

NPM No. 12-2018

13 April 2018

AR. SUSANA V. NONATO
BAC Chairperson
NATIONAL HOUSING AUTHORITY (NHA)
Quezon Memorial Elliptical Road, Diliman,
Quezon City 1100

**Re: Procurement of Goods and Services; List of Equipment
and Proof of Ownership Procurement of Goods -**

Dear AR. Nonato:

This refers to your letter requesting our opinion on whether the Bids and Awards Committee (BAC) correctly disqualified a bidder for the procurement of trucking services because of non-submission of the list of equipment and proof of ownership of at least 25% of the trucks.

It is represented that in the Technical Specifications you provided in the Bidding Documents, referred to as Terms of Reference (TOR), there is a provision that says: "to fully satisfy items 3.10 and 3.11, the bidder must own at least twenty five percent (25%) of the required number of trucks pledged to be utilized during the relocation operation per day." In addition, there was a statement in the Bid Data Sheet (BDS) that "bidders must consider the provisions of the attached approved TOR in the preparation of their bids." In this regard, a bidder questioned the failure of another bidder to submit the list of owned equipment together with its supporting documents. Hence, after its disqualification, a request for reconsideration was filed by the non-compliant bidder.

At the outset, it is noteworthy to emphasize that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) only render policy and non-policy opinions, respectively, on issues pertaining to the interpretation and application of our procurement laws, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from the courts having actual jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the Bids and Awards Committee (BAC), since these duties and responsibilities fall solely within the ambit of its authority and discretion as sanctioned by law. Additionally, the determination of the legality and/or validity of the actions and decisions of the BAC including contracts emanating therefrom is not within the express mandate of the GPPB.

We wish to clarify that Procuring Entities (PEs) are proscribed from requiring additional eligibility requirements. For purposes of determining the eligibility of bidders, only the documents mentioned in Section 23.1 for the procurement of Goods and Infrastructure projects and Section 24.1 for the procurement of Consulting Services of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 are required. The PE cannot include another requirement to, nor delete any requirement from, the identified list of eligibility requirements. This is because the list of minimum eligibility requirements under the 2016 IRR of RA 9184 has already been streamlined¹ alongside the governing principle of government procurement, *i.e.* a streamlined government procurement process.² The rationale for this is to allow greater participation, enhance competition among prospective bidders, and reduce transaction costs.³

On the other hand, the authority of PEs in imposing additional documentary requirements during competitive bidding stage is recognized. But this is limited only to those sanctioned by the 2016 IRR of RA 9184, *i.e.* duly notarized Secretary's Certificate pursuant to Section 25.3 of the same IRR, other documents related to the financial component as stated in the BDS⁴, and other appropriate licenses and permits required by law and stated in the Bidding Document pursuant to Section 34.2 of the 2016 IRR of RA 9184.

Nonetheless, the list of equipment and proof of ownership of at least 25% of the trucks to be utilized for the project may be included as part of the requirements under the Technical Specifications of the Bidding Documents, if based on PEs determination, such requirement is necessary for the procurement at hand. The Bidding Documents contain all the specific requirements, limitations and parameters of the procurement activity, as determined by the PE, which bids will be compared and evaluated for determination of compliance or responsiveness. Thus, Section 17.2 of the 2016 IRR provides that "[T]he specifications and other terms in the Bidding Documents shall reflect the necessary specifications required to meet the needs of the Procuring Entity in clear and unambiguous terms."

As such, additional specifications may be required by the procuring entity as long as it is necessary to meet its needs and must not unduly restrict competition. Moreover, the technical specifications must be based on relevant characteristics, functionality and/or performance requirements, as stated in Section 18 of the 2016 IRR. Accordingly, non-compliance by the bidder with the Technical Specifications would be a ground for disqualification.

In sum, we wish to clarify that Procuring Entities are prohibited from requiring additional eligibility requirements other than those mentioned in Section 23.1 for the procurement of Goods and Infrastructure projects and Section 24.1 for the procurement of Consulting Services of the 2016 IRR of RA 9184. However, Procuring Entities may require additional documents, as clearly stated in the bidding documents, during competitive bidding stage only with regard to those sanctioned by the 2016 IRR or other documents related to the financial component as stated in the BDS, and other appropriate licenses and permits required by law pursuant to Section 34.2 of the 2016 Revised IRR of RA 9184. Moreover, the list of

¹ NPM No. 79-2013 dated 20 September 2013.

² Section 3(c) of the IRR of RA 9184.

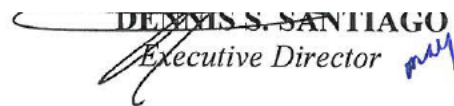
³ NPM No. 65-2009 dated 17 December 2009.

⁴ Clause 13.1 of the Philippine Bidding Documents for the Procurement of Goods and Infrastructure Projects in relation to Section 25.3 of the IRR of RA 9184.

equipment and proof of ownership of at least 25% of the trucks to be utilized for the project may be included in the technical specifications required by Procuring Entities in the Bidding Documents, if based on their careful determination, such specific requirement, limitation, or parameter is necessary for the procurement at hand and must not unduly restrict competition.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours,
(sgd.)


DENNIS S. SANTIAGO
Executive Director

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