



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

**NPM No. 46-2013**

11 June 2013

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**Re : Division of Project into Separate Lots through a Supplemental/Bid Bulletin**

Dear Atty. Romero:

We respond to your letters dated 26 April, 10 May, 17 May, 31 May 2013, seeking our opinion on whether the Department of Transportation and Communications (DOTC) could legally divide a single procurement project into 2 lots with 2 separate Approved Budget for the Contract (ABC) without re-advertising the amended/revised Invitation to Bid (IB) and Bidding Documents.

It is represented that the DOTC advertised the IB for the procurement of "Land Transportation Office (LTO) Motor Vehicle License Plates" in a newspaper of general nationwide circulation and posted the same in its own website and in the Philippine Government Electronic Procurement System (PhilGEPS), indicating that the ABC is PhP3,851,600,100.00. After publication and posting, the Bids and Awards Committee (BAC) of DOTC issued several Supplemental/Bid Bulletins, among which, are the following:

1. General Bid Bulletin No. 001-2013 dated 20 February 2013, clarifying that the Project will be under the contract for the "Supply and Delivery of Motor Vehicle License Plates for the Land Transportation Office Motor Vehicle License Plate Standardization Program" (hereinafter the "LTO MV Plate Standardization Program" or "Project"), indicating the number of license plates needed as 5,236,439 for Motor Vehicles (MV) and 9,968,017 for Motorcycles (MC).
2. General Bid Bulletin No. 003-2013 dated 6 March 2013 amending paragraph 1 of the IB by stating that the LTO MV Plate Standardization Program is divided into 2 separate lots, namely: (i) Lot 1 – MV Plates: 5,236,439 pairs for MV amounting to PhP2,356,397,550.00; and (ii) Lot 2 – MC Plates: 9,968,017 pieces for MC amounting to PhP1,495,202,550.00.

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3. General Bid Bulletin No. 008-2013 dated 27 March 2013 amending paragraph 2 of the IB by indicating that it is inviting bids for the 2 separate lots (*i.e.*, MV Plates and MC Plates) of the LTO MV Plate Standardization Program mentioned above.
4. General Bid Bulletin No. 009-2013 dated 12 April 2013 clarifying the Bid Data Sheet provision for Clause 28.3 of the Instructions to Bidders that the evaluation and contract award shall be on a per lot basis, and that the requisite threshold for the largest similar contract shall be based on the ABC for each of the lots.

As counsel of Marianing & Sons Development Corporation, you sent a letter to DOTC on 8 April 2013 asserting that DOTC could not validly amend the IB by providing 2 lots with their respective ABCs through a mere issuance of a Bid Bulletin. In response, DOTC issued General Bid Bulletin No. 013-2013 dated 22 April 2013 reiterating the validity of dividing the Project into 2 separate lots with their respective ABC. It is in this context that you seek our opinion on the validity of DOTC's action.

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) only render policy and non-policy opinions, respectively, on issues purely relating to the interpretation and application of our procurement laws, rules, and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from courts having actual jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the BAC, since these duties and responsibilities fall solely within the ambit of its authority and discretion as sanctioned by law. Nonetheless, this office may monitor and assist procuring entities in improving their compliance with Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR).

In this regard, we shall limit our discussion on the interpretation of the relevant provisions of RA 9184 and its IRR pertinent to the issue on the validity of DOTC's General Bid Bulletins amending the Bidding Documents for the Project, including the IB, indicating that there are 2 separate lots with their respective ABCs without re-advertising the revised IB.

#### **Advertisement of the Invitation to Bid**

Section 21 of the IRR of RA 9184 mandates the advertisement or posting of the IB, which should indicate, among others, the name of the contract to be bid; a brief description of the goods to be procured; and the ABC to be bid. This requirement is in line with the principle of transparency and is necessary to inform the public of the procuring entity's intention to procure the item(s) specified in the IB. It serves as a notice to bidders informing them, directly or by reference, of the matters to be bid upon and of the time and place of receiving bids.<sup>1</sup>



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<sup>1</sup> Law on Public Bidding and Government Contracts, Agapito P. Cobacha and Domingo O. Lucenario, 1960, p. 11.

