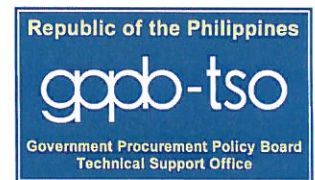


Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 016-2017

27 October 2017

MR. RAUL G. BRADECINA, Ph.D.

President

PARTIDO STATE UNIVERSITY (PSU)

San Bautista St., Goa, Camarines Sur 4422

Re: Multiple Awards to the Same Contractor

Dear President Bradecina:

This refers to the Honorable University President's letter seeking clarification on whether the award of all five (5) projects to the same bidder would be improper even if the rules have been diligently and meticulously adhered to and even if that same bidder, after passing the eligibility screening offered the lowest financial bid in all five (5) projects and passed the post qualification process.

As represented, PSU have five (5) infrastructure projects that have undergone competitive bidding process with the Bids and Awards Committee (BAC) strictly adhering to the procedural rules in the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. However, for all these projects, the same bidder was recommended for the award because its financial offers are the lowest among the other competitors in all projects. Nevertheless, the PSU Board of Regents (BOR), upon seeing that all five (5) projects could be awarded to only (1) bidder, is apprehensive on the propriety of the possible award despite the BAC having observed and adhered strictly to the relevant rules. Hence, this request for clarification as the PSU BOR held in abeyance the confirmation and/or approval of the contract awards pending the opinion of the Government Procurement Policy Board (GPPB).

Award of Contract to the Lowest Calculated Responsive Bid

Section 34 of RA 9184 mandates that in all cases, the contract shall be awarded only to the bidder with the Lowest Calculated Responsive Bid (LCRB). During the post-qualification stage, if the bidder with the Lowest Calculated Bid (or the next Lowest Calculated Bid, in case of disqualification of the Lowest Calculated Bid, as the case may be), after undergoing verification, ascertainment and validation of all its legal, technical and financial submissions and representations, passed all the requirements and conditions specified in the Bidding Document, which includes the eligibility requirements, and the relevant technical and financial requirements of the project, the BAC shall declare such bidder as the LCRB, and shall recommend award of contract to the Head of the Procuring Entity (HoPE) in favor of said LCRB.

In Competitive Bidding, which is founded on the concept of open participation, any interested bidder may participate in the procurement opportunity. A bidder may then participate in as many procurement projects that it is interested to participate in, and may be awarded the ensuing

contracts if it is found to have the legal, technical and financial capability to undertake each project. This would necessarily include the ascertainment of the bidder's previous track record (Single Largest Completed Contract) to undertake similar projects and financial capability (Net Financial Contracting Capacity) to undertake multiple projects.

Accordingly, there is no prescribed limit on the number of contracts that a single bidder may secure. For as long as the bidder is determined as having submitted the Lowest Calculated Responsive Bid in all the procurement projects that it has participated in, award to such bidder can be recommended by the BAC, as it has been already verified that such bidder is legally, technically and financially capable to undertake multiple projects.

Reservation Clause

The right of the Head of the Procuring Entity (HOPE) to reject any and all Bids, declare a failure of bidding or not award the contract is embodied in Section 41 of RA 9184 and its 2016 revised Implementing Rules and Regulations (IRR), otherwise known as the Reservation Clause. The right under the Reservation Clause may only be exercised under the following situations, thus:

1. If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
2. If the BAC is found to have failed in following the prescribed bidding procedures; or
3. For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government of the Philippines, as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the Head of the Procuring Entity; (ii) if the project is no longer necessary as determined by the Head of the Procuring Entity; and (iii) if the source of funds for the project has been withheld or reduced through no fault of the procuring entity.

It bears stressing, however, that the right to reject any and all Bids, declare a failure of bidding or not award the contract should not be exercised whimsically, arbitrarily or capriciously. Section 37.1.3 of the 2016 IRR of RA 9184 mandates that the disapproval by the HOPE of the recommendation of the BAC to award the contract with the LCRB shall be based only on valid, reasonable and justifiable grounds, *i.e.*, grounds enumerated under Section 41 of RA 9184 and its IRR. In the absence of any of these grounds, the HoPE has no basis to disapprove the recommendation of the BAC to award the contract to the LCRB.

Mandatory Nature of Periods

In awarding a contract to the bidder with the Lowest Calculated Responsive Bid, Section 37 of RA 9184 and its 2016 Revised IRR prescribes certain periods that procuring entities ought to observe, thus:

1. Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated

Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

2. Within ten (10) calendar days from receipt of the Notice of Award, the winning bidder shall formally enter into contract with the Procuring Entity.
3. When further approval of higher authority is required, the approving authority for the contract shall be given a maximum of twenty (20) calendar days to approve or disapprove it. In the case of government-owned and/or -controlled corporations, the concerned board shall take action on the said recommendation within thirty (30) calendar days from receipt thereof.


We would like to stress that the mandatory nature of the periods under RA 9184 is recognized by the Honorable Supreme Court in the case of *Jacomille v. Abaya, et al.*¹, where it was held that the different periods provided by RA 9184 within which certain stages of the procurement process must be completed is not merely directory but mandatory. It concluded that such non-compliance with the period will certainly affect the validity of the bidding process.

Summary

In sum, it is our considered opinion that a bidder may be awarded several contracts for multiple projects provided that it has been determined to have submitted the Lowest Calculated Responsive Bid in all projects such that it has the legal, technical and financial capability to undertake such multiple projects. In case of approval of such recommendation, the periods prescribed by RA 9184 shall be observed. On the other hand, the recommendation for award of contract may only be disapproved based on valid, reasonable and justifiable grounds provided in Section 41 of RA 9184 and its 2016 IRR.

We hope that 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 there be other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director V


11/7/23

¹ G.R. No. 212381, 22 April 2015