

**NPM No. 064-2016**

3 November 2016



**Re: Bill of Quantities**


Dear [REDACTED],

This is in response to your electronic mail requesting for clarification on the following matters:

1. Whether the recommendation of the Technical Working Group (TWG) is sufficient to disqualify Landrock Construction for submitting a non-responsive bid when it modified the quantity of an item in the Bill of Quantities issued by the Procuring Entity; and,
2. If there is a need to notify in writing Landrock Corporation that it failed in the detailed evaluation of bids considering that during the opening of bids it was determined to be the "lowest as read".

At the outset, the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) 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 consistently refrained from passing upon decisions of the BAC or the procuring entities on its procurement activities, or in this case, the disqualification of a bidder.

Based on your representation, one of the bidders, Landrock Construction was disqualified in the evaluation of bids for modifying the quantity of an item in the Bill of Quantities issued by the Procuring Entity. The disqualification is based on Section 32.2.1 of the revised Implementing Rules and Regulations of R.A. No. 9184, which provides that bids not addressing or providing all of the required items in the Bidding Documents including, if applicable, bill of quantities, shall be considered non-responsive and is automatically disqualified except if the Instructions to Bidders allow partial bids.

The Technical Working Group (TWG) is created by the BAC from a pool of technical, financial, and/or legal experts to assist them in the procurement process. TWG members are tasked to aid, particularly, in the eligibility screening, evaluation of bids and post-qualification, depending on the proficiency required and the nature of the procurement to be undertaken<sup>1</sup>. The BAC may accept or reject the findings of the TWG to support the disqualification of a bidder, in this case, Landrock Construction. 

<sup>1</sup> NPM 008-2009 dated February 02, 2009

**Whether the Modification of the Bill of Quantities  
By the Bidder Constitutes a Ground for its Disqualification**

As previously opined, bids should address or provide all of the required items in the Bidding Documents including, where applicable, Bill of Quantities, otherwise the bid shall be considered non-responsive and, thus, will be automatically disqualified.

Instructions to Bidders (ITB) Clause 15.2 of the Philippine Bidding Documents (PBDs) for Infrastructure Projects is instructive, such that the Bill of Quantities shall contain items of work for the construction, installation, testing, and commissioning of work to be done by the Contractor. Bids not addressing or providing all of the required items in the Bidding Documents including, where applicable, bill of quantities, shall be considered non-responsive and, thus, automatically disqualified. This same principle was also enunciated in our earlier opinion<sup>2</sup> where a bidder was disqualified for submitting an item which is inaccurate and did not comply with the quantity stated in the bill of quantities.

Owing to the clear and categorical statement of the IRR and the PBDs on the matter, there is no further need for interpretation, but only the implementation of this provision. Failure of the bidder to submit an offer *vis-à-vis* a requirement in the bill of quantities, by modifying the quantities, results to a non-responsive bid, and consequently, a ground for disqualification.

**Whether a Notice in Writing should be  
Issued in Favor of the Disqualified Bidder**

As to the second issue, it must be noted that RA No. 9184 and its revised IRR do not provide rules for the notification of bidders as to the result of the bid evaluation. However, Section 34.5 of the revised IRR dictates that the BAC shall immediately notify the bidder in writing that it was post-disqualified and the grounds relied upon by the BAC for such disqualification. Moreover, GPPB Circular No. 03-2012, dated 17 August 2012, provides the guidelines on the post-qualification process and notification of bidders determined by the procuring entity to be post-disqualified.

The post-qualification process involves the verification, ascertainment and validation of the documents and statements submitted by the bidder; and if Landrock Construction has already been subjected to this exercise to be determined whether it is the bidder with the Lowest Calculated and Responsive Bid (LCRB), it should be notified in writing that it was post-disqualified if it is determined that it failed to comply with the requirements of the project as stated in the bidding documents.

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 *MSH*

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<sup>2</sup> NPM 078-2013 dated September 18, 2013