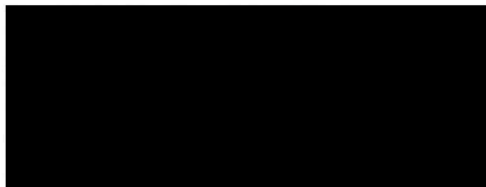


**NPM No. 179-2015**

29 December 2015



**Re: Protest Mechanism**

Dear [REDACTED]:

This refers to your letter seeking guidance as to what documents should be prepared by the Bids and Awards Committee-Secretariat (BAC Sec) in the event that the protest filed by the bidder is granted by the Head of Procuring Entity (HOPE).

At the outset, we wish to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) render policy and non-policy opinions respectively, on matters purely pertaining to the interpretation of the procurement law and its associated rules and regulations. We adhere to the position that apart from courts having actual jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the BAC, since these duties and responsibilities fall solely within the ambit of its authority and discretion sanctioned by law.<sup>1</sup> In this wise, we shall limit our discussion on the interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented.

Section 55.1 of the revised Implementing Rules and Regulations (IRR) mandates the Bids and Awards Committee (BAC) to keep the bid envelopes unopened and/or duly sealed of a bidder who signified her intent to file a request for reconsideration. These documents shall be in the custody of the BAC Sec as the main depository of all procurement documents and records pursuant to Section 14.1 of the IRR.

In view thereof, in the event that a protest is filed and eventually granted or decided in favor of the protesting bidder pursuant to Rule XVII of the IRR, thereby reversing the decision of the BAC, the bid envelopes of the protesting bidder, previously kept unopened or duly sealed in accordance with Section 55.1, shall be opened/reopened and evaluated/reevaluated in the same manner as those previously opened bids. In order to maintain the public character of a bid opening activity, the Bids and Awards Committee (BAC) should open a reconsidered bid under the same circumstances as it opened the bids that were not disqualified, i.e., upon a duly scheduled opening of bid with proper notices to

<sup>1</sup> NPM No. 46-2013 dated 11 June 2013.

the concerned entities.<sup>2</sup> Thus, in our previous opinion<sup>3</sup>, we stated that if the motion for reconsideration is granted, it is mandatory for the BAC to publicly open the second bid envelope of the bidder and, must notify the bidder and other interested parties, such as but not limited to the other eligible bidders and the observers, of the date and time for the opening of the second bid envelope.

The BAC Secretariat is created by law as the main support unit of the BAC, providing administrative support to the BAC and taking custody of all procurement documents and other records, among others. Thus, should a protest be decided in favor of the protester, the procurement process shall proceed in accordance with the decision of the HOPE. The BAC Sec, for its part, shall provide the BAC all necessary documents to enable the latter to comply with the resolution of the HOPE, including any unopened and/or duly sealed bid envelopes.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours,

(sgd.)

 **DENNIS S. SANTIAGO**  
*Executive Director V*

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<sup>2</sup> NPM 69-2013 dated 27 June 2013.

<sup>3</sup> NPM No. 43-2007 dated 13 August 2007.