



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

NPM No. 51-2014

14 October 2014

ATTY. ALMA T. DELOS REYES-LANZO

Vice Chairman, Bids and Awards Committee

FOREST MANAGEMENT BUREAU (FMB)

FMB Bldg. Visayas Avenue,

Diliman, Quezon City 1100

Re: Failure of Bidding; Sale of Bidding Documents in Case of Re-bidding

Dear Atty. Delos Reyes-Lanzo:

This refers to your electronic mail seeking our opinion on the following concerns:

1. Whether or not the BAC is allowed to include in one (1) Resolution the disqualification of all bidders who all used labor rate below minimum wage; and
2. Whether or not the previous bidders who joined the previous failed bidding are required to pay the cost of the Bidding Documents in case of subsequent re-bidding.

As represented, the procurement project involves the construction of an Archive. There were seven (7) bidders who, upon evaluation for the preparation of Abstract of Bids, were discovered to have used a labor rate below minimum wage. Instead of undergoing the process of bid evaluation and post qualification of the lowest calculated bid and once disqualified, the 2nd lowest bid and so on, you intend to have one (1) Resolution disqualifying all the bidders and recommend re-bidding of the project. It is in this light that you raised the above-mentioned queries.

Failure of Bidding

Under Section 35.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184, the Bids and Awards Committee (BAC) shall declare the bidding a failure when:

1. No bids are received;
2. All prospective bidders are declared ineligible;
3. All bids failed to comply with all the bid requirements or fail post qualification, or in the case of consulting services, there is no successful negotiation; or

4. The bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid refuses, without justifiable cause, to accept the award of contract, and no award is made in accordance with Section 40 of RA 9184 and its IRR.

Based on your representation, all bids of the seven (7) bidders for the subject procurement used labor rate below minimum wage. At this juncture, we make the assumption that the first envelope containing the eligibility documents and technical bid proposal, including the second envelopes containing the financial proposal of all the 7 bidders were read, but it was determined that the labor rate submitted by all 7 bidders were pegged below minimum wage in violation of existing labor laws and standards. Since all the bidders failed to use the prescribed minimum wage rate, in effect all of them failed to comply with the requirements. Under the rules, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed".¹

If no bid complies with all bid requirements, the BAC shall issue a Resolution declaring a failure of bidding.² The finding that all bidders failed to meet all the bid requirements shall be reflected in a BAC Resolution declaring a failure of bidding. It is not necessary that separate BAC Resolutions be issued to declare the disqualification of all the bidders. If after opening and preliminary examination of bids, all bidders were disqualified, such fact can be reflected in one Resolution where the BAC will declare a failure of bidding and recommend the conduct of re-bidding with re-advertisement, when applicable, subject to compliance with Sections 35.2 and 35.3 of the IRR of RA 9184.

Sale of Bidding Documents in Case of Re-bidding

At the onset, we wish to clarify that the decisions to charge bidders for the payment of Bidding Documents lies solely on the sound discretion of the PE. Section 17.4 of the IRR of RA 9184 provides that bidders may be requested to pay for the Bidding Documents to recover the cost of its preparation and development.

The use of the word "may" is permissive only and operates to confer discretion³. Applying this to Section 17.4 of the IRR of RA 9184, PE has the discretion to distribute Bidding Documents for free or for specific amount. Further, as the rule does not distinguish, and considering that each bidding activity is separate and distinct from each other, even if they have the same subject-matter, the discretion to require payment for the Bidding Documents covers both the first bidding and the re-bidding.

In this regard, the decision in charging fees for Bidding Documents, whether for the first bidding or any subsequent re-bidding, depends upon the PE, taking into account the need to recover the cost of its preparation and development *vis-a-vis* the effects on competition and participation of bidders⁴.

Specific for re-bidding, the PE may still collect fees from bidders who participated in the original bidding that was declared a failure, especially if the Bidding Documents may

¹ Section 30.1, IRR of RA 9184.

² Manual of Procedures for the Procurement of Infrastructure Projects.

³ *Ombudsman v. Andutan, Jr.*, G.R. No. 164679, 27 July 2011.

⁴ NPM No. 68-2013 dated 27 June 2013.

have been modified as a result of the mandatory review and evaluation to determine the reason for the failed bidding.⁵

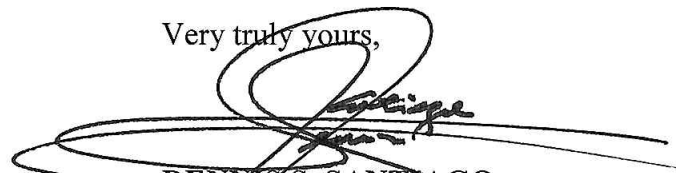
Summary

In sum, we wish to clarify the following matters relative to your concerns:

1. If after opening and preliminary examination of bids, all bidders were disqualified, such fact can be reflected in one Resolution where the BAC will declare a failure of bidding and recommend the conduct of re-bidding with re-advertisement, when applicable, subject to compliance with Section 35.2 and 35.3 of the IRR of RA 9184; and
2. The decision to require previous bidders, who joined the first failed bidding, to pay the cost of the Bidding Documents for the re-bidding depends upon the PE, taking into account the need to recover the cost of its preparation and development *vis-a-vis* the effects on competition and participation of bidders.

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. SANTIAGO
Executive Director V

ms
11/23

⁵ *Ibid.*

11/07/14

Secretariat

From: fmb bac sec <fmb.bacsec@yahoo.com>
Sent: Wednesday, July 23, 2014 5:47 PM
To: gppb@gppb.gov.ph; legal@gppb.gov.ph; secretariat@gppb.gov.ph;
 admin@gppb.gov.ph
Subject: Request Letter

Jerry [Signature] 7/30
Please prepare OPINION
NT BSS

Dear Sir/Madam :

The Forest Management Bureau (FMB) BAC humbly request your opinion on the following matters, to wit:

1. Whether or not the BAC is allowed to issue in one RESOLUTION disqualifying all bidders considering they all used labor rate below minimum wage?
 FACTS:

The project is for the Construction of Archives. There are seven (7) bidders who, upon evaluation for the preparation of Abstract of Bids, were discovered to have used a labor rate below minimum wage.

Instead of following the usual process of evaluation and post qualification of the lowest calculated bid and once disqualified, the 2nd lowest bid and so on, would it be possible to have an Omnibus Resolution covering all bidders disqualifying all of them for the above reason and recommending for re-bidding?

2. Whether or not the previous bidders who joined in the previous failed bidding is required to pay the cost of the bid document in case of re-bidding of the same?

We highly appreciate your immediate action on the matter.

Very truly yours,

ATTY. ALMA T. DELOS REYES-LANZO
 Vice-Chair, FMB-Bids and Awards Committee

23 JUL 2014
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