

NPM No. 063-2017

21 December 2017

MS. MARIA TERESA M. BAHIA

Authorized Representative

J.L. BAHIA CONSTRUCTIONS AND SUPPLY

<materesahm@yahoo.com.ph>

Re: Accreditation for Infrastructure Projects -


Dear Ms. Bahia:

This refers to your electronic mail seeking clarification on whether accreditation by a particular procuring entity, apart from registration in the Philippine Government Electronic Procurement System (PhilGEPS), is required in the procurement of infrastructure projects under Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR).

As represented, you are already registered as a PhilGEPS Platinum member. However, your bid was declared ineligible despite meeting the eligibility criteria under Section 23.4.2 of the 2016 IRR of RA 9184. In connection with this, you are inquiring what your violations are under RA 9184 and its 2016 IRR to have been declared ineligible.

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 and the Bids and Awards Committee, 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.

Accreditation System –

Accreditation by a procuring entity, apart from the registration with the Philippine Government Electronic Procurement System (PhilGEPS), is not a requirement to be able to participate in the procurement of infrastructure projects. Accreditation is not consistent with RA 9184 and its 2016 IRR. Only the eligibility requirements under Sections 23 and 24 of the 2016 IRR of RA 9184 are the criteria required to determine whether or not a prospective bidder may be eligible to participate in government procurement. 

As we previously explained in a Non-Policy Matter (NPM) Opinion¹, implementation of an accreditation system by Procuring Entities is not consistent with the Procurement law, its rules and regulation, thus:

The enactment of RA 9184 brought about major reforms in the procurement system, the most significant of which is the use of competitive bidding in all government procurement as a matter of policy. Consequently, the creation of an accreditation system is not in accordance with the mandate of the present procurement law because it in fact contravenes the very basic principles of competitive bidding. As it was previously discussed in Non-Policy Matter 28-2005, the establishment of an accreditation system within the agency would limit the participation of bidders only to the accredited suppliers, to the exclusion and prejudice of the bidders in the market.


From the foregoing, accreditation by a particular procuring entity, apart from the registration with Philippine Government Electronic Procurement System (PhilGEPS), is not required in the procurement of infrastructure projects. However, a registration mechanism within the Procuring Entity for purposes of maintaining a roster of bidders participating in the agency is allowed, provided that it functions only as a registration system, such that even if a bidder is not registered s/he will still be allowed to participate and bid as opposed to an accreditation system where only those who are accredited or pre-qualified will be allowed to bid.

PCAB License and Registration -

Section 23.4.2 of the 2016 IRR of RA 9184 provides the eligibility criteria for the procurement of Infrastructure Projects, including a Philippine Contractors Accreditation Board (PCAB) license and registration. Under Section 23.4.2.3, the persons/entities enumerated in Section 23.4.2.1 may participate in competitive bidding if he has been issued a license by the PCAB to engage or act as a contractor in accordance with RA 4566².

Based on the foregoing, while accreditation from another agency is not required for the procurement of infrastructure projects, registration in the PCAB and PhilGEPS are required for eligibility and/or post-qualification in the procurement of infrastructure projects.

Bidder's Eligibility -

Section 23.6 of the 2016 Revised IRR provides that notwithstanding the eligibility of a bidder, the Procuring Entity (PE) concerned reserves the right to review the qualifications of the bidder at any stage of the procurement process if the PE has reasonable grounds to believe that a misrepresentation has been made by the said bidder, or that there has been a change in the bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the bidder which will affect the capability of the bidder to undertake the project so that it fails the eligibility criteria, the PE shall consider the said bidder as ineligible and shall disqualify it from obtaining an award or contract, in accordance with Rules XXI, XXII, and XXIII of the IRR. 

¹ NPM No. 033-2011 dated 28 December 2014

² An Act Creating the Philippine Licensing Board for Contractors, Prescribing its Powers, Duties and Functions, Providing Funds Therefor, and for Other Purposes

For further guidance, please note that as provided in Section 30.1 of the IRR of RA 9184, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary “pass/fail” criterion. If a bidder submits the required document, it shall be rated “passed” for that requirement, and rated “failed” if no document is submitted or if the document submitted is **incomplete** or **patently insufficient**.⁴

Summary -

In sum, we wish to reiterate the following, to wit:

- (1) Accreditation by a particular procuring entity, apart from registration in the Philippine Government Electronic Procurement System (PhilGEPS), is not required in the procurement of infrastructure projects. However, a registration mechanism within the Procuring Entity for purposes of maintaining a roster of bidders participating in the agency is allowed, but it should not operate as an accreditation or pre-qualification system that only those who are accredited or pre-qualified shall be allowed to bid;
- (2) For the procurement of Infrastructure Projects, PhilGEPS and PCAB registration is required; and
- (3) The PE may exercise its right to review the qualifications of the bidder at any stage of the procurement process despite the eligibility of the bidder. In this regard, a prospective bidder may address its inquiry with the Procuring Entity relative to the violation it committed that gave rise to its disqualification.

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.

(sgd.)

~~DELMINO SALPIAGU~~
Executive Director V *mm*

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⁴ NPM Opinion No. 017-2013, dated 19 December 2013.