



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 85-2015

13 October 2015

MS. EMILY J. FERNANDEZ
DEVELOPMENT BANK OF THE PHILIPPINES
Sen. Gil J. Puyat Avenue corner Makati Avenue,
Makati City

Re: Withdrawal of Bids; Arithmetical Correction

Dear Ms. Fernandez:

This refers to your electronic mail (e-mail) seeking our opinion relative to erroneous computation of the total cost in the offer of one of your bidders.

As represented, for the second bidding of one of your infrastructure projects, the sole bidder submitted a bid in the amount of Php 7,815,000.00. During Bid Evaluation, you noted an arithmetical error in the bid where the summation of the total cost resulted in the reduction of the bid by Php 356,000.00 from its original bid price. It is in this light that you are raising the following queries:

1. What should the contractor do if it decides to withdraw its bid?
2. What happens to the bid security of the contractor if it withdraws its bid?
3. Can the DBP still invite the contractor in Negotiated Procurement?

Arithmetical Corrections

During Bid Evaluation, the BAC shall immediately conduct a detailed evaluation of all bids using non-discretionary criteria in considering the completeness of the bid and arithmetical corrections.¹ Effecting arithmetical corrections for computational errors and omissions, among others, are considered to enable proper comparison of all eligible bids.² These arithmetical corrections serve as basis for the BAC to arrive at the total calculated bid prices, which will be ranked in ascending order to identify the bidder that submitted the Lowest Calculated Bid (LCB).

For transparency purposes, any arithmetical corrections shall be communicated in writing to the concerned bidder for confirmation. If the bidder fails to accept the arithmetical

¹ Section 32.2.1(b).

² *Ibid.*

corrections per the computation made by the BAC, the bidder will be disqualified and its bid security forfeited.³

Withdrawal of Bids; Sanctions

Section 26 of Republic Act (RA) No. 9184 provides that a bidder may, through a letter, withdraw its bid or express its intention not to participate in the bidding before the deadline for submission, receipt and opening of bids. To reinforce this provision, the revised Implementing Rules and Regulations (IRR) of RA 9184 states that the withdrawal of bids after the applicable deadline shall be subject to appropriate sanctions.


Other than forfeiture of bid security, the bidder who withdraws a bid may also be imposed the administrative penalty of suspension from participating in the public bidding process as well as disqualification from further participating in the public bidding being undertaken by the procuring entity concerned.⁴

Effect of Withdrawal

In case of withdrawal, the bidder shall no longer be allowed to submit another bid for the same contract directly or indirectly.⁵ The term "same contract" refers to the same on-going procurement activity in which he withdrew his participation; it does not refer to the new procurement activities undertaken as a result of declaration of failure of previous bidding for the same subject matter of procurement.

In a previous opinion⁶, we expressed our view that each procurement activity is distinct and separate from each other, even if the subject matter of the procurement activities are one and the same - as in the case of a second bidding after the failure of the first. More so, if the procurement activities with the same subject matter have already changed, as when there are already different terms, conditions, specifications and cost estimates brought about by the mandatory review conducted by the procuring entity.

To reiterate, under Section 35.3 of the IRR of RA 9184, terms, conditions, specifications and cost estimates may be revised or adjusted based on the result of the mandatory review to be conducted by the BAC after a failure of bidding. Necessarily, the revisions and adjustments establish new contract provisions that are different from that of the original contract to be bid out. Consequently, the rule that the bidder cannot submit another bid for the same contract shall not apply because the new procurement activity is separate and distinct from the one earlier conducted, apart from the fact that it now refers to a different contract scope and coverage.

From the foregoing, a Negotiated Procurement (Two-Failed Biddings) shall be treated distinctly and separately from the two (2) failed biddings earlier conducted. In recognition of the principle of competitiveness, a bidder in the first failed bidding may participate in the succeeding procurement activities whether it is another competitive bidding or other method of procurement, unless such bidder has been imposed the administrative sanction of disqualification which prevents him from further participating in the bidding. 

³ Manual of Procedures for the Procurement of Goods and Services.

⁴ Section 69.1 (d)

⁵ Section 26 of RA 9184.

⁶ NPM No. 68-2013, dated 27 June 2013.


Summary

All told, we wish to clarify the following matters relative to your concerns:

1. A bidder can only withdraw its bid before the deadline for the submission, receipt and opening of bids. Withdrawal of bid after the deadline for the submission and receipt of bids subjects the concerned bidder to imposition of appropriate sanctions, that is, penal, administrative or both;
2. The bid security posted by the bidder may be forfeited if the bidder does not accept the arithmetical corrections performed by the BAC.
3. The procuring entity shall impose on the bidder who withdraws his bid the administrative penalty of suspension from the public bidding process as well as disqualification from further participating in the public bidding being undertaken by the said procuring entity; and
4. If no such penalty of suspension is imposed on the bidder, he may still participate in the succeeding procurement activity for the same subject matter, such as when the PE opted to resort to Negotiated Procurement under the Two-Failed Biddings modality sanctioned under the rules.

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

Very truly yours,


DENNIS S. SANTIAGO
Executive Director V

