



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

NPM No. 136-2012

29 October 2012

MR. RANDOLPH Q. MARCIAL

Acting Chairman

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS)

REGULATORY OFFICE

Katipunan Road, Balara, Quezon City

1105 Philippines

Re: Absence of Quorum during the Opening of Financial Bid

Dear Chairman Marcial:

We respond to your letter dated 6 August 2012 seeking our opinion on whether the decision of the Bids and Awards Committee (BAC) Chairman and Vice-Chairman of the MWSS to proceed with the Opening of the Bidder's Financial Bid despite the absence of quorum is a valid ground to declare a failure of bidding.

As represented, there are two (2) firms that expressed their interest to participate in the procurement of consultancy services and subsequently submitted their respective Technical Proposals and Financial Bids within the deadline stated in the Invitation to Bid. After the conduct of Quality-Based Evaluation, only one (1) firm passed the required technical score. Thereafter, the Board of Trustees, through the recommendation of the BAC, declared the firm as the Highest Rated Bid (HRB). Subsequently, the BAC notified the firm with the HRB and invited it for the opening of its financial proposal and negotiation. During the opening of the financial bid of the HRB, the Chairman and Vice-Chairman proceeded with the scheduled opening and even initialed every page thereof despite the absence of quorum. Considering the foregoing circumstances, the process of negotiation was re-set to another date. During the next meeting and with the required presence of quorum, the BAC concluded the negotiations with the HRB. This eventually resulted to the award of contract in favor of the firm. Nevertheless, the Observer from the Commission on Audit (COA) took note of the absence of quorum during the opening of financial bid since quorum is required in every transaction of business.

At the outset, we wish to note that pursuant to Section 12.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, quorum for the transaction of business is determined through a majority of the BAC composition provided that the presence of the Chairman or Vice-chairman shall be required. Additionally, for purposes of determining the presence of quorum, it should be emphasized that General laws in our jurisdiction commonly provide that a majority of members constitute a quorum, such as Section 16 (2),

Article VI of the 1987 Constitution; Section 52, Title VI of the Corporation Code of the Philippines; and, Section 53(a) of the Local Government Code of 1991.

“Quorum” is defined as that number of members of a body which, when legally assembled in their proper places, will enable the body to transact its proper business or that number which makes a lawful body and gives it power to pass upon a law or ordinance or do any valid act.¹ “Majority,” when required to constitute a quorum, means the number greater than half or more than half of any total.²

It bears stressing that the BAC is considered a collegial body and, as such, the act of the head of a collegial body cannot be considered as that of the entire body itself³. Thus, we are of the view that pursuant to the requirements of the procurement law and its associated rules, in order to transact business and validly pass upon any act or resolution, the BAC being a collegial body, must have a quorum that requires the participation of the majority of its members. As a collegial body, the agreement or consent of a majority of the BAC members constituting a quorum is regarded as a singular representative act of the body, which has legal and binding effect in fact and in law. As members of the collegial body, the decision of the Chairman and the Vice-Chairman without the required quorum to transact business is not sufficient to legally render a valid and binding decision. In reality, the sense and spirit of collegiality are impaired when any member acts for and in behalf of the BAC without the required quorum, in which case the act or decision is not only highly questionable, it is invalid, illegal, and has no force and effect.

Based on the foregoing, we opine that the conduct of opening of the financial proposal necessitates the collegial action of the BAC. Thus, quorum constituting a majority of the members of the BAC must be present during the opening of the financial proposal for the purpose of conducting negotiations with the consultant. Absent such quorum, any decision rendered by the Chairman and/or Vice-Chairman, acting alone or in concert, is regarded as unofficial and cannot be attributed to the collegial action of the BAC. It follows that any decision rendered during this stage, regardless of the decision to move the date of negotiation with the consultant is an act that was done outside the legal parameters set by RA 9184 and its IRR.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is rendered on the basis of facts and particular situations presented, and may not be applicable given different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO

Executive Director III


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1 Javellana v. Tayo, 6 SCRA 1042, 1048-1049 (1962).

2 Perez v. Dela Cruz, 27 SCRA 587, 603 (1969).

3 GMCR, Inc. v. Bell Telecommunications Phil's., G.R. No. 126496, April 30, 1997, 271 SCRA 790.