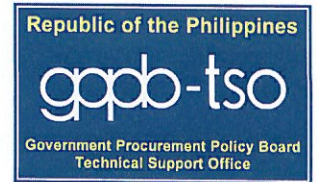




Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 002-2017

10 February 2017

MR. RONALD A. ORTILLE, CESO II
Deputy Administrator
LAND REGISTRATION AUTHORITY (LRA)
East Avenue cor. NIA Road, Quezon City

Re: Change in Procurement

Dear Mr. Ortille:

This refers to your letter seeking our opinion on the regularity of LRA's procurement where it changed its procurement approach from purchase of two (2) elevator units to modernization of its existing elevator units.

It is represented that the Department of Budget and Management (DBM) issued Special Allotment Release Order (SARO) to LRA in the amount of P17.582 Million, which included the purchase of 2 units passenger elevator worth P7 million to replace the existing units. After a failure of bidding for the purchase of the 2 elevator units, the Bids and Awards Committee (BAC) conducted mandatory review of the terms, conditions and specifications of its bidding documents, where it was discovered that the shaft of the 2 existing elevator units is no longer compatible with the current models of elevators, such that, if LRA insists on the replacement of the elevators, it would necessitate the total demolition of the said shaft to accommodate the current models. This would then require a major reconfiguration of the structural and architectural designs of the 4-storey building. In addition, according to the service maintenance provider, the existing elevator units are not actually encountering any breakdown but that it only needs an upgrade or replacement of the controller, hall door and door operator.

By reason of the findings, the LRA decided to revise the scope of work and specifications for the project to that of "modernization" of the 2 existing elevator units instead of replacing them. For this, a supplemental procurement plan was made and approved, with Direct Contracting as the new mode of procurement at a cost of P4.5 Million. Hence, the Honorable Deputy Administrator is now inquiring if the procurement action taken by LRA in changing its procurement from purchase to modernization is allowed under the procurement law and its associated rules.

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity (HOPE) and the Bids and Awards Committee (BAC), since these duties and responsibilities fall solely within the ambit of their authority and discretion. In this regard, we shall limit our discussion on the interpretation of relevant procurement rules and regulations pertinent to the issues presented.

Change in Scope of Work and Specifications under RA 9184

Pursuant to Sections 35.2 and 35.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, whenever a failure of bidding has occurred, the Procuring Entity (PE) is required to conduct a mandatory review of the terms, conditions, and specifications in the bidding documents, including its cost estimates. Based on the findings during the mandatory review, the procuring entity may revise and agree on a new set of technical specifications; and, if necessary, may adjust the amount of the Approved Budget for the Contract (ABC), subject to the required approvals under the IRR.

Consequently, the PE may change its scope of work or specifications, including the ABC, based on a finding that the original scope of work or specifications would not be compatible with the existing facility and would therefore necessitate a major reconfiguration of the structural and architectural designs of the PE's existing 4-story building. Otherwise, a re-bidding on the original scope of work or specifications might result only to another failure of bidding and further delay in the procurement project.

In sum, during the conduct of the mandatory review, the specifications provided for in the first failed bidding may be revised, and the PE may agree on a new scope of work or specifications, and adjust the ABC, if necessary, for the second competitive bidding or a more applicable alternative method of procurement, subject to the required approvals under existing budgeting, accounting and auditing rules.

We hope that 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 there be other concerns, please do not hesitate to contact us.

Verv. truly yours
(sgd.)

~~DENIS S. SANTIAGO~~
Executive Director V

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