## **Issuance of Supplemental/Bid Bulletin**

Section 22.5.2 of the IRR of RA 9184 clearly and categorically provides that procuring entities may issue Supplemental/Bid Bulletins upon their initiative for the purpose of clarifying or modifying any provision of the Bidding Documents, which include the IB per Section 17.1(b) of the same IRR. Accordingly, the procuring entity has the authority to revise or amend any statement in the Bidding Documents, including the IB, specifically when such revision or amendment is made for purposes of clarifying or modifying its provisions. In order to address aspects of competition and transparency, Supplemental/Bid Bulletins, although not advertised in a newspaper of general nationwide circulation, must be posted at the PhilGEPS and at the procuring entity's website pursuant to Section 22.5.3 of the IRR of RA 9184.

## **Bid Bulletins Clarifying Provisions of the Bidding Documents**

We note that the original IB for the LTO MV Plate Standardization Program indicated that the sum of PhP3,851,600,100.00 is allocated for the payment of approximately 5,236,439 MV Plates and 9,968,017 MC Plates. A careful scrutiny of Paragraph 1 of the original IB, particularly the 3<sup>rd</sup> sentence, shows that the Project has 2 components, that is, MV Plates and MC Plates, upon which bidders are invited to submit offers that should not exceed their respective ceilings established through the identification of the unit price in the amount of PhP450.00 for each pair of MV Plates, and PhP150.00 for each MC Plate.

Thus, one would only need to exercise simple deduction and employ plain mathematical calculation to determine that, aside from the condition that bids should not exceed the ABC of PhP3,851,600,100.00, offers for the MV Plates and MC Plates should not be more than PhP2,356,397,550.00 and PhP1,495,202,550.00, respectively.

Our review of the original Bidding Documents *vis-à-vis* the relevant Bid Bulletins issued by the DOTC-BAC for the Project leads us to the observation that the Bid Bulletins, which explain that the Project comprises 2 components or lots, being the MV Plates and MC Plates, were likewise issued to clarify the pertinent portions of the Bidding Documents, more specifically on DOTC's intention and willingness to receive offers for each of the 2 lots or a combination thereof.

## **Re-advertisement of the Invitation to Bid**

Based on all the foregoing considerations, we are of the view that it is not necessary for the DOTC to re-advertise the revised IB for the Project, as the original IB that was advertised already provided necessary and relevant information that would sufficiently notify the public of the procurement opportunity, including the relevant components and the corresponding ABCs for each of these components; and, the Bid Bulletins issued thereafter merely set to clarify that the DOTC intends to receive offers for each of the 2 components of the LTO MV Plate Standardization Program.

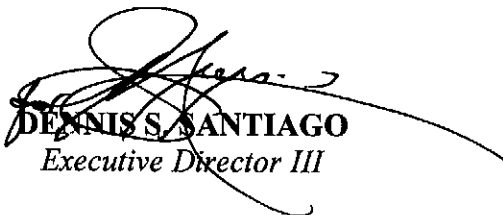
In reiteration, clarifications or modifications to the Bidding Documents through the issuance of Supplemental/Bid Bulletins by the procuring entity are sanctioned by the procurement law and the associated rules and regulations without need of further re-advertisement of the IB. ✱

**Protest on Decisions of the BAC**

Finally, we wish to stress that Section 55 of RA 9184 and its IRR provide for the protest mechanism through which bidders may raise concerns on or disagreement with the actions or decisions of the BAC at any stage of the procurement process. Consequently, we strongly suggest that questions, issues and concerns relating to the actions or decisions of the BAC should be raised before said Committee by way of a request for reconsideration and protest, when necessary, to secure appropriate redress for the grievances mentioned in your letter.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*Executive Director III*