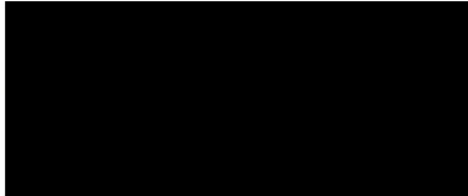


NPM No. 112-2016

6 December 2016



Re: Revision of Terms of Reference; Eligibility Documents for Small Value Procurement

Dear ,

This refers to your letter requesting our opinion relative to your procurement of consulting services for the Administration of an Overall-type Customer Satisfaction Survey through the Small Value Procurement (SVP) under Section 53.9 of the revised Implementing Rules and Regulations.

Based on your representations, the BAC has two (2) unsuccessful shortlisting for the engagement of consultants for the aforementioned project due to the fact that the three (3) invited bidders/consultants that submitted the required eligibility documents lacked the corresponding Tax Clearance Certificate. It is for this reason that our opinion is being sought, on the following issues:

1. Whether or not the Bids and Awards Committee (BAC) may revise the Terms of Reference with a condition that the winning bidder undertakes to submit an affidavit that it has no tax liability with the BIR and that it will submit its Tax Clearance before the final payment in the conduct of SVP; and
2. Whether or not the BAC has the discretion to change the list of eligibility documents to be submitted for SVP since no bidder can submit its Tax Clearance Certificate from the BIR.

Revision of Terms of Reference

The revised Implementing Rules and Regulations¹ of RA 9184 and the Guidelines for Shopping and Small Value Procurement (Guidelines) is silent on the mandatory conduct of review and evaluation of terms, conditions, specifications and cost estimates in the RFQ or RFP in case no quotations or proposals are received or there is a failure in the conduct of

¹ Refer to the 2009 revised IRR

small value procurements. Applying the rules under Sections 35.2 and 35.3² of the revised IRR in a suppletory manner, the procuring entity may review the terms, conditions and specifications in the RFQ to determine the reason for the failed bidding, and based on its findings, the BAC may revise the terms, conditions, and specifications, and if necessary, adjust the same, including the ABC, provided that the adjustments or revisions of the terms and conditions complied with the required approvals.

From the foregoing, if based on the BAC's findings, the requirement on the submission of the Tax Clearance in the conduct of small value procurement for the project is the reason for the failed procurement, the BAC may revise the Terms of Reference or the requirement for Tax Clearance with a condition that the winning bidder undertakes to submit an affidavit that it has no tax liability with the BIR and that it will submit its Tax Clearance before the final payment, provided such revision is in accordance with the documentary requirements for SVP.

Eligibility Requirements for Shopping and Small Value Procurement

In an earlier opinion³, we explained that the (2009) IRR of RA 9184 is silent on whether or not eligibility documents mentioned under Section 23.1 must be submitted when resorting to any of the Alternative Methods of Procurement, except those where competitive bidding or a semblance thereof is still present. This being the case, the Procuring Entity (PE) has the discretion to require the submission of the legal, technical, and financial eligibility documents or not, in line with Section 3(j) of GPPB Resolution No. 09-2009 which mandates the PE to validate whether it is entering into a contract with a technically, legally, and financially capable supplier, contractor, or consultant.

As such, the submission of a Tax Clearance as part of eligibility requirements rests upon the sound discretion of the Procuring Entity in case of procurements undertaken through Shopping and Small Value Procurement. However, it is incumbent upon the Procuring Entity to validate whether it is entering into a contract with a technically, legally and financially capable supplier, contractor or consultant by requiring the submission of only a few, but the most relevant, eligibility documents at the initial stage of the procurement activity so as not to defeat the principles of Alternative Methods of Procurement, couched upon economy and efficiency.

The procuring entity is given a wide discretion on the documents that will be submitted by the consultant to prove that it is technically, legally and financially capable to execute the procurement at hand. This does not however absolve the procuring entity from validating or determining if it is entering into an agreement with a capable and legitimate consultant. The procuring entity is still bound to exercise due diligence in contracting with the consultant through the documents to be submitted by the latter.



² Section 35.2 In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates.

Section 35.3 Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of this IRR.

³ NPM Nos. 077-2015 dated October 13, 2015 and NPM No. 056-2015 dated October 09, 2015

In sum, in case of failed procurement of consulting services under SVP, the BAC may revise the Terms of Reference or the requirement for Tax Clearance with a condition that the winning bidder undertakes to submit an affidavit that it has no tax liability with the BIR and that it will submit its Tax Clearance before the final payment, provided such revision is in accordance with the documentary requirements for SVP. Furthermore, as the (2009) IRR of RA 9184 is silent on whether or not eligibility documents mentioned under Section 23.1 must be submitted when resorting to any of the Alternative Methods of Procurement, except those where competitive bidding or a semblance thereof is still present, the PE has the discretion to require the submission of the Tax Clearance or not, in line with Section 3(j) of GPPB Resolution No. 09-2009.

Please take note, however, that Appendix A of the Consolidated Guidelines for Alternative Methods of Procurement or Annex "H" of the 2016 revised IRR prescribes the documents that the BAC shall require from suppliers, contractors and consultants for Alternative Methods of Procurement. The BAC shall indicate in the RFQ or RFP at what stage of the procurement process the documents shall be submitted, *i.e.* submission of offer/s, evaluation of offer/s, before issuance of Notice of Award or prior to payment.

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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