



Republic of the Philippines
VISAYAS STATE UNIVERSITY
Visca, Baybay, Leyte

BOR RESOLUTION NO. 8, s. 2019

A RESOLUTION APPROVING THE DISMISSAL OF THE BLACKLISTING COMPLAINT FILED BY BAYBAY PRINTSHOP AGAINST ELECTROCOMPUTER DATA SYSTEMS

WHEREAS, the Leyte State University was created by virtue of Republic Act 9158 which converted the then Visayas State College of Agriculture (ViSCA) into a state university last 11 August 2001 which was later renamed Visayas State University (VSU) by virtue of R.A. 9437;

WHEREAS, Section 4 of R.A. 9158 specifically provides that the University “*shall have the general powers of a corporation as set forth in the Corporation Law. The Administration of the University and the exercise of its powers shall be vested exclusively in the Board of Regents*”;

WHEREAS, Section 5 of R.A. 9158 provides: “*The governing body of the University shall be the Board of Regents, hereinafter referred to as the Board...*”;

WHEREAS, Section 6 of R.A. 9158 provides, to wit: “*The Board shall promulgate and implement policies in accordance with the declared State policies in education and other pertinent provisions of the Constitution on education, agriculture, science and technology, as well as the policies, standards and thrusts of the CHED under Republic Act No. 7722*”;

WHEREAS, Paragraph (a), Section 7 of R.A. 9158 empowers the Governing Board “*to enact rules and regulations, not contrary to law, as may be necessary to carry out the purposes and functions of the University*”;

WHEREAS, Paragraph (f), Section 7 of R.A. 9158 empowers the Governing Board “*to authorize the construction or repair of its buildings, machineries, equipment and other facilities and the purchase and acquisition of real and personal properties, including necessary supplies, materials and equipment...*”;

WHEREAS, Section 4.1 of the 2016 Revised IRR of RA 9184 provides, to wit: “*This IRR shall apply to all procurement of any branch, agency, department, bureau, office, or instrumentality of the GoP, including government-owned and/or -controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs)*”;

WHEREAS, the Visayas State University advertised in the PhilGEPS last 29 August 2018, the *Invitation to Apply for Eligibility* and to bid for the project: “Supply and Delivery of Appliances and Other Office Equipment” (GOODS-18-28) with an Approved Budget for the Contract (ABC) of P1,900,000.00;

WHEREAS, the Bidding Documents for GOODS-18-28 were made available to interested bidders beginning 29 August 2018 until 18 September 2018 until 9:59 AM only;

WHEREAS, Rule IX (Bid Evaluation), Section 30 (Preliminary Evaluation of Bids), Sub-Section 30.1 of the 2016 Revised IRR of RA 9184 provides, to wit: *“The BAC shall open the first bid envelopes in public to determine each bidder’s compliance with the documents required to be submitted for eligibility and for the technical requirements, as prescribed in this IRR. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary ‘pass/fail’ criterion, as stated in the Instructions to Bidders. If a bidder submits the required document, it shall be rated ‘passed’ for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered ‘failed.’ Otherwise, the BAC shall rate the said first bid envelope as ‘passed;’”*

WHEREAS, Rule IX (Bid Evaluation), Section 30 (Preliminary Evaluation of Bids), Sub-Section 30.2 of the 2016 Revised IRR of RA 9184 provides, to wit: *“Immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second envelope of the remaining eligible bidder whose first bid envelope was rated ‘passed.’ The second envelope of each complying bidder shall be opened on the same day, except as provided under Section 33 of this IRR. In case any of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid concerned as ‘failed.’ Only bids that are determined to contain all the bid requirements for both components shall be rated ‘passed’ and shall immediately be considered for evaluation and comparison.”*

WHEREAS, two (2) bidders, Electrocomputer Data Systems (EDS) and Baybay Printshop, purchased bidding documents and submitted proposals during the Opening of Bids for GOODS-18-28 held at the Conference Room, Office of the Vice President for Administration and Finance (OVPAF), 1/F, VSU Administration Building, VSU Main Campus, City of Baybay, Leyte last 18 September 2018 at exactly 10:00 AM;

