

**NPM No. 085-2017**

29 December 2017

**RUBY ANGELICA C. GALICANO**  
*Chairperson, Bids and Awards Committee (BAC)*  
**CARCAR WATER DISTRICT (CWD)**  
San Vicente Ferrer St., Pob. I,  
Carcar, Cebu

**Re: ISO Certification Requirement -**

Dear Ms. Galicano:

This refers to your letter inquiring on the following:

- 1) Whether it is proper for the BAC to have issued a Supplemental/Bid Bulletin in the absence of any bidder during Pre-Bid Conference and if it is under any obligation to explain to its prospective bidder the rationale of its Supplemental/Bid Bulletin;
- 2) Whether a claim by an opposing bidder that there is only one capable supplier for a particular bidding may be used as basis for effectively removing a technical specification requirement despite the insistence of the end-user for its inclusion; and
- 3) Whether water districts are prohibited from requiring a three (3)-year continuing certification for ISO 14001:2004.

It is represented that CWD's sole bidder was post-disqualified for failing to comply with the 3-year continuing ISO 14001:2004 Certification requirement in your technical specifications. For this reason, the said bidder alleged that only one company is compliant on such a requirement and thus requested that they be provided a valid reason and legal basis for including such a requirement. It also complained the issuance of the supplemental/bid bulletin despite the absence of bidders during the pre-bid conference.

At the outset, please note that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) only render policy and non-policy opinions respectively, on issues purely relating 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 under the law. Likewise, the GPPB and the GPPB-TSO do not have the authority to decide for and in behalf of a procuring entity, nor dictate upon the procuring entity how to decide relative to its procurement activities. Hence, this office has consistently refrained from passing upon decisions of the BAC or even by the Head of the Procuring Entity (HoPE) relative to the application of and compliance with Republic Act (RA) 9184, the Government Procurement Reform Act, and its

2016 revised Implementing Rules and Regulations (IRR). It is in this wise that we shall limit our discussion on the relevant provisions of the procurement law, rules and regulations pertinent to the issue presented.

### **Issuance of Supplemental/Bid Bulletin -**

In the preparation of technical specifications, procuring entities are presumed to have carefully considered the necessity and underlying reason for the procurement of the intended goods.<sup>1</sup> Consequently, '[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.'<sup>2</sup>

For guidance, under Section 22.5.1 of the 2016 IRR of RA 9184, requests for clarification(s) on any part of the Bidding Documents or for an interpretation must be in writing and submitted to the BAC of the Procuring Entity (PE) concerned at least ten (10) calendar days before the deadline set for the submission and receipt of bids. The BAC shall respond to the said request by issuing a Supplemental/Bid Bulletin, duly signed by the BAC Chairperson, to be made available to all those who have properly secured the Bidding Documents, at least seven (7) calendar days before the deadline for the submission and receipt of bids. The Supplemental/Bid Bulletin is also issued upon the BAC's initiative to clarify or modify any provision of the Bidding Documents at least 7 calendar days before the deadline for submission of bids.

In other words, clarifications, modifications, changes or amendments to the Bidding Documents must be reflected through the issuance of the corresponding Supplemental/Bid Bulletin, and posted in the websites of the Philippine Government Electronic Procurement System (PhilGEPS) and the concerned Procuring Entity. This is important to inform the prospective bidders of the revised requirements, if any, and to afford them the opportunity to comply with these additional requirements. Consequently, if no Supplemental/Bid Bulletin is issued to reflect changes in the Bidding Documents, or even if the same was issued but not posted at the PhilGEPS' and PE's websites, the original provisions contained in the Bidding Documents remain and the prospective bidder, including the winning bidder, cannot be compelled to abide or comply with the changes made by the PE.<sup>3</sup>

From the foregoing, the BAC may issue a Supplemental/Bid Bulletin upon its own initiative to clarify or modify any provision of the Bidding Documents within the prescribed period, regardless of the fact that no prospective bidder attended the Pre-Bid Conference.

### **ISO Certification as part of the Technical Specifications -**

As to whether the PE may require an ISO 14001:2004 Certification<sup>4</sup> even if only one supplier could comply with the said requirement, we had an occasion to discuss the same matter in NPM No. 054-2015<sup>5</sup>, where the procuring entity also inquired on the

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<sup>1</sup> NPM No. 009-2015 dated 7 April 2015.

<sup>2</sup> Section 17.2, IRR of RA 9184.

<sup>3</sup> NPM No. 024-2013 dated 27 March 2013.

<sup>4</sup> ISO 14001:2004 specifies requirements for an environmental management system to enable an organization to develop and implement a policy and objectives which take into account legal requirements and other requirements to which the organization subscribes, and information about significant environmental aspects. [http://www.iso.org/iso/catalogue\\_detail?csnumber=31807](http://www.iso.org/iso/catalogue_detail?csnumber=31807) accessed on 8 October 2015.

<sup>5</sup> Dated 9 October 2015.

reasonableness of requiring ISO 14001:2004 Certification as a technical eligibility for the procurement of main/distribution pipes through public bidding. Thus:

Pursuant to Section 1 of Executive Order 301, procuring entities of the Executive Department are directed to include environmental criteria in public tenders, *whenever possible and practicable*. In line with this, specifications and requirements may be established for products and services to be considered environmentally advantageous.

Technical specifications of a procurement project serve a twin-purpose. They present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured, and at the same time, permit the widest possible competition. It needs to be set in a precise manner to identify the actual requirements of the PE, but should not be couched in terms that are too limiting that it becomes restrictive and violative of the principle of competition. In the specification of standards for equipment, materials, and workmanship, recognized Philippine and International Standards should be used as much as possible. Since ISO Certification is one of the recognized international standards, it may be included in the technical specifications for a procurement project.

However, it bears stressing that in using ISO Certification as standard, the specifications must have a direct relation to the agency's needs *vis-à-vis* the goods or works to be procured that will satisfy the identified needs. In particular, the specification must be relevant and should serve a particular important purpose, and that the parameters required can be validly measured, tested, proven and/or confirmed. Additionally, the specifications should also state that equipment, materials, and workmanship that meet other authoritative standards, and which ensure that at least a substantially equal quality than the standards mentioned, will also be acceptable to enhance competition among prospective bidders.

Accordingly, it is up to the procuring entity to prepare and craft detailed technical specifications in their bidding documents; and it is incumbent upon them to show that the specifications or conditions set forth are based on relevant characteristics and/or performance requirements. An ISO requirement may be acceptable so long as the procuring entity can show that this is necessary, imperative and relevant based on its needs, and that these standards can be validly measured, tested, proven and/or confirmed.

In this case, the 3-year continuing ISO requirement may be included as part of the specifications, if the PE deems it necessary, imperative and relevant based on its needs, provided that such requirement will not be too limiting that it becomes restrictive and violative of the principle of competition, and the standards required can be validly measured, tested, proven and/or confirmed. If not, the PE has the discretion to remove such specification.



## Summary

All told, we wish to clarify the following:

1. Supplemental/Bid Bulletins are issued by the BAC to answer requests for clarification or interpretation, and upon BAC's initiative to clarify or modify any provision of the Bidding Documents; and
2. Whenever possible and practicable, an ISO Certification may be included in the technical specifications for a procurement project, provided that such requirement will not be too limiting that it becomes restrictive and violative of the principle of competition, and the standards required can be validly measured, tested, proven and/or confirmed.

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.

Very truly yours  
(sgd.)

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Executive Director *V. [Signature]*

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