



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

NPM No. 13-2008

24 July 2008

MR. LUCRECIO R. ALVIAR, JR.
*Regional Technical Director and
Chairman, Bids and Awards Committee*
DEPARTMENT OF AGRICULTURE
Regional Field Unit No. 02
Tuguegarao City, Cagayan

Re : Negotiated Procurement

Dear Mr. Alviar, Jr:

This refers to your letter dated 22 July 2008, received by our office on 23 July 2008, seeking clarification on whether you can proceed with the conduct of negotiated procurement for the acquisition of a reduced quantity of Muriate of Potash, using the same ABC, after two failures of bidding.

Based on your representations, the following factual considerations were noted:

1. Your office has declared first and second failures of bidding for the procurement of 135,000 kgs. of Muriate of Potash with an ABC of P5,130,000.00 on account of no bid submission;
2. You intend to resort to negotiated procurement;
3. Under GPPB Resolution No. 07-2005: Rules on Adjustment of the ABC, the terms, conditions and specifications of the project as well as the ABC must be maintained;
4. However, you are assuming that there will likewise be a failure of negotiated procurement in view of the continuing price escalation of agricultural fertilizers; and
5. To cope with the prevailing market prices, you are considering to reduce the quantity of Muriate of Potash while maintaining the ABC, using negotiated procurement.

As you have appropriately pointed out, GPPB Resolution No. 07-2005: Rules on Adjustment of ABC provides, in one of its whereas clauses, to wit:

“WHEREAS, if after two failed biddings, the procuring entity finds that there is a need to evaluate the responsiveness of the ABC, and

decides to revise the ABC accordingly, the procuring entity should conduct another public bidding with re-advertisement and/or posting. However, **if the procuring entity resorts to negotiated procurement, the terms, conditions and specifications of the project as well as the ABC must be maintained.**" (emphasis ours)

As can be gleaned from the foregoing, the conditions under which negotiated procurement may be undertaken after two failed biddings are clear and unequivocal. The terms, conditions and specifications of the project, as well as the ABC must be maintained. Hence, it necessarily follows that if you intend to enter into negotiated procurement of Muriate of Potash after two failed biddings, you must not only retain the ABC, but also require the same quantity to be procured.

Further, considering the prevailing market prices of agricultural fertilizers viz- a- viz your assumption that a negotiated procurement will likewise fail, it may be more prudent for your office to look into/evaluate the responsiveness of the ABC which you have previously set at P5,130,000.00 and thereafter conduct a new bidding for the procurement of 135,000 kgs. of Muriate of Potash using an adjusted ABC within a period of twenty-eight (28)¹ calendar days.

We trust that this clarifies matters. Should you have any clarifications, please feel free to contact us.

Very truly yours,


for **RUBY U. ALVAREZ**
Executive Director III

¹ Annex "C" Period of Action on Procurement Activities, Handbook on Philippine Government Procurement, Fourth Edition. September 2007

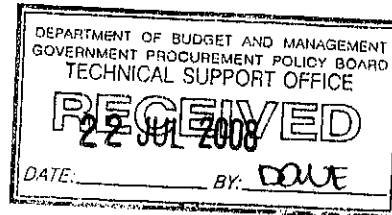


Republic of the Philippines
DEPARTMENT OF AGRICULTURE
 Regional Field Unit No. 02
 Tuguegarao City
 Tel. Nos. 844-1324/1312 Fax. Nos. 844-1031 / 846-9131

Emmie,
 Pls. handle. Sign in my
 behalf.
 PJ 7/23/08

22 July 2008

DIR. EMILUISA C. PEÑANO
 Deputy Executive Director
 Technical Support Office
 Government Procurement Policy Board
 Unit 2506 Raffles Corporate Center
 F. Ortigas Jr. Road, Ortigas Center
 Pasig City 1605



Dear Director Peñano:

The Department of Agriculture-Regional Field Unit No. 02 (DA-RFU 02) had posted an Invitation to Apply for Eligibility and to Bid Nos. 05-01-2008 and 06-01-2008 at PhilGeps website and published it in the Philippine Star on May 21 and 28, 2008 and June 25 and July 2, 2008, respectively, for the Procurement of 135,000 kgs. of Muriate of Potash, with an ABC of P5,130,000.00.

We have declared first and second failure of bidding because no bids were received during the above schedule of bidding activities.

Relative to this, the DA-RFU 02 is planning to resort to negotiated procurement, however, under GPPB Resolution 07-2005: Rules on Adjustment of the ABC, stated that the terms, conditions and specifications of the project as well as the ABC must be maintained. With the continuing price escalation of agricultural fertilizers, we assume that failure in the negotiated procurement will happen again.

Therefore, may we be advised if we can reduce the quantity (135,000 kg) of Muriate of Potash but the ABC shall be maintained, in order that we can cope up with the prevailing market prices.

Your advise or decision regarding the matter shall be our basis in the recommendation for the award of contract. We appreciate very much if you can send your reply as soon as possible through fax machine.

Thank you.

Very truly yours,

LUCRECIO R. ALVIAR, JR.
 Regional Technical Director and
 Chairman, BAC