WHEREAS, the BAC 1, after checking the eligibility and technical requirements, declared that only EDS passed the preliminary examination of bids while the other bidder, Baybay Printshop was declared ineligible because it erroneously submitted an expired PhilGEPS Registration, which is one of the eligibility requirements required under Sub-Section 30.1 of the 2016 Revised IRR of RA 9184;

WHEREAS, the Motion for Reconsideration (MR) filed by “Baybay Prinshop” is a prohibited motion, and should not have been entertained by the BAC 1;

WHEREAS, the BAC 1 gravely erred when it *“favorably acted on the MR filed by Baybay Printshop”* as contained in BAC1 Resolution No. 56, s. 2018 dated 25 September 2018 as this BAC 1 action is in direct contravention of Sub-Sections 30.1 and 30.2 of the 2016 Revised IRR of RA 9184;

WHEREAS, in the PhilGEPS advertisement for GOODS-18-28, one salient requirement clearly indicated was: *“Prospective bidders should have experience in undertaking a similar project within the last 2 years with an amount of at least 50% of the proposed project for bidding. The description of an eligible bidder is contained in the Bidding documents particularly in Section II, Instruction to Bidders”*;

WHEREAS, in the Bidding Documents, particularly in the **Bid Data Sheet**, Invitation to Bid (ITB) Clause No. 5.4 provides, to wit: *“The Bidder must have completed a Single Largest Completed Contract (SLCC) similar to the Project with an amount equivalent to at least 50% of the ABC for this project; or Completed at least 2 similar contracts, the aggregate amount of which should be equivalent to at least 50% of the ABC of the project... For this purpose, similar contracts shall refer to **APPLIANCES AND/OR OFFICE EQUIPMENT**”*;

WHEREAS, documents submitted by both the EDS and Baybay Printshop clearly show that both bidders **FAILED** to satisfy the requirement set forth in ITB Clause 5.4 of the Bid Documents;

WHEREAS, both EDS and Baybay Printshop clearly intended to misrepresent themselves as possessing the needed SLCC requirement, in order for them to be legitimate bidders for GOODS-18-28;

WHEREAS, the BAC 1 should have immediately disqualified both EDS and Baybay Printshop and barred both from participating in the bidding for GOODS-18-28;

WHEREAS, the BAC 1 gravely erred when it disregarded procedures spelled out in the 2016 Revised IRR of RA 9184 when it proceeded with the "Bid Evaluation" on 27 September 2018 and identified the Lowest Calculated Bid (LCB) per item;

WHEREAS, in Section IV. - Technical specifications, in particular the Statement of Compliance, provides, to wit: *"Bidders must state here either 'Comply' or 'Not Comply' against each of the individual parameters of each specification stating the corresponding performance parameter of the equipment offered..."*

WHEREAS, Baybay Printshop failed to follow what was required in Section IV – Technical Specifications – particularly in the Statement of Compliance because *"Baybay Printshop did not state either 'Comply' or 'Not Comply' against each of the individual parameters of each specification stating the corresponding performance parameter of the equipment offered"* in direct contravention of the requirement set by the BAC 1 in the Bidding Documents;

WHEREAS, the HoPE was unable to immediately act on the blacklisting complaint because the BAC 1 failed to submit all the needed documents attendant to the bidding of GOODS-18-28 to the HoPE; and

WHEREAS, the Head of Procuring Entity (HoPE) finds the act of filing a blacklisting complaint to be *"an act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition"* as provided for in Section 41 of Rule XI of the 2016 Revised IRR of RA 9184.

THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED to DISMISS the blacklisting complaint lodged by Baybay Printshop against Electrocomputer Data Systems.

IN WITNESS of our approval thereof, we hereby affix our signatures this 18th day of March 2019 at CHED Central Office, C.P. Garcia Avenue, UP Diliman, Diliman, Quezon City.

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VSU, Visca, City of Baybay, Leyte*

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VSU, Visca, City of Baybay, Leyte*

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Ormoc City

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