

NPM No. 152-2015

11 December 2015



Re : Observer's Access to Documents

Dear [REDACTED]

This refers to your letter requesting for guidance on whether Observers may be provided documents other than those enumerated in Section 13.5 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, the SSS received three (3) letters from the Anti-Trapo Movement of the Phils, Inc. (ATMPI), a non-government organization (NGO), requesting that it be provided various documents in view of its duties as an observer in the procurement of the Five (5) Year Outsourced Production of UMID Cards. The first letter concerns ATMPI's request for copies of the documents enumerated in Section 13.5, to which SSS acquiesced to. On the other hand, the subsequent letters concerned ATMPI's request for documents and information on the disqualification and Protest filed by one of the bidders in the said procurement activity. It is in this regard that our opinion is sought.

Among the rights of an Observer under Section 13.5 of the IRR of RA 9184 is the access to the following documents upon request and signing of a confidentiality agreement: 1.) Annual Procurement Plan (APP) and Project Procurement Management Plan (PPMP); 2.) Minutes of BAC meetings; 3.) Abstract of Bids; 4.) Opened Proposals; and 5.) Post-Qualification Summary Report.¹

The right of the Observer to review the aforementioned documents is in accordance with its responsibility to prepare a report on the observations made during the procurement activities conducted by the Bids and Awards Committee (BAC). The report shall indicate an assessment on the extent of the BAC's compliance with the provisions of the IRR and shall likewise include an evaluation on the areas of improvement in the BAC's proceedings.² In case the Observers did not submit their respective reports, it is understood that the bidding activity conducted by the BAC followed the correct procedure.³

The responsibility of the Observers is grounded upon Section 13 of RA 9184 which allows Observers to sit in "all stages of the procurement process". Specifically, the BAC is

¹ p.4, POG; cf. Section 13.5 of the IRR of RA 9184

² Section 13.4 (a) of the IRR of RA 9184.

³ Section 13.4 (b), *Ibid.*


required to invite Observers who may attend and observe all stages of the procurement. The procurement process contemplated under Section 13 of the law and its associated rules refers to "competitive bidding", which is defined as "[a] method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract."⁴

In view of the foregoing, it is clear that the phrase "all stages of the procurement" includes only the abovementioned procurement stages. This incidentally excludes other proceedings in the IRR of RA 9184, such as, but not limited to, those observed in the Protest Mechanism⁵. Hence, the rights and responsibilities of the Observers are limited to the same extent and the BAC may provide the documents requested in accordance with Section 13.5 of the IRR of 9184.

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.

Very truly yours,

(sgd.)

 DENNIS S. SANTIAGO
Executive Director V

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⁴ Section 5(h), *Id.*

⁵ Sections 55 to 58, *Id.*