

NPM No. 081-2017

29 December 2017

MR. AHIMADRU LOLOLOL
Bbb3aaaa2@gmail.com

Re: Limited Period of the Availability of the Bidding Documents; Submission of Bids and the Bidding Process -

Dear Mr. Lololol:

This refers to your electronic-mail requesting for opinion on the following:

1. Whether or not the practice of the Municipality of Pasacao, Camarines Sur in setting the availability of the Bidding Documents for its procurement of infrastructure projects for a period of only four (4) or five (5) days, and requiring the bid submission within the same period is valid; and
2. Whether or not the practice of the same Municipality in conducting the entire bidding process for only one (1) week is valid.

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 courts having competent 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.¹ Thus, we shall limit our opinion on the applicable law and rules on the matter.

Period for the Availability of Bidding Documents -

On the availability of Bidding Documents. Section 17.3 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Government Procurement Reform Act, mandates the BAC to make available the Bidding Documents from the time the Invitation to Bid (IB) is first advertised or posted until the deadline for submission and receipt of bids. The use of the word “shall” in Section 17.3 underscores its mandatory character. Thus, the BAC cannot limit the availability of the Bidding Documents at a date earlier than that mandated by Section 17.3 of the IRR, to do otherwise would be in violation of the mandatory provision of the law and its associated rules.

¹ NPM No. 111-2014, dated 07 November 2014.

Timeline for Submission of Bids -

Section 25.5 of the same IRR provides that for infrastructure projects, the maximum periods to be observed from the last day of posting of the IB up to the submission and receipt of bids are fifty (50) and sixty five (65) calendar days for projects with an ABC of Fifty Million Pesos and below, and above Fifty Million Pesos, respectively. In line with this, please note that Annex "C" of the 2016 IRR provides the earliest possible time and maximum period allowed for each stage of the procurement process.

We wish to clarify that the procuring entity may adopt a shorter period than that provided in Section 25.5 of the 2016 IRR for the deadline of submission and receipt of bids as allowed under Annex "C." Based on the table for the earliest possible time in Annex "C," and considering the details of the Project *vis-à-vis* the relevant provisions of the IRR, the earliest possible time within which the submission and receipt of bids for an infrastructure project can be conducted is twenty (20) calendar days from the first day of advertisement/posting of the IB. This is under the presumption that the pre-bid conference is conducted the next day after the last day of advertisement/posting of the IB, *i.e.*, the eighth day, and the procuring entity adopted the minimum period between the pre-bid conference and the submission and receipt of bids, *i.e.*, twelve (12) calendar days.

Period of the Bidding Process -

As regards the conduct of the bidding process in one (1) week, RA 9184 provides that the procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned. The law provides that the different procurement activities shall be completed within reasonable periods to be specified in the IRR.

In this regard, the 2016 IRR, particularly its Annex "C," provides for the recommended earliest possible time for the procurement of infrastructure projects, which is twenty six (26) days. Thus, a competitive bidding process for infrastructure project completed within one (1) week could be regarded as non-compliant with RA 9184 and its 2016 IRR.

In sum, we wish to stress the following:

1. The BAC shall not limit the period of availability of the Bidding Documents at a date earlier than that mandated by Section 17.3 of the 2016 IRR, as this is violative of the mandatory provisions of the 2016 IRR;
2. The earliest possible time for the submission and receipt of bids for an infrastructure project can be conducted is twenty (20) calendar days from the first day of advertisement/posting of the IB; and
3. A competitive bidding process for the procurement of infrastructure projects completed in one (1) week could be regarded as non-compliant with RA 9184 and its 2016 IRR.



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

(sgd.)

~~XXXXXXXXXXXXXXXXXXXX~~
Executive Director V

//sd2 JF-f