

NPM No. 079-2016

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REGIONAL OFFICE IX
Pettit Barracks, Zamboanga City

Re: Documentary Requirements for Negotiated Procurement (Two-Failed Bidding)

Dear Mr. Martin:

This refers to your email requesting for guidance on the eligibility requirements to be submitted when resorting to Negotiated Procurement (Two-Failed Bidding) under Section 53.1 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

On 29 August 2016, the 2016 IRR of RA 9184 was published in the Official Gazette and took effect sixty (60) days thereafter and effectively superseded the 2009 IRR. The 2016 IRR, and its Consolidated Guidelines for the Alternative Methods of Procurement (Annex "H"), introduced changes and improvements in the conduct of Alternative Methods of Procurement, which rendered few opinions by the Government Procurement Policy Board-Technical Support Office (GPPB-TSO) inoperative. In this regard, we respond to your query in accordance with the current applicable provisions.

Section 53.1 of the 2016 IRR provides that Negotiated Procurement (Two-Failed Bidding) may be resorted to when there has been failure of competitive bidding or Limited Source Bidding for the second time in accordance with Section 35. In this regard, Section V(D)(b)(i) of Annex "H" of the 2016 IRR provides that for Negotiated Procurement (Two-Failed Bidding), the BAC, after conducting mandatory review of the terms, conditions, specifications, and cost estimates, may revise and agree on the technical, legal, and financial eligibility requirements of the procurement activity, thus:

Section V(D)(b)(i) –

After conduct of the mandatory review of the terms, conditions, specifications, and cost estimates, as prescribed in Section 35 of the IRR, *the BAC, based on its findings, (...) may revise and agree on the technical, legal and financial eligibility requirements* and technical specifications or terms of reference, and if necessary, adjust the ABC, subject to the required

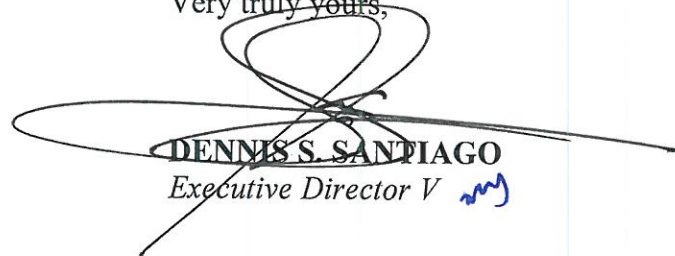
approvals. However, the ABC cannot be increased by more than twenty percent (20%) of the ABC for the last failed bidding.

In light of such provision, Procuring Entities, in the interest of promoting economy and efficiency, are now given the discretion to determine which requirements must be submitted by bidders when resorting to Negotiated Procurement (Two-Failed Bidding) under Section 53.1 of the 2016 IRR. This gives Procuring Entities the authority to choose the eligibility documents necessary for the project, provided that a mandatory review has been conducted to determine the adjustments needed to address the previous failure of bidding.

Incidentally, please note that the changes made in the 2016 IRR of RA 9184 and its Annex "H" as regards Negotiated Procurement (Two-Failed Bidding) would necessarily affect our opinion in NPM No.124-2014.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

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