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CIRCULAR 05-2016

20 December 2016

TO : Heads of Departments, Bureaus, Offices and Agencies of the National Government, including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units

SUBJECT : Period for the Conduct of Re-bidding and Negotiated Procurement under Two Failed Biddings Modality

1.0 Purpose

This Circular is being issued to prescribe the period for the conduct of re-bidding and Negotiated Procurement under Two-Failed Biddings modality under Sections 35.3 and 53.1 of the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184

2.0 Coverage

All Departments, Bureaus, Offices and Agencies of the National Government, including State Universities and Colleges, Government-Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units.

3.0 Re-bidding and Negotiated Procurement under Two Failed Biddings modality

3.1 Under Section 35.1 of the 2016 Revised IRR of RA 9184, Section 35 of RA 9184 and its 2016 Revised IRR provides that “[t]he BAC shall declare the bidding a failure when:

- a. No bids are received;
- b. All prospective bidders are declared ineligible;
- c. All bids fail to comply with all the bid requirements or fail post-qualification, or, in the case of Consulting Services, there is no successful negotiation; or
- d. The bidder with the LCRB, HRRB, SCRB or SRRB refuses, without justifiable cause, to accept the award of contract, and no award is made in accordance with Section 40 of the Act and this IRR;”

- 3.2 Pursuant to Sections 35.2 and 35.3 of the 2106 Revised IRR of RA 9184, in order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates, and based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of the same IRR.
- 3.3 Section 35.5 of the 2016 Revised IRR of RA 9184 provides that should there occur a second failure of bidding, the Procuring Entity may resort to Negotiated Procurement, as provided for in Section 53.1 of the same IRR.

4.0 Period for the Conduct of Re-bidding and Negotiated Procurement under Two Failed Biddings modality

- 4.1 Pursuant to the principle of efficiency in the procurement process espoused by RA 9184 and its 2016 Revised IRR, whether in the conduct of Competitive Bidding or Alternative Methods of Procurement, a period for the conduct of re-bidding and Negotiated Procurement under Two Failed Biddings modality shall be prescribed:
 - 4.1.1 The Bids and Awards Committee (BAC) shall endeavor to conduct the re-bidding of a procurement project immediately, but it should not exceed fifteen (15) days after the declaration of the first failure of bidding under Section 35 of RA 9184 and its 2016 Revised IRR. The period may be extended up to 30 days upon approval of the Head of the Procuring Entity (HoPE);
 - 4.1.2 The same periods shall be observed for the conduct of Negotiated Procurement under Two Failed Biddings modality reckoned from the declaration of the second failure of bidding; and
 - 4.1.3 If the procurement cannot be undertaken within such periods, the BAC shall make a report to the HoPE so that the latter can make the appropriate decision to facilitate the procurement or take other proper action.

5.0 This Circular shall take effect immediately.

6.0 For guidance and compliance.

(sgd.)
BENJAMIN E. DIOKNO
Chairperson