

NPM No. 024-2017

11 December 2017

MR. JULIUS L. JUANITO

Supervising Administrative Officer

WEST VISAYAS STATE UNIVERSITY (WVSU) MEDICAL CENTER

SUPPLY OFFICE

E. Lopez Street, Jaro, Iloilo City

Re: Technical Specifications

Dear Mr. Juanito:

This refers to your electronic mail inquiring whether the technical specifications for your procurement of Intravenous (IV) fluids are correct.

Based on your representation, the West Visayas State University (WVSU) Medical Center procured IV fluids, which are required to be in plastic packaging. However, one of the bidders, whose IV fluids are contained in glass bottles, contended that requiring the IV fluids be packaged in plastic is unfair and discriminatory. Hence, this inquiry.

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. We have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since this office has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, except courts of competent jurisdiction, 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.

Specifications Based on Need -

Section 7.3.2 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provides that based on the specific needs, the end-user or implementing units of the Procuring Entity (PE) shall be responsible for the preparation of all documents necessary for the procurement activity, including but not limited to, the technical specifications, scope of work, or terms of reference. In the preparation of technical specifications, procuring entities are presumed to have carefully considered the necessity and underlying reason(s) for the procurement of the intended goods based on its specific needs.



Specifications Should Not Arrest Market Participation -


Section 17.2 of the 2016 revised IRR of RA 9184 provides that “[t]he specifications and other terms in the Bidding Documents shall reflect necessary specifications required to meet the needs of the Procuring Entity in clear and unambiguous terms.” Thus, it is the discretion of the WVSU Medical Center to require that the IV fluids be in plastic packaging based on its determined needs. It is worthy to stress, however, that in the development of the technical, performance, functionality and environmental requirements for a specific project procurement, the end-user or implementing unit shall not craft such specifications so as to forfeit or arrest wider participation of market operators, such as when specifications are patterned after, molded-to-form or tailor-fitted to a specific brand, product or design, that would prevent other market operators to participate.

Summary -

The PE has the authority and is in the best position to determine the technical specifications for a specific project, including the performance, functionality and environmental requirements, based on its identified needs and the attendant circumstances to effectively meet such need without arresting or forfeiting wider market participation. The bidder complying with the necessary technical specifications required by the PE, and whose proposal is determined to be the “lowest calculated and responsive bid” shall be awarded the contract.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular 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.

Very truly yours
(sgd.)

Executive Director 

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