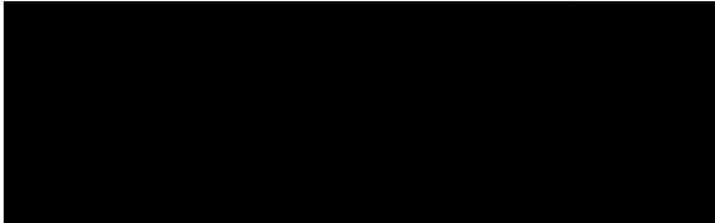


NPM No. 114-2015

3 November 2015



Re: Attendance during Bid Opening and Bidder's Access to Bids and Awards Committee (BAC) Resolutions

Dear [REDACTED]

This refers to your letter seeking clarification on the following issues:

1. Whether the procuring entity (PE) can bar non-bidders from observing its scheduled opening of bids;
2. Whether a disqualified bidder may be asked to leave the bid opening; and
3. Whether the bids and awards committee (BAC) can refuse to provide a copy of the BAC Resolutions/ Bid Evaluation to the concerned bidder.

Attendance during Bid Opening

At the outset, we note that RA 9184 is governed by the principle of transparency in the procurement process and in the implementation of procurement contracts in government agencies.¹ Thus, Section 29 of Republic Act No. 9184 states that the Bids and Awards Committee (BAC) shall **publicly** open all bids at the time, date, and place specified in the bidding documents.

The right of the people to information on matters of public concern, which by its very nature a public right, is a constitutionally enshrined principle. In *Subido vs. Ozaeta*², the Supreme Court had the opportunity to define the word "public" and held that it is "a comprehensive, all-inclusive term. Properly construed, it embraces every person. To say that only those who have a present and existing interest of a pecuniary character in the particular information sought are given the right of inspection is to make an unwarranted decision."²

¹ Section 3(a).

² 80 Phil 387 (1948)

Subsequently, in the case of *Legaspi v. Civil Service Commission*³, the Supreme Court held that the government agencies are without discretion in refusing disclosure of, or access to, information of public concern but may impose reasonable regulations on the manner in which the right to information may be exercised by the public.

Applying the foregoing rulings by analogy, it is clear from the public nature of the bidding process, particularly the opening of bids, that the procuring entity cannot bar non-bidders from observing its scheduled opening of bids. Accordingly, the public is entitled to observe the bid opening subject to the sound, regulatory discretion of the procuring entity.⁴ Hence, the PE can set the rules on the conduct of its bid opening pursuant to the provisions of the IRR of RA 9184, which should be made available to bidders, and to the public at large.

If the public is entitled to observe the bid opening, as in the case of non-bidders, more so is the disqualified bidder who has an interest in the outcome bidding process, particularly the opening of bids. Corollarily, the PE can set the rules on the conduct of its bid opening, and regulate the manner by which the bidders, prospective bidders, disqualified bidders, non-bidders, and the general public will participate in the bid opening pursuant to the provisions of the IRR of RA 9184.

Bidder's Access to BAC Resolutions/ Bid Evaluation

In as much as the public cannot be prohibited from attending and observing the PE's bidding process, more particularly, the opening of bids, on the basis of the constitutionally enshrined principle on the right of the people to information of public concern, it is in the same vein that a bidder may not be denied access to BAC Resolutions or Bid Evaluation results.

The absence of discretion on the part of government agencies in allowing the examination of public records, was further emphasized by the Supreme Court in the *Subido* case, thus:

Except, perhaps when it is clear that the purpose of the examination is unlawful, or sheer, idle curiosity, we do not believe it is the duty under the law of registration officers to concern themselves with the motives, reasons, and objects of the person seeking access to the records. It is not their prerogative to see that the information which the records contain is not flaunted before public gaze, or that scandal is not made of it.

Nonetheless, reasonable regulations may be imposed by the PE in the manner in which bidders may access information or acquire copies of BAC Resolutions or results of the Bid Evaluation.

At this juncture, it is worthy to stress that from the moment the BAC conducts bid evaluation until award of contract, there is a prohibition under Section 32.1 of the IRR of RA 9184 from making or accepting any communication with any bidder relative to the evaluation of bids until issuance of the notice of award, thus:

32.1. Members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making or accepting any

³ G.R. L-72119 (29 May 1987)

⁴ NPM 14-2009 dated 5 March 2009.

communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award. However, the BAC, through its Secretariat, may ask in writing the bidder for a clarification of its bid. All responses to requests for clarification shall be in writing.

The purpose of the prohibition is to prevent any undue influence or pressure to the BAC in the determination of the qualifications of the participating bidders, and ultimately the outcome of the bidding process. Consequently, the request for BAC Resolutions or Bid Evaluation results should not be made to influence or affect in any way the conduct of the bid evaluation, post-qualification and eventual award of the contract by the procuring entity.

In sum, the PE must ensure that the bidders or their representatives, non-bidders, disqualified bidders, and the public in general, are allowed to attend the subject procurement proceedings, as well as make the records of said proceedings available, *i.e.* minutes, BAC Resolutions, etc., in keeping with the principles of transparency and public monitoring embodied in RA 9184 and its IRR and the constitutional right to public information. Additionally, the request should not be made to influence or affect in any way the conduct of the bid evaluation, post-qualification and eventual award of contract by the procuring entity.

We hope this opinion issued by 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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