

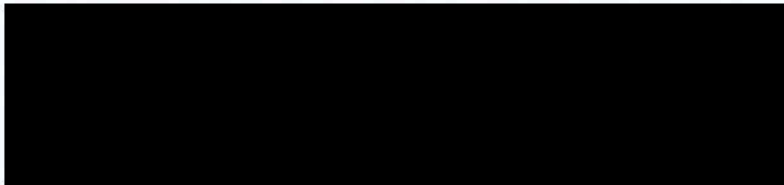


Republic of the Philippines  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**



**NPM No. 43-2015**

9 October 2015



**Re: Clause 20.3 of Instructions to Bidders (ITB) of the Philippine Bidding Documents (PBDs) for Goods**

Dear :

This refers to your letter requesting for an opinion whether a Motion for Reconsideration should be granted in favor of a bidder who was disqualified due to non-compliance with the requirements on sealing and marking of bid envelopes.

As represented, the Bids and Awards Committee (BAC) found that a company submitted a bid wherein the envelopes were sealed but the authorized signatory printed the company name on each envelope instead of actually signing in behalf of the company.

The bidder was eventually disqualified due to non-compliance with Clause 20.3 of the ITB of the PBDs for Goods set forth in the bid document, which states:

“Section II – INSTRUCTIONS TO BIDDERS  
Clause 20.3 “The original and the number of copies of the Bid as indicated in the BDS shall be typed or written in indelible ink and **shall be signed by the bidder or its duly authorized representative/s.**” (Emphasis supplied)

The bidder filed a Motion for Reconsideration for the reversal of its disqualification.

**Authority of BAC to Resolve Issues**

The BAC has the sole authority to resolve motions for reconsideration pursuant to Section 12(g) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. As such, the GPPB and the GPPB-TSO do not have the authority to decide for and on its behalf.

As previously opined, “the GPPB may only render contemporaneous construction of the provisions of the law pursuant to its quasi-legislative fiat, and issue rules and regulations pursuant to its rule-making power.” Thus, we wish to clarify that the GPPB and the GPPB-TSO

TSO cannot dictate to the procuring entity, or its BAC, on how to decide or resolve issues relative to its procurement activities<sup>1</sup>.

### Signature by Bidder or Authorized Representative

The GPPB-TSO has been consistent in the interpretation of the term "shall" under Clause 20.3 of the ITB. This connotes the mandatory nature of the rules as the ordinary signification of the word "shall" is imperative.<sup>2</sup> Hence, failure to observe the rules on proper sealing and marking of bids may serve as a ground to disqualify a bidder.<sup>3</sup>

One of the sealing and marking requirements enumerated is the act of signing or affixing the signature of the bidder or an authorized representative on the envelopes of technical and financial components under Clause 20.3. The mandatory nature of this requirement has been addressed in a previous opinion<sup>4</sup> of the GPPB-TSO.

It is apparent in Clause 20.3 that the act of signing has to be made personally by a natural person as it has particularly required the bidder, or an authorized representative if the bidder is a juridical entity, to affix his or her signature on the folders. Thus, printing the company name on each envelope instead of actually signing it will not constitute compliance with this mandatory requirement under Clause 20.3.

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 V*

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<sup>1</sup> NPM No. 121-2013, dated 26 December 2013.

<sup>2</sup> *Diokno v. Rehabilitation Finance Corporation*, 91 Phil. 608, 611 (1952).

<sup>3</sup> NPM No. 118-2014 dated 10 November 2014, NPM No. 36-2013 dated 10 April 2013, and NPM No. 145-2012 dated 11 November 2012.

<sup>4</sup> NPM No. 102-1013 dated 20 December 2013.