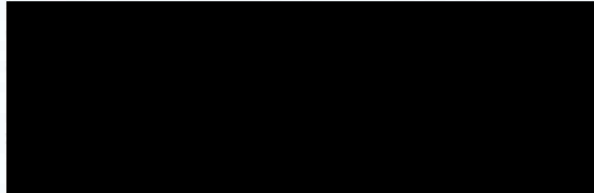


**NPM No. 07-2015**

11 March 2015



**Re: Protest Fee and Typographical Error in the Technical Specification**

Dear [REDACTED]:

This is in response to your letter seeking clarification and guidance on the following issues:

1. Whether the non-payment of protest fee within the reglementary period is a valid ground for a denial of the protest being filed; and
2. Whether a typographical error (numerical figure) appearing in the technical specifications will invalidate the entire bid if all other documents (financial, etc.) reflected the correct figure.

**Protest Fee**

Rule XVII of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR), specifically Section 55 on Protest, apply in this situation. Section 55.3 of the IRR of RA 9184 specifically states that protest may be made by filing a verified position paper with the Head of the Procuring Entity (HOPE) concerned, **accompanied by the payment of a non-refundable protest fee** in the amount or percentage of the ABC prescribed depending on the ABC range. Hence, the payment of the protest fee is a condition *sine qua non* for the filing of a valid protest.

More importantly, Section 58 of the IRR of RA 9184 is clear, in that, cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. As discussed in a previous opinion<sup>1</sup>, the Honorable Supreme Court<sup>2</sup> had the occasion to declare that the payment of a non-refundable protest fee is one of the requirements for filing a protest before the HOPE, to wit:

<sup>1</sup> NPM 145-2012 dated November 11, 2012.

<sup>2</sup> *DBM-PS v. Kolomwel Trading*, G.R. No. 175608, 8 June 2007.

[B]eing one of the indispensable requirements for filing a protest, the non-payment of the protest fee does not toll the prescriptive period for filing a protest and it becomes a justifiable basis for the HOPE not to entertain a protest. Simply stated, a bidder whose request for reconsideration was denied must pay the required protest fee to avail of the protest mechanism under the procurement law and its associated rules.

Consequently, non-payment of protest fee within the reglementary period is a justifiable basis for the HOPE not to entertain the protest.

### **Typographical Error**


Anent the second query, the alleged typographical errors (numerical figure) appearing in the Technical Specifications may amount to non-compliance with the required number of units for the identified technical component. If this is the case, such mistake/error results in non-compliance with the project requirements. On the other hand, all bids that were determined to contain all the bid requirements for both technical and financial components shall be considered for detailed evaluation and comparison pursuant to Section 30.2 of the IRR of RA 9184, and it is good to emphasize that non-compliance with the required units and specifications is ground for disqualification.

For purposes of evaluation, the BAC shall use a non-discretionary criteria in considering the 1) completeness of bid; and, 2) arithmetical corrections. Any computational error and omissions shall be determined to enable proper comparison of all eligible bids.<sup>3</sup> Such arithmetical corrections should be subject to the rules provided in Section 32.2.3 of the IRR of RA 9184, thus:

Section 32.2.3 of the revised IRR provides the rules in case of discrepancies:

- (a) bid prices in figures and in words, the latter shall prevail;
- (b) total price per item and unit price for the item as extended or multiplied by the quantity of that item, the latter shall prevail;
- (c) stated total price and the actual sum of prices of component items, the latter shall prevail;
- (d) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail.

Thus, if the error pertains to the abovementioned discrepancies, this could be rectified by applying the foregoing rules. On the other hand, if the alleged typographical error or omission relates to non-compliance with the technical specifications as regards the number of units or in the specification required, those occasions will be grounds for disqualification of the bidders.

From the foregoing, we stress that an alleged typographical error resulting in non-compliance with the required number of units relative to a technical component of the project to be procured is a ground for disqualification; and any discrepancy in the submitted price or in the calculated bid price shall be resolved following the rules in Section 32.2.3 of the IRR of RA 9184. 

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<sup>3</sup> Section 32.2.1 of the revised IRR of RA 9184.

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

*[initials]*  
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