



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 118-2017

29 December 2017

MR. ALIESTHER TAN

Sales Officer

R. DAN AND CO., INC.

20 Alfonso St., Rosario, Pasig City

Re: Technical Requirement -

Dear Mr. Tan:

This refers to your letter seeking our opinion relative to your post-disqualification due to the Bids and Awards Committee's (BAC) finding that you failed to comply with the contractor's qualification in the Terms of Reference, which states that "the contractor shall be a duly authorized installer and technical representative of the manufacturer". According to the Notice of Disqualification, R. Dan only submitted a letter where the manufacturer, Ansir Systems, only committed to provide all the technical back-up to execute the project and did not expressly and equivocally state that your company, R. Dan, is an authorized installer and technical representative of manufacturer.

At the outset, please be advised that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) have no jurisdiction to rule over actual controversies with regard to the conduct of the bidding or the validity of the ensuing contract for the project since we have 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.

Thus, the resolutions of the BAC and the decision of the Head of the Procuring Entity (HOPE) in the exercise of their respective duties, functions and responsibilities under the procurement law and associated rules shall be recognized including their corresponding effects. In this regard, we recognize the authority and discretion of procuring entities to identify the technical specifications and qualifications required for its projects based on its needs, and whether the bidder is responsive or not in the specifications and conditions set forth in its bidding documents.

Post-Qualification Process;
Compliance with Requirements -

Section 34 of Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations provide for the objective process of Post-Qualification. Particularly, Section 34.1 provides that "[t]he Lowest Calculated Bid/Highest Rated Bid shall undergo post-qualification in order to determine

whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents.” In addition, under Section 34.3, [t]he post-qualification shall verify, validate, and ascertain all statements made and documents submitted by the bidder with the Lowest Calculated Bid/Highest Rated Bid, using non-discretionary criteria, as stated in the Bidding Documents...”

A careful perusal of the document presented, which you likewise submitted during the bidding, shows that the Technical Support Certificate supposedly certifying your company as an authorized and qualified installer was also issued by your company; and the letter of Ansir Systems only confirmed their agreement with your company that they will provide technical back-up for the execution of the project. The Technical Support Certificate, on its face, does not expressly and unequivocally states that your company is an authorized installer and technical representative, as required in the Terms of Reference of the bidding documents of the Procuring Entity. Thus, following the relevant rules and procedures under Section 34 of the 2016 IRR, the BAC found basis for post-disqualification, due to non-compliance with the project requirements as stated in the Procuring Entity’s Terms of Reference for the project.

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.

(sgd.)

Executive Director *V. RAM*