



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 43-2014

10 October 2014

ATTY. VIRGILIO TABALBA PABLICO
Officer-in-Charge
LEGAL DIVISION
CRIMINAL INVESTIGATION & DETECTION GROUP (CIDG)
PHILIPPINE NATIONAL POLICE (PNP)
Camp Crame, Quezon City

Re : Procurement of Projects By Lot

Dear Atty. Pablico:

We write in response to your letter requesting our opinion on the following matters, thus:

1. Whether the procurement of medicine by lot is allowed under Republic Act No. (RA) 9184 and its Revised Implementing Rules and Regulations (IRR);
2. Whether the Approved Budget for the Contract (ABC) should be based per item, the aggregate total, or both;
3. Whether there is violation if the contract entered into is by lot and the price of the items are higher than the ABC per item; and
4. Whether overpricing in some of the items may be off-set by under pricing in other items.

As represented, in a case conference between the PNP Bids and Awards Committee (BAC) Secretariat and the investigators of CIDG, PCI Jojie A. Tabios of the CIDG - Criminal Investigation & Detection Unit (CIDU) recommended that the supplier be disqualified for an alleged violation of Section 31 of RA 9184 and its IRR because of his findings that the bid price of some 98 items of medicines/medical supplies in the lot are higher than the individual item ABCs. However, the Legal Officer of the Office of the Deputy Chief for Administration expressed the view that there is no overpricing because the medicines/medical supplies purchased by lot were lower than the ABC for the project, and that the remedy of disqualification is no longer available because the project is already at the delivery stage. Nonetheless, you note that the Commission on Audit representative favored the findings of the CIDG - CIDU investigators.

Procurement By Lot

We wish to inform you that procurement of projects by lot is a recognized mechanism under existing government procurement rules. The Philippine Bidding Documents (PBDs) for the Procurement of Goods, particularly Clause 1.2 of the Instructions to Bidders (ITB) and the corresponding Bid Data Sheet (BDS) provision, requires Procuring Entities (PEs) to provide the name, identification, and number of lots specific to the bidding.

The BDS provision for ITB Clause 28.3 of the PBDs for Goods explains that lots should be formed of similar items that are likely to attract the maximum competition, and defines "lot" as the quantity and number of items that will be included in a single contract. It also states three options that PEs may choose from in grouping and evaluating lots, *i.e.*, (i) each item to be evaluated and compared with other bids separately and recommended for contract award separately; (ii) all items to be grouped together to form one complete lot that will be awarded to one bidder to form one complete contract; and (iii) similar items, to be grouped together to form several lots that shall be evaluated and awarded as separate contracts.

Clearly then, procurement by lot is recognized and allowed, and may be adopted by PEs by specifying the details of each lot in the bidding documents.

Basis of the ABC and Award of Contract

As provided in Section 5(b) of the IRR of RA 9184, the ABC refers to the budget for the contract duly approved by the Head of the Procuring Entity (HOPE), as provided in the relevant budget document, *i.e.*, General Appropriations Act, Corporate Budget, or Appropriation Ordinance. On the other hand, the ABC depends on the amount appearing in the Annual Procurement Plan (APP) as approved by the HOPE.

It will be noted that in the PE's pursuit or performance of its mandate, it will procure **items** that may be grouped into **lots** necessary to conduct **activities** identified under particular **projects** pursuant to the approved **programs** of the PE.

Each item in the Project Procurement Management Plan (PPMP) created by an end-user unit has a corresponding budget. This budget becomes the ABC when the decision of the PE is to procure such item as the subject of a contract separate from all other items in the APP.

The PE may opt to group several items into one package consisting of several lots, and award the contract per lot; in which case, the ABC shall be based on the budget for each lot that will be awarded separately. In this wise, bids shall be evaluated per lot, such that any price offer that exceeds the ABC for a particular lot shall be disqualified for that respective lot. However, the same bidder may be awarded other lots where it is found to have submitted the lowest calculated and responsive bid.

Alternatively, the PE may decide to group several items into one lot and award it as one contract. In such case, the sum of the respective budgets of the items aggregated into one lot becomes the ABC for such lot. Thus, bids that exceed the ABC for the lot shall be disqualified per Section 31 of RA 9184 and its IRR. Accordingly, bids that are within the ABC, regardless if the price offered for other items in the lot exceeds their respective ABC.



per item, may be considered for award if proven to be the lowest calculated and responsive bid among all other bids.

For purposes of competitive bidding, evaluation, and contract award, the grouping of items/lots shall be based solely on what is indicated in the Bidding Documents, particularly in Clause 28.3 of the Bid Data Sheet.

Summary

Based on all the foregoing, we wish to clarify that procurement by lot is recognized and supported under RA 9184 and its IRR, as well as its associated issuances, and that the propriety of the findings and recommendations of the CIDG - CIDU with respect to the subject procurement activity will depend on the details of the contract/s awarded *vis-à-vis* that provided in the approved bidding documents, particularly the grouping and contract packaging by lot as specified in the Instructions to Bidders (ITB) in relation to the Bid Data Sheet, more particularly Clause 28.3.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTAGO
Executive Director V

1/1/23

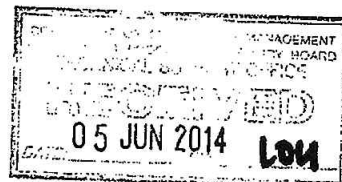


Republic of the Philippines
NATIONAL POLICE COMMISSION
PHILIPPINE NATIONAL POLICE
CRIMINAL INVESTIGATION & DETECTION GROUP
LEGAL DIVISION
Camp Crame, Quezon City



June 05, 2014

The Chairman
Government Procurement and Policy Board
Unit 2506, Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City



Dear Sir:

Greetings.

This Group is currently conducting an investigation on the alleged irregularities/improprieties in the projected purchase of Medicines and Medical Supplies by the PNP Health Service with an approved NFA of Php24 Million.

In yesterday's case conference between the PNP BAC Secretariat and the investigators of this Group, PCI Jojie A Tabios of CIDU-CIDG reported its findings that the bid price of some 98 items of medicines/medical supplies in the lot are higher than the individual item ABCs and, therefore, will opt to recommend that the supplier PHSI should be disqualified for Viol of Sec 31 of RA 9184 at this stage of delivery. The Legal Officer of the Office of the Deputy Chief for Administration took the stand that since the medicine/medical supplies were purchased *by lot* and the bid price of Php23 Million is lower than the ABC, there is no overpricing and that at this stage of delivery, the remedy of disqualification is no longer available to the PNP. The COA Representative (Mrs. Isabelita Labrador) favored the findings of the CIDU investigators.

However, in view of the conflicting legal theories that should be applied and in order to guide our investigators on the aforementioned issues, may we respectfully request your opinion on the following to serve as basis in our investigator's final report, to wit:

- a. Whether or not the procurement of medicine *by lot* is allowed under the Rules;
- b. If allowed, what should be the basis of the ABC, is it *per item* or the *aggregate total* or *both*;
- c. If the contract entered into is by lot and the price of the items are higher than the ABC per item, is there violation of the rules; and
- d. Can overpricing in some of the items be off-set by under pricing in the other items?

Your prompt reply is highly appreciated.

Very truly yours,


ATTY. VIRGILIO TABALBA PABLICO
Crime Investigator III
Officer-in-Charge, Legal Division