

NPM No. 129-2016

29 December 2016



Re: Additional Eligibility Documents

Dear :

This refers to your letter seeking our opinion on whether requiring additional eligibility documents from the prospective bidders, such as a Certificate of No Slippage issued by the Project Management Office (PMO) of the procuring entity (PE), is allowed under Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR), or whether it can be required during the post-qualification evaluation or before contract award from the bidder having the Lowest Calculated Bid (LCB) or Lowest Calculated and Responsive Bid (LCRB).

Procuring Entities Prohibited from Requiring Additional Eligibility Documents

We wish to clarify that PEs are proscribed from requiring additional eligibility requirements. For purposes of determining the eligibility of bidders, only the documents mentioned in Section 23.1 for the procurement of Goods and Infrastructure projects and Section 24.1 for the procurement of Consulting Services of the 2016 IRR of RA 9184 are required. PEs cannot add another requirement to, nor delete any requirement from, the identified list of eligibility requirements. This is because the list of minimum eligibility requirements under the 2016 IRR of RA 9184 has already been streamlined¹ alongside the governing principle of government procurement, *i.e.* a streamlined government procurement process.² The rationale for this is to allow greater participation, enhance competition among prospective bidders, and reduce transaction costs.³

Negative Slippage

We wish to note that although the Certificate of No Slippage cannot be required as part of the eligibility documents, the rationale in requiring the Certificate of No Slippage may be addressed by Section 34.3(b)(ii)(a) of the 2016 IRR of RA 9184, which provides that:

The post-qualification shall verify, validate, and ascertain all statements made and documents submitted by the bidder with the Lowest Calculated Bid/Highest Rated Bid, using non-discretionary criteria, as stated in the Bidding Documents. These criteria shall consider, but shall not be limited to, the following:

¹ NPM No. 79-2013 dated 20 September 2013.

² Section 3(c) of the IRR of RA 9184.

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

...

Verification of availability and commitment, and/or inspection and testing for the required capacities and operating conditions, of equipment units to be owned/leased/under purchase by the bidder for use in the contract under bidding, as well as checking the performance of the bidder in its ongoing government and private contracts, if any of these ongoing contracts shows:

- a. Negative slippage of at least fifteen percent (15%) in any one project or a negative slippage of at least ten percent (10%) in each of two (2) or more contracts;

If the BAC verifies any of these deficiencies to be due to the contractor's fault or negligence, the agency shall disqualify the contractor from the award, for the procurement of Infrastructure Projects.

Accordingly, this provision may be the basis of the PE to disqualify the bidder during the post-qualification stage if it incurred a negative slippage of at least fifteen percent (15%) in any one project or a negative slippage of at least ten percent (10%) in each of two (2) or more contracts. Relatedly, in a previous opinion⁴, we stated that PE may request for the submission of additional documents from the bidder in support of the information it has provided in the bidding documents; however, non-submission of the additional supporting documents requested cannot be a ground for the bidder's post-disqualification, as a bidder may be post-disqualified only upon ascertainment, validation, and verification of its non-compliance with the legal, technical, and financial requirements of the project as provided in the bidding documents.

In sum, we wish to clarify that procuring entities are prohibited from requiring additional eligibility requirements other than those mentioned in Section 23.1 for the procurement of Goods and Infrastructure projects and Section 24.1 for the procurement of Consulting Services of the 2016 IRR of RA 9184. Thus, the Certificate of No Slippage cannot be required by the procuring entity as part of the eligibility documents. In addition, Section 34.3(b)(ii)(a) of the 2016 IRR of RA 9184 already provides for safeguards where the procuring entity may check the performance of the bidder in its ongoing government and private contracts, if any of these ongoing contracts shows a negative slippage of at least fifteen percent (15%) in any one project or a negative slippage of at least ten percent (10%) in each of two (2) or more contracts, which could disqualify the bidder during the post-qualification stage.

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.

Very truly yours,

(sgd.)


DENNIS S. SANTIAGO
Executive Director V

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⁴ NPM No. 25-2013 dated 27 March 2013.