



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

NPM No. 93-2013

19 December 2013

SUPT. FAUSTO F. SANTIAGO
Chairman, Bids and Awards Committee
BUREAU OF FIRE PROTECTION (BFP)
REGIONAL HEADQUARTERS 3
Del Pilar, City of San Fernando, Pampanga

Re: Negotiated Procurement (Two-Failed Biddings)

Dear Supt. Santiago:

We refer to your letter dated 5 November 2013, which we received on 11 November 2013, seeking clarification if it is proper to adjust the Approved Budget for the Contract (ABC) and resort to Negotiated Procurement after a second failure of bidding.

We understand from your letter that after a first failure of bidding, BFP Regional Headquarters 3 conducted a re-bidding that also resulted to a failure where none of the submitted bids were equal or lower than the ABC.

For your guidance, Sections 35.2 and 35.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provide that whenever a failure of bidding has occurred, the procuring entity is required to conduct a mandatory review of the terms, conditions, specifications in the bidding documents, including its cost estimates. As the BAC deems it fit, and based on the findings in its mandatory review, it may revise and agree on a new set of technical specifications; and, if necessary, may adjust the amount of the ABC, subject to the required approvals under the IRR.

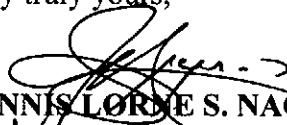
If, after two failed biddings under Section 35 of the IRR, the procuring entity decides to resort to Negotiated Procurement (Two-Failed Biddings), Section 53.1.1 of the IRR also requires the BAC to conduct a mandatory review of the terms, conditions, specifications, and cost estimates; and, when necessary, increase the ABC provided that it is not more than twenty percent (20%) of the ABC for the last failed bidding.

Owing to the clear and unequivocal provisions of the IRR on the matter, the well-established principle of statutory construction that where the law speaks in clear and categorical language, there is no room for interpretation or construction; there is only room for application holds true in this query.

Based on the foregoing, it is clear that the BFP Regional Headquarters 3 may adjust the ABC for its procurement, provided it is not more than twenty percent (20%) of the ABC for the last failed bidding, and the required approval for the increase have been obtained.

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

Very truly yours,


DENNIS LORNE S. NACARIO
Officer-In-Charge

CF
//lsd5