

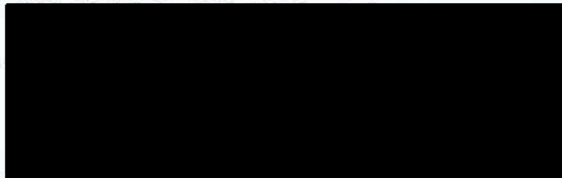


Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 38-2015

8 October 2015



Re: Marking and Sealing; Responsiveness of Bids

Dear 

This refers to your electronic mail (email) seeking our opinion on whether the decisions of the Bids and Awards Committee (BAC) in granting the motions for reconsideration of disqualified bidders are in accordance with the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, your company participated in a public bidding conducted by a certain government agency. Out of five (5) bidders that participated, three (3) were declared ineligible to bid for certain violations. Thereafter, two bidders filed a motion for reconsideration when disqualified for the following violations:

- a. The technical documents were placed together with the financial documents; and
- b. Leaving several blank items required for the bid.

It is in this context that our opinion is being requested as to the propriety of the decisions of the BAC.

Marking and Sealing of Bids

Section 25¹ of the IRR of RA 9184 and Clauses 20.1² and 20.2³ of the Instruction to Bidders (ITB) of the Philippine Bidding Documents (PBD) for Goods provide for the

¹ Section 25.1 Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements under Section 23.1 of this IRR, and the second shall contain the financial component of the bid.

² Clause 20.1, Section II, ITB of the PBD for Goods, original eligibility and technical documents shall be enclosed in a sealed envelope marked "ORIGINAL-TECHNICAL COMPONENT", and the original financial component in another sealed envelope marked "ORIGINAL-FINANCIAL COMPONENT", sealing them all in an outer envelope marked "ORIGINAL BID".

³ Clause 20.2, Section II, ITB each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as "COPY No. ___ - TECHNICAL COMPONENT" and "COPY NO. ___ - FINANCIAL

procedure to be adopted in the submission, sealing and marking of bids. This is the same procedure to be adopted by the BAC and is to be used unchanged by procuring entities in the preparation of the Bidding Documents.


On the other hand, the rules relative to sealing simply provide that the envelopes containing the technical and financial components should be sealed to maintain the integrity of the submitted documents. Thus, ensuring the proper sealing and marking of the bid envelopes is imperative upon the BAC and the bidders. Although the rules of procedure on sealing are simple and general, they must be strictly observed considering that RA 9184 and its IRR treat as criminal act the opening of any sealed bid and any and all documents required to be sealed, or divulging their contents, prior to the appointed time for the public opening of Bids.⁴

Moreover, it will be noted that the cited provisions use the word “shall”, which connotes command and compulsion. Thus, under Rule 64, Section 3 of the Rules of Court, where the word “shall” is used, a mandatory duty is imposed, which the courts ought to enforce.⁵

Responsiveness of Bids

Section 32.2.1 of the IRR of RA 9184 provides that unless the Instructions to Bidders allow partial bids, bids that do not address or provide all the required items or where no price was indicated in the Bidding Documents, including bill of quantities, shall be considered non-responsive, and thus, automatically disqualified. However, specifying a “0” (zero) for an item would mean that it is being offered for free to the government.⁶

In an earlier opinion⁷, the Generic Procurement Manual (GPM) for Consulting Services expressly provides that specifying a “0” (zero) or a “-” (dash) for the required item means that the same is being offered free to the government. While the GPM for both Goods and Infrastructure Projects only indicates “0” (zero) in the evaluation of bids, it can be gleaned that the intention of the rules is to provide a standard procedure for the procurement projects. Such interpretation is consistent with the rationale behind the rule on ensuring the integrity of the bids. This is because leaving blank spaces in the bidding documents would open the door for possible unauthorized insertions and entries, thereby rendering inutile the principles of transparency and competition governing government procurement.

In addition, it is the responsibility of the bidders to examine all instructions, forms, terms, and specifications in the bidding documents as provided in Clause 6.3 of the Instruction to Bidders of the Philippine Bidding Documents (PBD) for the Procurement of Goods. Necessarily, the bidder must complete the appropriate forms as part of its bid. As such, in order for the procuring entity to consider a bid as complete and responsive, the bidder should apply all pertinent information, in the form of an actual amount, zero, or dash, for each of the required items in the bidding documents. 

COMPONENT” and the outer envelope as “COPY No. ___”, respectively, and these envelopes containing the original and the copies shall then be enclosed in one single envelope.

⁴ Section 65(1) of RA 9184.

⁵ *Mirasol v. CA*, G.R. No. 128448, dated 1 February 2001.

⁶ Generic Procurement Manual for the Procurement of Goods and Infrastructure.


⁷ NPM 80-2012 dated 4 July 2012.

Likewise, we note that failure of the BAC to observe the proper procurement procedure in accordance with the revised IRR of RA 9184 would render the acts illegal and void. Article 5 of the Civil Code of the Philippines provides that acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. RA 9184, having been enacted for the advancement of public welfare, undoubtedly contains mandatory provisions. Thus, the omission to follow such rules renders the proceeding to which it relates illegal and void, or the violation of which makes the decision therein rendered invalid.⁸

Based on the foregoing, we wish to stress that the revised IRR of RA 9184 and the standardized Philippine Bidding Documents provide the procedures to be adopted in the submission, sealing and marking of bids, and is to be used unchanged by procuring entities in the preparation of the Bidding Documents. Moreover, it is incumbent upon the procuring entity to ensure that the documents that form part of the financial bid of its bidders should pass the completeness of the bid in accordance with Section 32.2.1 of the IRR, to be considered complete. As such, in order for the procuring entity to consider a bid as complete and responsive, the bidder should apply all pertinent information, in the form of an actual amount, zero, or dash, for each of the required items 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 



⁸ NPM No. 170-2012 dated 28 December 2012 and NPM No. 026-2005 dated 25 April 2005.