

NPM No. 106-2015

2 November 2015

MS. MANUELA M. LOZA

Chairperson, Bids and Awards Committee (BAC)

DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT

FIELD OFFICE NATIONAL CAPITAL REGION (DSWD-NCR)

389 San Rafael corner Legarda Streets, Sampaloc, Manila

Re: Negotiated Procurement under Section 53.1 (Two Failed Biddings) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184

Dear Ms. Loza:

This refers to your letter, requesting for opinion relative to the conduct of Negotiated Procurement under Two (2)-Failed Biddings.

As represented, DSWD-NCR BAC has conducted Negotiated Procurement pursuant to Section 53.1 (Two-Failed Biddings) of the IRR of RA 9184 for two (2) projects. However, the negotiated procurement for both projects also failed. The BAC is currently exploring the following options:

- (1) To conduct a Second (2nd) Negotiated Procurement under Section 53.1 (Two-Failed Biddings) of the IRR of RA 9184; or
- (2) To conduct public bidding since the end-user modified the technical specifications of the Project, but without changing its ABC.

It is in this context that DSWD-NCR BAC is seeking advise from this office on which of the two (2) options is allowed in accordance with the IRR of RA 9184.

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) render policy and non-policy matter opinions, respectively, on issues pertaining to the interpretation and application of procurement laws, rules and regulations. It has no authority to determine the specific procurement method to be adopted by the Procuring Entity (PE) in the conduct of its procurement activity, which authority is specifically granted to the PE.

For your guidance, Section 10 of RA 9184 and its IRR provides that the PE shall, as a general rule, adopt public bidding as a mode of procurement. Alternative Methods of Procurement may be resorted to only in highly exceptional circumstances provided in Article

XVI of RA 9184. Among the highly exceptional cases recognized by the rules is when there has been Two(2)-Failed Biddings in accordance with Section 53.1 of the IRR of RA 9184.

When the BAC has declared another failure of procurement despite resort to Negotiated Procurement under Two Failed Biddings), the BAC may still resort to the same negotiated modality considering that the conditions of Section 53.1 of the IRR of RA 9184 are present.

However, as clarified in NPM No. 14-2012 dated 18 January 2012, resort to negotiated procurement after two-failed biddings is not mandatory as the primary mode of procurement under Section 10 of the procurement law and associated rules is Competitive Bidding. As provided in Section 48.1 of the IRR of RA 9184, in order to promote economy and efficiency, the procuring entity **may** resort to any of the alternative methods of procurement, subject to the prior approval of the head of the procuring entity. The use of the word “may” indicates that resort to alternative methods is permissive, subject to the sound discretion of the procuring entity.

Accordingly, it is up to the procuring entity to resolve, in the interest of efficiency and economy, whether is it still best to resort to Competitive Bidding under Section 10 or Negotiated Procurement under Section 53.1 of the IRR of RA 9184 after the two (2) failures of bidding.

We hope this opinion issued by GPPB-TSO provided sufficient guidance on the matter. Note that this is 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. SANJIAGO

Executive Director V *nl*

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