



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

**NPM No. 57-2014**

15 October 2014

**MR. ZYRIL D. CARLOS**

*Rear Admiral*

**OFFICE OF THE INSPECTOR GENERAL**  
**ARMED FORCES OF THE PHILIPPINES (AFP)**  
Camp General Emilio Aguinaldo,  
Quezon City


**Re: Award of Contract**

Dear Rear Admiral Carlos:

This refers to your letter dated 02 September 2014 seeking our opinion on whether the actions taken by the Head of the Procuring Entity (HOPE) of the AFP in cancelling the Notice of Award (NOA) is in accordance with Republic Act No. (RA) 9184.

As represented, the following are the preceding circumstances leading to this request for opinion:

“After the Opening of Bids, a winning bidder has already been declared as the lowest calculated bidder. On the next day, one of the losing bidder submitted his Motion for Reconsideration for reasons that he has offered a discount to his bid that would make him the lowest calculated bidder. The Bids and Awards Committee disqualified said bidder for reasons that he did not indicate in his Bid Form and in the grand total cost of its bid the discount he offered. The Bids and Awards Committee (BAC) processed the documents of the winning bidder until the issuance of NOA. However, three (3) months later, the NOA was instead issued to the losing bidder by the HOPE.”

At the outset, we wish to inform the Honorable Rear Admiral that we have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since the office 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 sanctioned by the law.<sup>1</sup> In this wise, we shall limit our discussion on the interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented. 

<sup>1</sup> NPM No. 46-2013 dated 11 June 2013.

## **Lowest Calculated Bid**

We wish to clarify that the Lowest Calculated Bid (LCB) is identified or determined only after the conduct of Bid Evaluation, following the steps enumerated under Section 32.2 of the revised Implementing Rules and Regulations (IRR) of RA 9184. Specifically, during Bid Evaluation, submitted bids shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications, to identify the LCB<sup>2</sup>.

The lowest bid “as read” during bid opening shall not be automatically considered as the LCB until the confirmation during detailed bid evaluation that it remains to be the lowest bid from among all the bids that have been evaluated and corrected for computational errors. If the result of detailed evaluation reveals otherwise, such that the lowest bid “as read” during bid opening is different from the lowest bid during bid evaluation, the latter shall be considered as the LCB and not the former.

After bid evaluation, the bidder identified to have the LCB shall undergo post qualification in order to determine whether it complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents<sup>3</sup>, following the procedures laid down under Section 34 of the IRR of RA 9184. If the BAC determines that the bidder with the LCB passes all the criteria for post qualification, it shall declare the said bid as the Lowest Calculated and Responsive Bid (LCRB), and recommend to the Head of the Procuring Entity (HOPE) the award of contract at its submitted bid price or its calculated bid price, whichever is lower.<sup>4</sup>

## **Award of Contract**

It bears stressing that the recommendation of the BAC to award a contract is subject to the approval of the HOPE. This can be gleaned from the provisions of Section 12.1 of the IRR of RA 9184 which limit the authority of the BAC to recommend award of contract to the HOPE, who on the other hand, is the proper authority to award procurement contracts. Thus, the bidder with the LCRB, who was recommended by the BAC, is not guaranteed to receive an award, until the HOPE approves such recommendation for award.

We would like to emphasize that the power of the HOPE to approve or disapprove the recommendations made by the BAC in the entire procurement process is a discretionary act as distinguished from a purely ministerial act<sup>5</sup>. As a concrete example, the decision to award a contract rests within the sole discretion of the HOPE. Within a period not exceeding seven (7) calendar days from the date of receipt of the recommendation of the BAC relative to the award of contract, the HOPE is given the discretion whether to approve or disapprove such recommendation.<sup>6</sup>

Under Section 37.1.3 of the IRR of RA 9184, in case of approval of the recommendation of the BAC, the HOPE shall immediately issue the NOA to the bidder with the LCRB. On the other hand, in the event the HOPE shall disapprove such recommendation,

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<sup>2</sup> Section 32.2.4 of the IRR of RA 9184.

<sup>3</sup> Section 34.1 of the IRR of RA 9184.

<sup>4</sup> Section 34.4 of the IRR of RA 9184.

<sup>5</sup> NPM No. 118-2004 dated 27 August 2004.

<sup>6</sup> Section 37.1.2 of the IRR of RA 9184.

the disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, copy furnished the BAC. In the latter case, if the LCRB has been disqualified, the BAC shall initiate and complete the post qualification process on the bidder with the second LCB. This process shall be repeated until the LCRB is determined for award. But in the event that no bidder passes the post-qualification, the BAC shall declare a failure of bidding and conduct a re-bidding with re-advertisement.

### Summary

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

1. LCB is identified during bid evaluation wherein submitted bids shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications;
2. Bidder with the LCB shall undergo post qualification process and only the bid declared as LCRB shall be recommended to the HOPE for award of contract; and
3. The HOPE has the discretion to approve or disapprove the recommendation of the BAC, and in case the HOPE disapproved such recommendation, the disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing.

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*

12/17/14



GENERAL HEADQUARTERS  
ARMED FORCES OF THE PHILIPPINES  
**OFFICE OF THE INSPECTOR GENERAL**  
Camp General Emilio Aguinaldo, Quezon City

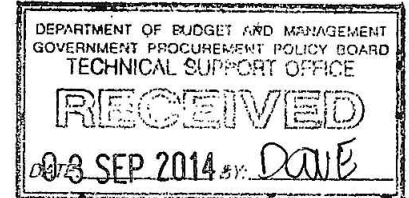
SEP 02 2014

**ATTY. DENNIS SANTIAGO**

Executive Director III

Government Procurement Policy Board

Unit 2506, Raffles Corporate Center, F. Ortigas Jr. Road,  
Ortigas Center, Pasig City



**Dear Atty. Santiago:**

This pertains to the provisions of Republic Act 9184 and its Implementing Rules and Regulations (IRR), specifically procedures from the Opening of Bids to the issuance of the Notice of Award to a declared Lowest Calculated Bidder.

May we request for a Government Policy Procurement Board (GPPB) opinion whether or not the actions taken by the Head of the Procuring Entity in cancelling the issued Notice of Award (NOA) is in accordance with Republic Act 9184 as presented in the preceding circumstances:

After the Opening of Bids, a winning bidder has already been declared as the lowest calculated bidder. On the next day, one of the losing bidder submitted his Motion for Reconsideration for reasons that he has offered a discount to his bid that would make him the lowest calculated bidder. The Bids and Awards Committee disqualified said bidder for reasons that he did not indicate in his Bid Form and in the grand total cost of its bid the discount he offered. The Bids and Awards Committee processed the documents of the winning bidder until the issuance of Notice of Award (NOA). However, three (3) months later, the NOA granted to the winning bidder was cancelled and a NOA was instead issued to the losing bidder by the Head of the Procuring Entity.

Thank you for giving this letter your utmost attention. It shall be deeply appreciated to receive reply to this query not later than September 15, 2014, since the vital information would guide us in deciding the issue.

Very truly yours,

**ZYRIL D CARLOS**  
**RADM AFP**

The Inspector General, AFP

*Jan Henry*  
*11 Sep 14*  
Please prepare OPINION.  
Note that the LCB is not the  
winning bidder as yet. Discuss  
post-qual process as well. *arr ds*