



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

**NPM No. 99-2013**

20 December 2013


**MR. JOHN S. MANALILI, CESO III**  
*Director IV*  
**BUREAU OF COMMUNICATIONS SERVICES (BCS)**  
**PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE**  
Malacanang, Manila

**Attention: MR. LINO G. AALA**  
*Chief Administrative Officer*  
**BUREAU OF COMMUNICATIONS SERVICES (BCS)**

**Re: Declaration of Failure of Bidding;**  
**Negotiated Procurement (Two-Failed**  
**Biddings); Limited Source Bidding**

Dear Director Manalili:

We refer to your letter dated 27 November 2013 requesting that the bidding of BCS for a **4-color** offset machine be declared failure of bidding and seeking clarification whether it can resort to Negotiated Procurement (Two-Failed Biddings) under Section 53.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184 if the first bidding for a **2-color** offset machine results in a failure of bidding, and whether it may resort to Limited Source Bidding instead.

As represented, BCS entered into a contract with a supplier as a result of its bidding for a **4-color** offset machine, which was eventually terminated. BCS has since then posted a notice in the Philippine Government Electronic Procurement System (PhilGEPS) for the procurement of a **2-color** offset machine. We understand that the procurement of a **2-color** offset machine involves the same procurement project as the **4-color** offset machine, albeit using a revised technical specification.<sup>1</sup> It is in this context that BCS is requesting that the bidding for the **4-color** offset machine be declared a failure of bidding and, at the same time, inquiring whether Negotiated Procurement (Two-Failed Biddings) may be resorted if the bidding for the **2-color** offset machine is unsuccessful. 

<sup>1</sup> Clarified in a meeting with BCS dated 19 December 2013, headed by Mr. Josefino T. Po of BCS.

### **Declaration of Failure of Bidding**

Declaration of failure of bidding is well within the authority and accountability of the Bids and Awards Committee and the Head of the Procuring Entity to exercise, under Sections 35 and 41 of the IRR of RA 9184, respectively. Thus, we regret that we cannot favorably grant the request to declare your bidding for the 4-color offset machine to have failed.

Moreover, we wish to note that, based on your representation, BCS has already entered into a contract for the 4-color offset machine as a result of its procurement activity. Please note that by issuing a Notice of Award and subsequently entering into a contract for a procurement project, the same will be considered to have been successfully completed. Hence, the bidding for 4-color offset machine can no longer be declared a failure of bidding despite the fact that it was eventually terminated.

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

Section 53.1 of the IRR of RA 9184 allows procuring entities to resort to Negotiated Procurement in the event that there has been a failure of public bidding for the second time for the same procurement project. The occurrence of two failed biddings will warrant resort to the Negotiated Procurement modality if the two failed biddings were based on reasons provided under Section 35 of the IRR.

As already discussed, the first bidding for the 4-color offset machine can no longer be declared a failure of bidding since award therefor has already been made. Moreover, even if the procurement of the 2-color offset machine results in failure of bidding, BCS cannot immediately resort to Negotiated Procurement (Two-Failed Biddings) because such failed bidding is only the first instance of failed bidding for the procurement activity.

### **Limited Source Bidding**

The determination and accountability in using any alternative method of procurement rests with the Head of the Procuring Entity, upon prior recommendation of the Bids and Awards Committee justifying the existence of the conditions and requirements provided in Rule XVI of the IRR of RA 9184.

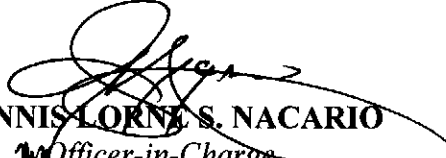
In the employment of Limited Source Bidding, Section 49 of the IRR requires that the procurement be for highly specialized types of goods or consulting services where only a few suppliers or consultants are known to be available, such that resorting to public bidding will not likely result in any additional suppliers or consultants participating in the bidding; or for major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.

*AS*

Based on this, it is imperative for BCS to establish and justify that conditions and requirements provided in Section 49 of the IRR exist and are complied with in the procurement of an offset machine in order that it may employ Limited Source Bidding.

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 there be other concerns, please do not hesitate to contact us.

Very truly yours,

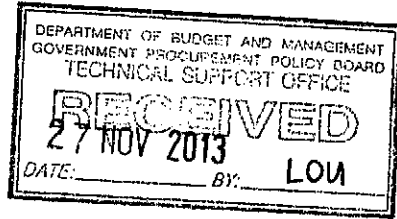
  
**DENNIS LORNE S. NACARIO**  
*Officer-in-Charge*

*CRD*  
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3/12/14



Republic of the Philippines  
**Presidential Communications Operations Office**  
**BUREAU OF COMMUNICATIONS SERVICES**  
Malacañang, Manila



BY HAND

27 November 2013

**ATTY. DENNIS S. SANTIAGO**

Executive Director V  
Government Procurement Policy Board  
Unit 2506 Raffles Corporate Center  
Ortigas Ave., Pasig City

*Rya.  
please prepare opinion.  
There is no failed bidding, but  
to awarded for. Tax 10%*

Dear Exec. Director Santiago:

This is in connection with the unconsummated procurement of a 4-color offset machine by this office.

On 19 April 2013, the Bureau of Communications Services (BCS) entered into a contract with the Gakken (Philippines), Inc. for the procurement of one (1) unit of 4-color Autoprint Dion 450 Offset Machine with a contract price of Php 9,588,777.00.

Before the payment for the offset machine was made to GPI, the BCS Director, John S. Manalili, made a thorough study of the documents relative to the purchase. He noticed the uniform amount written in the different columns of the Bid Form, all reflecting the amount of Php 9,588,777.00.

On 30 September, the BCS served the Notice of Termination of Contract to GPI. The GPI pulled out their machine on 06 November 2013.

As at date, our procurement of a -2 color offset machine has been posted in the PhilGEPS for two (2) days.

May we respectfully request that the bidding on the 4-color machine be considered a **FAILED BIDDING**.

May we proceed with the procurement through **Negotiated Purchase** should our 1<sup>st</sup> bidding for the 2-color offset machine not be successful? Further, can we resort to **Limited Source Bidding** as an alternative mode of procurement under R.A. 9184 and its Implementing Rules and Regulations.

We trust that this request merits your preferential attention and consideration. Thank you very much.

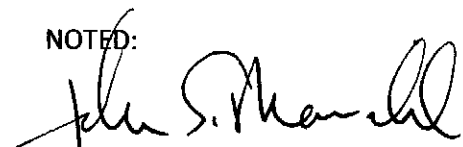
Very truly yours,



**LINOG. AALA**

*Chief Administrative Officer*

NOTED:



**JOHN S. MANALILI, CESO III**

*Director IV*