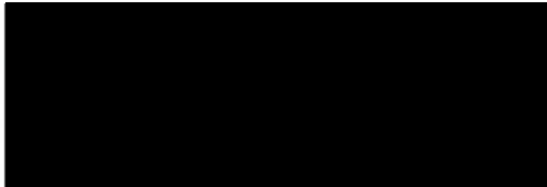


NPM No. 116-2016

6 December 2016



Re: Technical Specifications

Dear [REDACTED]:

This refers to your electronic mail (e-mail)¹ requesting for our guidance on whether it is allowed to include in the Technical Specifications for the procurement of laptops the following requirements: “Branded computer laptop must be globally known brand and at least top five worldwide vendor as per latest 2016 IDC Report.”

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy matter opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We do not have the authority under law to instruct procuring entities on how to proceed with their respective ongoing procurement activities. In this regard, we shall limit our discussion on the relevant procurement rules and regulations pertinent to the issue presented.

Competition and Reference to Brand Names

It bears stressing that requiring in the Bidding Documents, particularly in the Technical Specifications, that the Goods to be offered by the bidder shall be “branded computer laptops that must be globally known and at least top five worldwide vendor as per latest 2016 IDC Report” violates one of the governing principles of Republic Act (RA) No. 9184, that is, Competitiveness by extending equal opportunities to all suppliers, and the prohibition against reference to brand names. Such requirements effectively excluded those competent suppliers who are not internationally known and not part of the top five on the IDC Report but are capable of complying with the procuring entity’s requirements and desired output.

Since only few companies comply with the said requirements, it clearly excludes the rest who may desire to participate in the bidding, thereby defeating the concept of competition. One of the governing principles of RA 9184 is ensuring competitiveness among all private contracting parties. By limiting to specific brands or a particular standard pertinent only to certain private entities, either for a product or a set of standards, will cater to the

¹ August 23, 2016.

disadvantage of bidders whose products, although not of the same brand name, can equally comply with the procuring entity's desired characteristics and performance.

A similar issue was raised by a bidder with the GPPB-TSO when it inquired on whether the use of the Gartner's Magic Quadrant as part of the technical specifications in the procurement of software may be allowed. We rendered an opinion in NPM 134-2015² in this wise.

[T]he standards provided by Gartner Inc., may be used as a guide in developing technical specifications for various procurements but the term "Gartner Standard" cannot be expressly included or specifically stated in defining the technical requirements and in determining compliance with the technical specifications.

[T]he requirement that brands should be those included in the latest Gartner's Magic Quadrant for Global Enterprise Desktops and Notebooks cannot be specifically indicated in the technical specifications of the bidding documents as it runs counter to the very essence and principle of competition and to the prohibition against reference to brand names. [F]or the procurement of goods, specifications shall be based on relevant characteristics and/or performance requirements and not on a specific brand or "branded" goods.

Accordingly, we would like to stress that the procuring entity cannot specifically indicate as a requirement in the technical specifications that the goods to be offered by the bidder must be globally known as it runs counter to the very essence and principle of competition, and to the prohibition against reference to brand names.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular 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 *msj*

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² November 27, 2015.