

NPM No. 062-2016

3 November 2016

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Proper Sealing and Marking of Bid Envelopes

Dear [REDACTED]:

This refers to your request for opinion relative to the proper sealing and marking of bid envelopes because another bidder did not affix his signature on the submitted sealed envelopes. Notwithstanding your objection, the procuring entity (PE) considered the said submitted envelopes, which were opened and rated, as passed.

We wish to 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 the procurement law, 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. Hence, this office has refrained from passing upon decisions of the Bids and Awards Committee or even by the Head of the PE pertaining to the determination of compliance with Republic Act (RA) 9184 or its Implementing Rules and Regulations (IRR). In this regard, we shall limit our discussions on the relevant provisions of the procurement law, rules and regulations pertinent to the issues presented.

In an earlier opinion¹, we noted that Clause 20.3 of the Instructions to Bidders, Philippine Bidding Documents for the Procurement of Goods, provides that the original and copies of the envelopes containing the technical and financial components of the bid shall be signed by the bidder, but is silent whether the same should be done on the main (outer) envelope where all the envelopes containing the original and copies of the technical and financial components of the bid are enclosed. Nonetheless, it is our considered view that a PE may require that all envelopes shall be duly signed on the sealed overlaps or flaps by the bidder or duly authorized representative in order to maintain the integrity of the documents, provided that this requirement is expressly and clearly indicated in the PE's Bidding Documents².

In our jurisprudence, the word "shall" connotes mandatory³ application, and its mandatory acceptance is distinguished from the discretion that is allowed by the use of the

¹ NPM No. 56-2014 dated 15 December 2014.

² NPM No. 99-2015 dated 13 October 2015.

³ Joseph Peter Sison, et al. vs. Rogelio Tablang, G.R. No 177011, 5 June 2009.

word "may"⁴. Hence, the sealing and marking of bids shall be considered mandatory as this is anchored on the fact that the rules on sealing and marking of bids used the word "shall". It must be emphasized that under Article 5 of the New Civil Code of the Philippines, acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

We hope 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 you have further questions, please do not hesitate to contact us.

(sgd.)

~~DENNIS S. SANTIAGO~~
Executive Director V *ms*

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⁴ *Buzabal v. Salvador*, 84 SCRA 176 citing *Dizon v. Encarnacion* 9 SCRA 714.