

NPM No. 008-2016

21 March 2016

[REDACTED]

Re: Capitalization of Markings on the Bid Envelopes

Dear [REDACTED]:

This refers to your letter dated 5 February 2016, requesting our opinion relative to your disqualification from public bidding for the *Waterproofing of Roof-Deck Slab t4 Pumping Station, STP Bldg. 1&2 Sub-Station and Admin Sub-Station 1&2* of Manila International Airport Authority (MIAA).

It is represented that your company's bid was disqualified outright and remained unopened during the scheduled opening of the bids because the format on the bid envelope's title and markings were not in capital letters as provided for in Instruction to Bidders (ITB) Clauses 20.1,¹ 20.2² and 20.4³ of the Philippine Bidding Documents PBD for the procurement of Goods.

At the outset, we wish to stress that we have no authority or 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 apart from courts having actual 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 sanctioned by the law.⁴ In this regard, we shall limit our discussion on the

¹ 20.1. Bidders shall enclose their original eligibility and technical documents described in ITB Clause 12 in one sealed envelope marked "ORIGINAL - TECHNICAL COMPONENT", and the original of their financial component in another sealed envelope marked "ORIGINAL - FINANCIAL COMPONENT", sealing them all in an outer envelope marked "ORIGINAL BID".

² 20.2 Each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as "COPY NO. ___ - TECHNICAL COMPONENT" and "COPY NO. ___ - FINANCIAL COMPONENT" and the outer envelope as "COPY NO. ___", respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope.

³ 20.4 All envelopes shall:

(a) contain the name of the contract to be bid in capital letters;

(b) bear the name and address of the Bidder in capital letters;

...

⁴ NPM No. 46-2013 dated 11 June 2013.

interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented.

As we have clarified in our previous opinions⁵, it must be observed that the term used for the requirements for sealing and marking of bids is “shall”. This connotes the mandatory nature of the rules as the ordinary signification of the word “shall” is imperative.⁶ For this reason, we have consistently stressed that failure to observe the rules on proper sealing and marking of bids may serve as a ground to disqualify a bidder.⁷ Hence, it is our opinion that the requirements indicated under ITB Clause 20 of the PBDs for the Procurement of Goods shall be strictly complied with by the prospective bidders; otherwise, it gives basis for the Procuring Entity to disqualify the non-compliant bidder.

It bears stressing, however, that the rationale of implementing strict compliance with the rules for marking and sealing is to maintain the integrity of the submitted bid documents. On the other hand, notwithstanding the use of the word “shall” that connotes command and compulsion, if the failure to comply with the markings does not affect the integrity of the documents, or a strict interpretation of the requirements would lead to absurdity and injustice to bidders, the same should not be considered as ground for disqualification. This interpretation is consistent with the governing principles of government procurement under Republic Act (RA) No. 9184, that is, competitive and streamlined procurement process, alongside concepts of efficiency and fairness in government contracting.

In the case of *Pangandaman v. COMELEC*,⁸ petitioner argues that the provision it cited is mandatory because of the word “shall,” however, the Supreme Court ruled that:

The provision invoked cannot be construed in the manner as argued by petitioner for it would defeat the purpose and spirit for which the law was enacted...a statute must be read according to its spirit and intent. Thus, a too literal interpretation of the law that would lead to absurdity prompted this Court to —

. . . [a]dmonish against a too-literal reading of the law as this is apt to constrict rather than fulfill its purpose and defeat the intention of its authors. That intention is usually found not in “the letter that killeth but in the spirit that vivifieth” . . .

From a practical viewpoint, the purpose of the requirement on marking the bid envelopes in capital letters is for ocular facility and easy identification of the submitted bids, that is, the original bid envelope *vis-à-vis* the first and second copies. Nevertheless, failure by the bidder to write, type or print the markings in “ALL CAPS” or “CAPITAL LETTERS” does not in any way affect the sanctity and integrity of the bidding documents, especially when the necessary information were all reflected except that they were in small letters.

⁵ NPM Nos. 56-2014, dated 15 October 2014 and 118-2014 dated 10 November 2014.

⁶ *Diokno v. Rehabilitation Finance Corporation*, 91 Phil. 608, 611 (1952).

⁷ NPM No. 36-2013 dated 10 April 2013 and NPM No. 145-2012 dated 11 November 2012.

⁸ G.R. No. 134340 November 25, 1999.

Accordingly, we wish to reiterate that writing, typing or printing the markings on the Bid Envelopes in small letters format, instead of "ALL CAPS" or "CAPITAL LETTERS", should not serve as basis to disqualify a bidder since this does not violate the sanctity and integrity of the submitted bids. Otherwise, a literal interpretation of the requirement constricts rather than fulfills its purpose and in the process, runs counter to the principles of competition, efficiency and fairness in government contracting.

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.)

~~DENNIS S. SANTIAGO~~
Executive Director 

