



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

**NPM No. 75-2014**

21 October 2014

**MR. ROSANO G. COSTILLAS**  
*Member, Bids and Awards Committee*  
**MAASIN WATER DISTRICT (MWD)**  
Nasaug, Maasin City  
Southern Leyte

**Re: Negotiated Procurement (Two-Failed Biddings)**


Dear Mr. Costillas:

This refers to your electronic mail (email) seeking clarification on the procedural guidelines for the conduct of Negotiated Procurement under Section 53.1 (Two-Failed Biddings) under the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184.

As represented, MWD resorted to Negotiated Procurement under Section 53.9 (Small Value Procurement) of the IRR of RA 9184 for the procurement of one (1) unit of Multicab with an Approved Budget for the Contract (ABC) in the amount of Php 170,000.00. During the conduct of Small Value Procurement, MWD twice declared the procurement a failure. In the first declaration of failure, there was no interested bidder, while in the second declaration, only one bidder participated. MWD Bids and Awards Committee (BAC) then decided to resort to Negotiated Procurement under Section 53.1 (Two-Failed Biddings) of the IRR of RA 9184. It is in this light that you raised the above-mentioned request for clarification.

**Negotiated Procurement (Two-Failed Biddings)**

We wish to clarify that under Section 53.1 of the IRR of RA 9184, Negotiated Procurement through Two-Failed Biddings modality may be resorted to only where there has been **failure of public bidding for the second time as provided in Section 35** of RA 9184 and its IRR. Accordingly, to warrant the use of this alternative method of procurement by the Procuring Entity (PE), there must be an occurrence of two failed biddings under Section 35 of RA 9184 and its IRR.

The requirement of two-failed biddings refers to two failures of **Competitive Bidding** as defined under Section 5(e) of RA 9184. The instances mentioned in Section 35 of RA 9184 and its IRR refers to grounds to declare failure of **Competitive Bidding** as a specific mode of procurement. Hence, Negotiated Procurement through Two-Failed Biddings modality can be resorted to only if the original mode of procurement is Competitive Bidding and two-failed biddings are declared in accordance with Section 35 of the IRR of RA 9184. 

Negotiated Procurement through Small Value Procurement is an alternative method of procurement separate and distinct from Competitive Bidding. The procedures for its use are governed by a different Guidelines, as will be discussed below. Significantly, if the PE twice failed to obtain the required number of price quotations in Small Value Procurement, Section 35 of RA 9184 and its IRR will not apply. Hence, such failures to obtain the required number of price quotations do not fit the requirement of **two failed biddings** warranting the PE to use Negotiated Procurement under Section 53.1 (Two-Failed Biddings) of the IRR of RA 9184.

### **Negotiated Procurement (Small Value Procurement)**

The *Guidelines for Shopping and Small Value Procurement* (Guidelines for brevity) provides the rules and procedures in resorting to Negotiated Procurement through Small Value Procurement modality under Section 53.9 of the IRR of RA 9184. Subparagraph 3(g) states that the deadline for submission of price quotations may be extended if none or less than the required number of price quotations are received. Relatively, we have previously opined<sup>1</sup> that unlike in Shopping under Section 52.1(b)<sup>2</sup> of the IRR of RA 9184 where it is necessary to obtain at least three price quotations<sup>3</sup>, in Small Value Procurement, it will suffice to request quotations from three (3) suppliers, but it is not required to actually wait and receive three (3) quotations in order to proceed with the bid evaluation; hence, the receipt of a single price quotation from any of the suppliers [at least three (3)] in the list can be considered for award of contract.<sup>4</sup>

Based on the foregoing, in Small Value Procurement, if after the sending RFQ to at least three (3) suppliers, the PE cannot obtain at least one (1) price quotation, the deadline for submission may be extended until a price quotation is received. Extensions of deadline shall be posted in accordance with subparagraph 3(d) of the Guidelines.<sup>5</sup> It must be noted, however, that receipt of a single price quotation from any of the three (3) suppliers in the list can be considered for award of contract.

### **Summary**

In sum, we wish to clarify the following:

1. Negotiated Procurement through Two-Failed Biddings modality under Section 53.1 of the IRR of RA 9184 may be resorted to only where there has been **failure of public bidding for the second time as provided in Section 35** of RA 9184 and its IRR; and
2. In Small Value Procurement, the receipt of a single price quotation from any of the three (3) suppliers in the list can be considered for award of contract. In case no price quotation is received from the suppliers, the PE shall extend the deadline for submission of price quotation until receipt of at least a single price quotation is obtained.

<sup>1</sup> NPM No. 08-2013 dated 11 February 2013.

<sup>2</sup> Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service.

<sup>3</sup> Guidelines on Shopping and Small Value Procurement, Section 3(f).

<sup>4</sup> NPM No. 35-2014 dated 08 October 2014.

<sup>5</sup> *Supra*, Section 3(g).

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*

11/14/13