



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

NPM No. 100-2013

20 December 2013

DR. JUDE A. DUARTE, DPA
University President
LEYTE NORMAL UNIVERSITY (LNU)
Tacloban City

Re : Negotiated Procurement (Two-Failed Biddings)

Dear Dr. Duarte:

This refers to your letter dated 19 December 2013, requesting for exemption from the requirement under Section 53.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184 for the occurrence of two failed biddings before procuring entities may resort to the alternative modality of Negotiated Procurement (Two-Failed Biddings).

As represented, LNU conducted a public bidding for the Construction of New LNU House, the bid opening for which was scheduled on 18 December 2013. Unfortunately, failure of bidding was declared by the Bids and Awards Committee (BAC) for the first time because no bids were received. Considering that the appropriation for the project will lapse on 31 December 2013, and considering further that there is no more time to conduct a second bidding, LNU is requesting authority from the Government Procurement Policy Board (GPPB) to use Negotiated Procurement (Two-Failed Bidding) under Section 53.1 of the IRR after one failed bidding.

At the outset, we wish to inform you that it is beyond the authority of the GPPB to grant exemptions from the application of RA 9184 and its IRR as it does not have the mandate to legislate nor determine the coverage of the law. The GPPB may render contemporaneous construction of the provisions of the law pursuant to its quasi-legislative fiat, and issue rules and regulations on the basis of its rule-making power. Thus, we regret to inform you that we cannot grant the request for exemption.

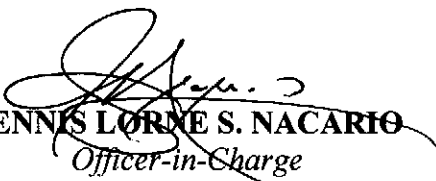
For your guidance, Section 53 (a) of RA 9184 and Section 53.1 of its IRR clearly and categorically provide that Negotiated Procurement as an alternative method of procurement may be resorted to in case of two failed biddings as provided in Section 35 thereof. Both provisions of the existing rules on government procurement do not provide for any qualifications as to its applicability in the instance of one failed bidding.

Based on the foregoing, and in view of the well-settled rule in statutory construction that the language of the law must be given its literal application and applied without

interpretation when it is written in clear and unequivocal terms, we are of the opinion that LNU cannot resort to Negotiated Procurement under Section 53.1 of the IRR of RA 9184 upon the instance of one failed bidding for its procurement project.

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



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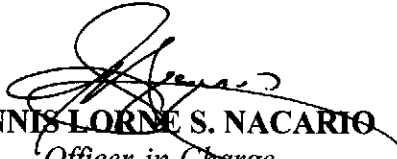
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