prescribed in the afore-mentioned section of the IRR-A. Having categorically required the submission of a sworn statement attesting the compliance with the prescribed responsibilities, the procuring entity is deemed to have considered it a criteria for qualification, among others stated in the ITB. Thus, the failure to submit the said document necessarily calls for the bidder's disqualification.

Conflict between the Philippine Bidding Documents and the Sample Forms

In compliance with Section 6.2 of the IRR-A, the Government Procurement Policy Board, through its Resolution 10-2005[5], approved and adopted the PBDs Edition II and specified the date for its mandatory use by all procuring entities. On the basis of the said GPPB Resolution, procuring entities are required to use the PBDs in all its procurement activities starting 01 July 2005.

The Sample Forms on the other hand, has not yet been officially released by the GPPB for mandatory use by procuring entities and prospective bidders alike. It was made available by this office only for purposes of information and guidance, the use of which is not binding upon procuring entities; rather it shall serve only as basis or guide from which an improved or customized form may be developed.

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[2] For procurement of goods.
[3] For procurement of infrastructure projects.
[4] For procurement of consulting services.
[5] Issued on 26 May 2005 and entitled "Approving and Adopting the Philippine Bidding Documents for the Procurement of Goods, Civil Works, and Consulting Services Edition II as Harmonized with the ADB, JBIC and World Bank Procurement Rules".

In this regard, any conflict between the requirements provided in the PBDs and the Sample Forms should be resolved in favor of the former.

We wish to inform you at this point that this office welcomes any comment or suggestion pertaining to the context of and information provided by any of the Sample Forms in order that we may make the appropriate and necessary corrections thereto.

We trust that this clarifies matters.

Very truly yours,

JOSE MARTIN C. SYQUIA
Executive Director III