



## RESOLUTION NO. 30-2016

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### **APPROVING THE ISSUANCE OF A CIRCULAR PRESCRIBING A PERIOD FOR THE CONDUCT OF RE-BIDDING AND NEGOTIATED PROCUREMENT UNDER TWO FAILED BIDDINGS MODALITY**

**WHEREAS**, Republic Act (RA) No. 9184 entitled “An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes,” took effect on 26 January 2003, while its 2016 Revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

**WHEREAS**, Section 63 of RA 9184 and its 2016 Revised IRR authorizes the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend, whenever necessary, its IRR;

**WHEREAS**, 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;”

**WHEREAS**, Sections 35.2 and 35.3 of the 2016 Revised IRR of RA 9184 mandate that 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;

**WHEREAS**, 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;

**WHEREAS**, the 2016 Revised IRR of RA 9184 does not provide a period for the conduct of re-bidding and Negotiated Procurement under Two Failed Biddings modality;

**WHEREAS**, RA 9184 and its 2016 Revised IRR adhere to the principle of efficiency in the conduct of the procurement process, whether Competitive Bidding or Alternative Methods of Procurement;

**WHEREAS**, consistent with the declared policy of adherence to the principles of efficiency in the procurement process, the GPPB-Technical Support Office (TSO) proposed

the issuance of a GPPB Circular prescribing a period for the conduct of re-bidding and Negotiated Procurement under Two Failed Biddings modality, thus:

“Seven (7) days after the failure of bidding, the Procuring Entity shall be able to post the procurement opportunity, either for re-bidding, or Negotiated Procurement in case of two-failed biddings. The BAC shall still observe the same periods as that of the competitive biddings for the other procurement activities.

In exceptional cases, however, taking into consideration the nature and complexity of the project, the 7-day period may be extended to fifteen (15) days;”

**WHEREAS**, during its 9<sup>th</sup> Regular Meeting on 29 November 2016, the Inter-Agency Technical Working Group (IATWG) discussed the proposal of the GPPB-TSO, and after due consideration, agreed to adopt such proposal for recommendation to the GPPB, subject to the following modifications, among others:

“The Bids and Awards Committee shall endeavor to conduct the re-bidding of a procurement project within 15 days after the declaration of failure of bidding under Section 35 of RA 9184 and its 2016 Revised IRR, which period may be extended up to 30 days in exceptional cases. 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. Otherwise, if the procurement cannot be undertaken within such periods, the BAC shall make a report to the Head of the Procuring Entity so that the latter can make the appropriate decision.”

**WHEREAS**, during the 12<sup>th</sup> GPPB and 10<sup>th</sup> IATWG Joint Meeting on 20 December 2016, the GPPB discussed the proposal of the GPPB-TSO, as modified by the IATWG, and after due deliberation and careful review, the GPPB approved the issuance of a Circular prescribing a period for the conduct of re-bidding and Negotiated Procurement under Two Failed Biddings modality;

**NOW, THEREFORE**, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to confirm, adopt and approve, as **WE** hereby confirm, adopt and approve the issuance of a Circular, copy of which is attached as **Annex “A”**, prescribing a period for the conduct of re-bidding and Negotiated Procurement under Two Failed Biddings modality.

This Resolution shall take effect immediately.

**APPROVED** this 20<sup>th</sup> day of December 2016 at Pasig City, Philippines.

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**DEPARTMENT OF BUDGET AND  
MANAGEMENT**

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**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

(SGD)

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**DEPARTMENT OF EDUCATION**

(SGD)

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**DEPARTMENT OF ENERGY**

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**DEPARTMENT OF FINANCE**

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**DEPARTMENT OF HEALTH**

(SGD)

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**DEPARTMENT OF INFORMATION AND  
COMMUNICATIONS TECHNOLOGY**

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**DEPARTMENT OF THE INTERIOR  
AND LOCAL GOVERNMENT**

(SGD)

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**DEPARTMENT OF NATIONAL  
DEFENSE**

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**DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS**

(SGD)

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

(SGD)

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

(SGD)

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**DEPARTMENT OF TRANSPORTATION**

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**PRIVATE SECTOR REPRESENTATIVE**



Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

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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**
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**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*