NPM No. 76-2014

21 October 2014

MS. LILIA C. GONZALES, M.D.
Chair, Bids and Awards Committee
RESEARCH INSTITUTE FOR TROPICAL MEDICINE
DEPARTMENT OF HEALTH
9002 Research Drive, Filinvest Corporate City
Alabang, Muntinlupa City

Re: Negotiated Procurement (Two Failed Biddings)

Dear Ms. Gonzales:

This refers to your letter dated 9 October 2014 inquiring whether this Office is allowed to accept the Motion for Reconsideration of a bidder who failed to submit its Philippine Contractors Accreditation Board (PCAB) license within the time prescribed by the rules or if the rules of technical procedure in negotiated procurement.

It is represented that the Research Institute for Tropical Medicine – Department of Health (RITM-DOH) conducted public bidding for the project Design and Build for the Vaccine Self-Sufficiency Plan II (VSSP II). RITM-DOH had three (3) failed public biddings and so the Bids and Awards Committee (BAC) resorted to negotiated procurement, wherein four (4) consortia submitted their best and final offer. However, three of which did not meet the Single Largest Completed Contract (SLCC) requirement; while the other one complied with the SLCC requirement, but failed to submit its Special PCAB license and instead, submitted an acknowledgment receipt from PCAB signifying that their license is still being processed by the said agency. Nonetheless, the remaining consortium was able to submit the special PCAB license after almost two weeks from the period given them by the BAC. It is for this reason that RITM-DOH is requesting whether it can grant the Motion for Reconsideration to accept the late requirement.

Firstly, the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) are not in the position to decide for and in behalf, or overturn a decision of, a procuring entity because it has no jurisdiction to rule over actual controversies with regard to the conduct of bidding.

Nonetheless, we wish to reiterate that Section 53 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 describes "Negotiated Procurement" as a method of procurement of goods, infrastructure projects, and consulting services,

whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant in any of the cases enumerated therein.

One of the instances when Negotiated Procurement may be used, as specified in Section 53.1 of the IRR of RA No. 9184, is when there has been failure of bidding for the second time as provided in Section 35 of the IRR. In the implementation of this alternative modality of procurement, Section 53.1.5 of the IRR requires that the procuring entity shall select the successful offer on the basis of the best and final offer which meets the procuring entity's minimum technical requirements and does not exceed the Approved Budget for the Contract (ABC).

Based on the foregoing, the procedures for the conduct of public bidding are not strictly observed in this modality of procurement. An offer or proposal submitted in relation to Negotiated Procurement (Two-Failed Biddings) under Section 53.1 of the IRR of RA 9184 should comply with the minimum technical requirements set by the procuring entity and should not exceed the ABC in order that the offer can be considered by the procuring entity.[1]

In this regard, the acceptability of a proposal submitted in response to a request for quotation under Negotiated Procurement through Two Failed Biddings modality depends on its compliance with the minimum technical requirements and the ABC. Thus, although in this type of procurement, the procedures for the conduct of public bidding are relaxed, the bidder must submit all the minimum technical requirements set by the procuring entity in the submission of its best and final offer. Consequently, failure to submit any of the minimum technical requirements on the specified date for the submission of the best and final offers constitutes non-compliance and shall result in the disqualification of the non-complying bidder.

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

//lrd4

[1] Non-Policy Matter (NPM) No. 109-2013 dated 23 December 2013.

Research Institute for Tropical Medicine - Department of Health
9002 Research Drive, Filinvest Corporate City Alabang, Muntinlupa City 1781 Philippines
T: (632) 809 7509 / 807 2628 to 32 F: (632) 842 2245
www.ritm.gov.ph | ISO 9001:2008 Certified

01/23/15

October 9, 2014

DEPARTMENT OF BUDGET AND MANAGEMENT
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE
RECEIVED
DATE 10 OCT 2014 TIME 12:41 pm

Atty. Dennis S. Santiago
Executive Director III
Government Procurement Policy Board

Dear Atty. Santiago,

This has reference to the Bidding conducted by Research Institute for Tropical Medicine – Department of Health for the project Design and Build for The Vaccine Self-Sufficiency Plan II (VSSP II). This project will provide a modular filling facility for the Pentavalent Vaccine and completion of VSSP I, such as:

A. Design and build for the following support facilities
   1. Animal laboratory facility for vaccine testing and breeding
   2. Raw materials storage
   3. Laundry
   4. Office
B. Upgrading
   1. Labeling and packaging
   2. Chemistry laboratory
C. Supply, installation, and commissioning of the following equipment:
   1. Elevator system in BMD building
   2. Generator
   3. Water pre-treatment system
   4. Step down transformer
   5. Electrical Switch Gear
   6. Boiler
   7. Diesel Reservoir
   8. Fire fighting equipment
   9. CCTV/IP Cameras
   10. Access control to critical areas

Jen/Diane, please prepare OPINION
TX, BB

There were three bidders who participated in three failed biddings namely:

1. Consortium of Philab Industries, SC Megaworld, First Snowden and Industrial Corporation, and IMA Pacific Co. Ltd.
2. Consortium of E.M. Cuerpo, and Architects Team 3 PTE Ltd.
3. Consortium of TTI, Chimera Gentec PTE Ltd., Utopia Acie PTE Ltd., Hybrid Biotech PTE Ltd., and FFJJ Construction

First bidding started on July 9, 2013, was declared a failure because none of the bidders met the Minimum Performance Specification Standard (MPSS). The second and third bidding also failed for failure to meet the Similar Single Largest Contract equivalent to 50% of ABC and absence of PCAB license.

BAC resorted to negotiated procurement after the third failed bidding and four consortiums submitted best and final offer namely:

1. SC Megaworld Construction and Development Corporation – PHILAB Industries, Inc. – IMA Pacific Co., Ltd.
2. E.M. Cuerpo, Inc. – Architects Team 3 PTE. LTD. (Singaporean) – Ridge Diversified Holdings LLC dba Phoenix Scientific (American)
3. AMTCI – ESCO – EDC
4. Liberty Builders & Development Corporation – ITS Science Phils , Inc.