



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

NPM No. 09-2011

9 May 2011

MR. EDUARDO RAMON T. DIMAANO
President
LOS CONTRATISTAS DELA CIUDAD DE ZAMBOANGA
Veterans Avenue, Zamboanga City

Re: Concerns on Post Qualification Process

Dear Mr. Dimaano:

We respond to your letter dated 7 April 2011 requesting for policy guidelines on the following concerns:

1. Period of post-qualification:
 - a) Are the time periods specified under Rule IX of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 mandatory or merely directory?
 - b) If they are mandatory, are there exceptions?
 - c) Can the procuring entity unilaterally declare failure of bidding for delays caused solely by the BAC?
2. Issuance of notice of Lowest Calculated Bid:
 - a) Can the procuring entity issue two (2) Notices of Lowest Calculated Bid?
 - b) Can the second notice be issued while the first notice had not yet been cancelled or recalled?
 - c) What is the legal effect of the second notice?
3. Order of post-qualification of bidders
 - a) Are there exceptions to Section 32.2.4 (Rule IX of the IRR), requiring the post qualification of the lowest bidder up to the last qualified bidder?
 - b) If the Lowest Bidder is post disqualified, can the BAC dispense with the post-qualification of the 2nd and 3rd lowest bidders and proceed immediately to the 4th lowest bidder?

Period of Post-qualification

As clearly provided in the Section 34.8 of the IRR of RA 9184, the post-qualification process shall be completed in not more than seven calendar days from the determination of the Lowest Calculated Bid (LCB)/Highest Rated Bid. Only in exceptional cases may such period be extended, but not to exceed thirty calendar days.

In common parlance and in its ordinary signification, the term "shall" is a word of command, and one which has or which must be given a compulsory meaning, and it is generally imperative or mandatory.¹ Thus, the use of "shall" in said provision renders the period, *i.e.*, seven to thirty calendar days, of post-qualification mandatory.

In the event that the BAC fails to comply with said period, the BAC may be deemed to have failed in following the prescribed bidding procedures and the head of the procuring entity may declare failure of bidding as provided in Section 41 (b) of the IRR of RA 9184. However, this is without prejudice to the imposition of any administrative sanctions under applicable rules.

Issuance of Notice of Lowest Calculated Bid

As you may well remember, the above-stated questions on this concern were previously addressed by this office through our letters dated 23 September 2010 and 20 October 2010 responding to your letters, although signed in your capacity as President of Bendimil Construction and Development Corporation, dated 23 August 2010 and 27 September 2010, respectively. In answering the foregoing concern, allow us to reiterate material portions of our discussion from said letters, to wit:

"As provided in the IRR of RA 9184, procuring entities shall rank all received bids in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications. After which, the first ranked bidder will be considered the bidder with the LCB and will be notified of such fact for purposes of post-qualification. Hence, in such case, the procuring entity is to issue only one notice to the bidder with the LCB. A second notice of LCB may only be issued after the first ranked bidder is declared post-disqualified."²

"Please note, however, that in case there are two or more bidders found to have submitted the same LCB and are thus equally ranked first, the procuring entity shall issue notice of LCB in favor of each bidder. The procuring entity will then have to initiate and complete the post-qualification process for all bidders in order to determine who among them has the Lowest Calculated and Responsive Bid.

"It goes without saying that in the absence of the situation above-mentioned, the procuring entity is to issue only one notice to the bidder with the LCB. Otherwise, clarification on which among the notices issued is correct should be made upon the procuring entity concerned."³

¹ Statutory Construction by Ruben E. Agpalo, Fifth Edition, 2003, p. 333.

² GPPB-TSO letter to Bendimil Construction and Development Corporation dated 20 October 2010.

³ GPPB-TSO letter to Bendimil Construction and Development Corporation dated 23 September 2010.

In this regard, if the procuring entity issues another notice of LCB prior to the post-disqualification of the first ranked bidder, the latter may seek redress of such grievance following the protest mechanism provided in the IRR of RA 9184.

Order of Post-qualification of Bidders

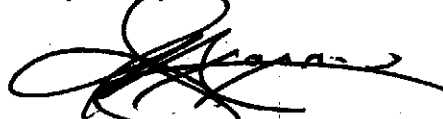
We wish to clarify that Section 32.2.4 (Rule IX of the IRR) does not require the post qualification of the lowest bidder up to the last qualified bidder; rather, it provides for the rule on how to identify the LCB. Note that the correct references for your question are Sections 34.6 and 34.7 of the IRR.

As can be gleaned from Sections 34.6 and 34.7 of the IRR, post-qualification is conducted following the order of the bidders' ranking based on their calculated price, with the lowest being the first. A careful reading of the same would reveal that the provisions do not admit of any exceptions with respect to the order in which each bidder will be post-qualified.

Thus, considering the clear and categorical language of Sections 34.6 and 34.7 of the IRR on the order of post-qualification of bidders, it is our considered view that the BAC cannot dispense with the post-qualification of the 2nd and 3rd lowest bidders and proceed immediately to the 4th lowest bidder.

We trust that the foregoing discussions provide sufficient guidance on the concerns. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS LORNE S. NACARIO

OIC, Executive Director