



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 019-2015

21 March 2016

[REDACTED]

Re: Demonstration Prior to Bidding

Dear [REDACTED]:

This is in response to your letter inquiring whether the procuring entity can require demonstration of the item to be bid prior to the actual bidding. You seek clarification on the following:

1. Whether the demonstration of the item prior to bidding will amount to a "prequalification" requirement abandoned with the enactment of Republic Act (RA) No. 9184; and
2. Whether this prior demonstration will result in "pre-determination" of the bid results as the demonstration would be the basis for post-qualification.

Anent the first query, it is our considered view that if the required demonstration of the item to be bid, will be a criterion for eligibility or qualification of bidders, such that the subsequent bidding process will be limited to those who participated in the demonstration activity, then the required demonstration will amount to "pre-qualification," which is proscribed under Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR). However, if the information and result of the demonstration will only be used by the procuring entity in coming up with its technical specifications, and equal opportunity shall be extended to all prospective bidders who are capable of complying with the procuring entity's requirements, then the demonstration will not fall within the ambit of "prequalification" activity proscribed by RA 9184.

As regards the second query, we are of the view that the demonstration conducted prior to bidding will not result in the pre-determination of the bid results if such was conducted only for the purpose of aiding the procuring entity in crafting its technical specifications and parameters, which may even be regarded as part and parcel of its market research approach. Such prior demonstration cannot be the basis for post-qualification results since the post-qualification process, which includes verification, validation and ascertainment, including the testing, of the goods/product for compliance with the technical requirements under Section 34 of RA 9184 and its IRR, is mandatorily conducted for each and every project submitted for competitive bidding. The objective of which is to determine

whether the bidder complies with and is responsive to all the legal, technical and financial requirements and conditions specified in the bidding documents.

Moreover, Section 34.2 of the IRR of RA 9184 explicitly requires the bidder with the LCB, within three (3) calendar days from receipt by the bidder of the notice from the BAC, to submit the following: a) latest income and business tax returns; b) certificate of PhilGEPS registration or PhilGEPS Registration Number if the procuring entity is a Philippine foreign office or post; and c) other appropriate licenses and permits required by law and stated in the Bidding Documents. Hence, the demonstration conducted prior to actual bidding may not be used to predetermine the results of the post-qualification in view of the processes that need to be undertaken and the additional documents that need to be complied with by the bidders with the LCB during the post qualification stage of the bidding process.

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

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