



REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE
Tanggapang Pampanguluhan sa Operasyong Pangkomunikasyon
Malacañang, Manila

SUPPLEMENTAL BID BULLETIN No. 001
14 October 2020

NEGOTIATED PROCUREMENT OF
SUPPLY AND DELIVERY OF OFFICE SUPPLIES

(PROCUREMENT CONTRACT No. 2019-PCOO-I-004a)

In Re: Reference to Brand Names
Lot 2: Consumables (Common Use
Printer Ink and Toners)

In response to the inquiry of Dona Alejandra Inc. regarding the Technical Specifications of Lot 2 in their letter dated 12 October 2020, the Bids and Awards Committee-I (“BAC”) after deliberating on the matter, responds to its queries as follows:

1. **Query:** When the provision allows the participation of branded items in some exceptional cases in a competitive bidding, **do you automatically disallow the participation of COMPATIBLE BRANDS OR PRODUCTS which can perform or function in the same manner as the original when you indicated Brother Drum Cart, Brother Ink Cartridges, Canon Ink Cartridges, HP Ink Cartridge, Brother Toner Cartridges, Sharp Toner Cartridges, Brother Waste Toner** in your Technical Specifications? [Emphasis in original]

Response: No, the BAC does not automatically disallow the participation of compatible brands or products.

Please note, however, that all bidders are required to indicate their complicity with all of the technical specifications under the procurement project. Failure of a bidder to indicate his complicity to all the technical specifications will, therefore, disqualify the bidder.

Should a bidder be awarded the contract, he will be bound to his complicity with the technical specifications. Should he fail to deliver in accordance with the technical specifications of the project, he may be considered in default and in breach of his contract.

2. **Query:** Would it still fall within the definition of a competitive bidding when the opportunity is limited only to a specific group such as authorized distributors or partners of specific brands like Brother, Canon, HP, Sharp with the **EXCLUSION OF OTHER COMPATIBLE BRANDS that can meet the Technical Specifications of Brother Drum Cart, Brother Ink Cartridges, Canon Ink Cartridges, HP Ink Cartridge, Brother Toner Cartridges, Sharp Toner Cartridges, Brother Waste Toner**? [Emphasis in original]

X-----X

Response: Please note that this project is being procured not under competitive bidding, but through negotiated procurement after two failed biddings.

Nevertheless, to answer your hypothetical query, yes, it would still fall within the definition of competitive bidding. As correctly pointed out in your letter, “competitive bidding” is “open to participation by any interested party.” Nevertheless, any interested party will still have to comply with the technical specifications of the project.

By its very nature, technical specifications necessarily limit the procurement opportunity to suppliers who can comply with the technical specifications. Conversely, technical specifications exclude suppliers who could not deliver on the technical specifications.

For example, if the technical specifications of the procurement project require the delivery of red ink ball-point pens, by its very nature, the procurement opportunity is limited to suppliers who can deliver red ink ball-point pens. Conversely, this excludes suppliers who could not deliver red ink ball-point pens. It could hardly be claimed that this is no longer competitive bidding because it excludes suppliers who can deliver only blue or black ink ball-point pens.

The BAC notes the reference in the letter to NPM Nos. 093-2017 and 042-2017. As correctly pointed out in the same letter, however, **Section 18 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 (the “RIRR”)** allows reference to brand names for items **“that are compatible with the existing fleet or equipment of the same make and brand, and to maintain the performance, functionality and useful life of the equipment.”**

In this case, the brand names were specified precisely to ensure compatibility with existing equipment, namely printers, of the same make and brand, and to maintain performance, functionality and useful life of the said printers.

In fact, NPM No. 093-2017 specifically provided that “[I]f the Power Distribution System will admit of no other Transformer as substitute or replacement, as **when the System will not perform or function in the same manner if the same brand of Transformer is not installed, then the procurement of the same brand of Transformer currently installed in the System may be initiated.**” Thus, the very NPM that was invoked by the supplier recognizes compatibility and maintenance as valid grounds for reference to brand names. These are the exact same reasons why the technical specifications in this project referred to brand names.

While the BAC understands that some suppliers claim that their ink and toner cartridges may be compatible with printers of a different brand, the experience of the end-user in this regard is that this is a hit-and-miss proposition. It would be a waste of government resources for the procuring entity to rely on the word of the supplier that its products are “compatible” with its printers, then be left with the problem of running after the supplier when the delivered product proves otherwise.

X-----X

The BAC notes that the technical specification for toners and ink cartridges are spread over four (4) brands. Moreover, the market study shows that multiple suppliers can supply each brand at varying prices.

Thus, the practical, and we emphasize, legal, way to ensure compatibility with, and maintain performance, functionality and useful life of existing printers is to require that the toners and ink cartridges to be delivered are of the same brand as the existing printers.

We trust that this addresses the inquiry of Dona Alejandra and other interested bidders. Kindly be advised that the Bid Opening for this project is set on 19 October 2020.

For everyone’s guidance and information.

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