



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

NPM No. 109-2013

23 December 2013

ENGR. MARCO A. ESTABILLO

Officer-in-Charge, Procurement and Property Management Department

SUBIC BAY METROPOLITAN AUTHORITY (SBMA)

Room 201, Building 255, Barryman Road,

Subic Bay Freeport Zone 2222

Re : Negotiated Procurement (Two Failed Biddings)

Dear Engr. Estabillo:

This is in response to your letter dated 30 October 2013, seeking our opinion on whether SBMA may consider the proposals of suppliers who participated in the Negotiated Procurement (Two Failed Biddings) under Section 53.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184 for the procurement of One (1) Lot Services and Materials for the Dry-Docking and Repainting Works of Two (2) Marine Vessels of SBMA (Project), even if they do not conform to SBMA's requirements.

As represented, SBMA resorted to Negotiated Procurement under Section 53.1 of the IRR of RA 9184 after public bidding for the Project failed twice. The proposals received by SBMA were within the Approved Budget for the Contract (ABC), but do not conform to its requirements for standard payment, three (3) to six (6) months warranty, and posting of performance security. It is in this context that clarification on the above-mentioned issue is being sought.

Section 53 of the IRR of RA 9184 describes Negotiated Procurement as a method of procurement of goods, infrastructure projects, and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant in any of the cases enumerated therein.

One of the instances when Negotiated Procurement may be used, as specified in Section 53.1 of the IRR of RA 9184, is when there has been failure of bidding for the second time as provided in Section 35 of the IRR. In the implementation of this alternative modality of procurement, Section 53.1.5 of the IRR requires that the procuring entity shall select the successful offer on the basis of the best and final offer which meets the procuring entity's minimum technical requirements and does not exceed the ABC.

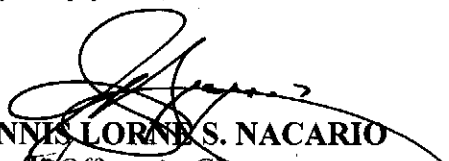
In this regard, the acceptability of a proposal submitted in response to a request for quotation under Negotiated Procurement (Two Failed Biddings) depends on its compliance

with the minimum technical requirements and the ABC, such that failure to satisfy either one will result in its disqualification.

Based on the foregoing, we wish to clarify that an offer or proposal submitted in relation to procurement through Negotiated Procurement (Two Failed Biddings) under Section 53.1 of the IRR of RA 9184 should comply with the minimum technical requirements set by the procuring entity and does not exceed the ABC provided in the request for quotation, in order that it can be considered by the procuring entity. We wish to emphasize that the contract shall be awarded to the bidder that is determined to have submitted the lowest calculated and responsive bid or highest rated and responsive bid, whichever is applicable.

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