



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT

PROCUREMENT POLICY BOARD
Technical Support Group

NPM No. 04-2003

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DEAN SUSAN B. VILLEGAS

Chairwoman, Bids and Awards Committee (BAC)
The Health Services Center,
University of the Philippines (UP) Manila
Taft Avenue, Ermita, Manila

Re : Request for Clarification -

Dear Dean Villegas:

This refers to your letter dated February 3, 2003, which we received through fax on February 5, 2003, requesting for clarification as three (3) issues. For reference, we quote verbatim the queries you raised in your letter, as follows:

- 1) May the Committee adopt a policy of not requiring the submission of the eligibility requirements from those already declared eligible in a rebid where bidders were already declared eligible based on the first envelope?
- 2) May the eligibility of a bidder be valid for at least one (1) month, provided, previously declared eligible bidders will be required to submit its NFCC and a duly notarized certification that they are not barred from any government/private entity for every public bidding?
- 3) If after two (2) failed biddings due to bid offers being higher than the approved budget and negotiation is conducted; still no bidder can meet the approved budget, what alternative action can be done? Likewise, what variation if any, can you recommend to the Committee for adoption?

Re-submission of Eligibility Requirements -

Subsection 16.4 of the Implementing Rules and Regulations (IRR) of Executive Order No. 40 (E.O. 40), is couched in no uncertain terms, in that, the Bids and Awards Committee (BAC) is required to conduct "eligibility check" and determine the eligibility of prospective bidders before it receives bids therefrom. Witness Subsection 16.4, specifically states as follows:

In relation to Section 18 on submission of bids, and subject to the provisions of Section 14.6 of these IRR, the BAC shall determine if each prospective bidder is eligible to participate in the bidding by examining the completeness of each prospective bidder's eligibility requirements or statements against a checklist of requirements, using a non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid, and shall be determined as either 'eligible' or 'ineligible.' xxx

The purpose of "eligibility check" is to establish the qualification, capability and competence of a prospective bidder to participate in the bidding, as such, should the prospective bidder fails to submit any of the required eligibility documents, he shall be declared ineligible to participate in the bidding considering that under Subsection 16.2.3 of the IRR of E.O. 40, only eligible bidders shall be allowed to participate in the bidding and be subsequently awarded the contract, thus:

16.2.3. Only an eligible bidder as defined and determined in accordance with these IRR may participate in the bidding and subsequently be awarded the contract being bid out if its bid is found to be responsive in accordance with these IRR.

"Eligibility check" is an integral part of every competitive bidding, hence, the submission of eligibility requirements is necessary even if a bidder has been previously declared eligible in a prior bidding. Accordingly, a bidder must submit eligibility requirements for every bidding even if the procurement is being conducted by the same department or agency of the government.

Consequently, to consider past eligibility of a prospective bidder to succeeding or future procurements will be in utter violation of the mandate of E.O. 40 and its IRR for the BAC to conduct "eligibility check" for each procurement made through competitive bidding.

Validity Period of Bidder's Eligibility -

As already discussed, the determination of a prospective bidder's eligibility applies only to the procurement of a specific project where he intends to participate. To provide for a period of time, like one (1) or more months, for the validity of a prospective bidder's

eligibility will be of no significance considering that this situation is not contemplated in E.O. 40 and its IRR. As it is, the declaration of a bidder's eligibility shall apply only to the particular project where he submitted his eligibility requirements.

Approved Budget for the Contract; Alternative Method -

After two (2) failed biddings, the agency may resort to "Negotiated Procurement" (Section 35.1.5., IRR, E.O. 40). Despite negotiation, no bidder can comply with, or meet, the Approved Budget for the Contract (ABC), the Agency may consider revising the technical specifications for the project or consider revising the quantity of the goods to be procured. However, the ABC must be maintained since it is the upper limit or ceiling for acceptable bids. (Section 25, IRR, E.O. 40).


Conclusion -

All told, procuring entities in the course of their procurement must consider the following:

1. Conduct "eligibility check" and require the submission of eligibility requirements for each project to be procured;
2. Determination of eligibility of a prospective bidder in a previous bidding is considered as one-time eligibility, as such, there is no validity period therefor and such declaration or determination shall be binding to the government only for that specific project; and,
3. In case no bidder can meet the ABC, the agency may revise its technical specifications or reduce the quantity of the goods to be procured. The ABC shall remain as is considering that it is the ceiling for bid prices.

We trust that this clarifies matters.

Very truly yours,


JOSE LUIS C. SYQUIA
Executive Director