

NPM No. 058-2016

3 November 2016

[REDACTED]

Re: Clause 5.1 of the Bid Data Sheet (BDS); Additional Eligibility Documents; Ten-year Business Existence of Bidder

Dear [REDACTED]:


This refers to your letter sent thru e-mail inquiring on the legality of Clause 5.1 of the Bid Data Sheet relative to the procurement of Starter Toolkits by the Technical Education and Skill Development Authority (TESDA), thus:

5.1 Additional Eligibility of the Bidders:

- 1. The Bidder must have been in the business for ten (10) years from date of opening of bids;*

At the outset, we wish to stress that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) only render policy and non-policy matter opinions, respectively, on issues purely relating to the interpretation and application of the 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 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 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 discussion on the interpretation of the procurement law and its associated issuances.

Bid Data Sheet (BDS) Clause 5.1

For your guidance, BDS Clause 5.1 of the Philippine Bidding Documents for Goods, in relation to Instructions to Bidders (ITB) Clause 5.1, refers to those bidders eligible to participate in bidding, in accordance with Section 23.5.1.1² of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. 

¹ Non-Policy Matter (NPM) No. 46-2013 dated 11 June 2013

² 23.5.1.1 The following shall be eligible to participate in the bidding for the supply of goods:

Additional Eligibility Requirements

We wish to clarify that PEs are proscribed from requiring additional eligibility requirements. For the procurement of goods, the list of eligibility requirements has been streamlined/simplified such that only those requirements enumerated under Section 23.1 of the IRR of RA 9184 are necessary for purposes of determining bidder's eligibility. The rationale for this is to allow greater participation, enhance competition among prospective bidders, and reduce transaction costs.³

Existence *vis-a-vis* Experience

As regards the requirement of bidder's business existence of at least ten (10) years, please note that the GPPB has no existing rule or issuance on the matter. However, in order to ensure one's technical eligibility and experience to undertake the project, the bidder shall submit its Single Largest Completed contract within the period specified in the Invitation to Bid, in accordance with Section 23.5.1.3 of the IRR of RA 9184, thus:

23.5.1.3 The prospective bidder must have completed, within the period specified in the Invitation to Bid, a single contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the National Statistics Office (NSO) consumer price indices, must be at least fifty percent (50%) of the ABC. However, in the case of Expendable Supplies, said single contract must be at least twenty five percent (25%) of the ABC. (Emphasis supplied)

Summary

All told, we wish to clarify that:

1. The GPPB and its TSO have 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;
2. Clause 5.1 of the BDS of the PBDs for Goods refers to those bidders who are allowed to participate in bidding, and does not, in any way, allow additional eligibility requirements, as the same are limited to those enumerated under Section 23.1 of the IRR of RA;

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- a) Duly licensed Filipino citizens/sole proprietorships;
 - b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
 - c) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
 - d) Cooperatives duly organized under the laws of the Philippines, and of which at least sixty percent (60%) belongs to citizens of the Philippines; or
 - e) Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.

³ NPM No. 65-2009 dated 17 December 2009.

3. Instead of bidder's years of business existence, the bidder is required to submit its SLCC within the period specified by the Procuring Entity, in accordance with Section 23.5.1.3 of the IRR of RA 9184.

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 V

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