



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

NPM No. 136-2013

27 December 2013

HON. VILMA B. CABRERA

Assistant Secretary

Chairperson, Bids and Awards Committee (BAC)

DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD)

IBP Road, Batasan Pambansa Complex, Constitution Hills, Quezon City

Re: Negotiated Procurement, Two-Failed Biddings

Dear Assistant Secretary Cabrera:

We respond to the Honorable Assistant Secretary's letters dated 12 August 2013 and 14 October 2013, seeking clarification on whether the Department of Social Welfare and Development (DSWD) Bids and Awards Committee-I (BAC-I) could evaluate a lone contractor who responded to the invitation to participate in Negotiated Procurement under Section 53.1 (Two Failed Biddings) of the revised Implementing Rules and Regulations of Republic Act (RA) No. 9184.

It is represented that the DSWD BAC-I resorted to Negotiated Procurement under Section 53.1 of the IRR of RA 9184 after the public bidding for the Design and Construction of Sewage Treatment Plant (STP) Facility and Installation of Overhead Water Tank and Distribution Lines Project (Project) at the Golden Acres, Tanay, Rizal, failed twice. However, DSWD BAC-I has also declared the Negotiated Procurement as "failed" when it did not obtain quotations from at least two (2) bidders, which they consider as "sufficient number of suppliers, contractors or consultants" under Section 53.1.2 of the IRR of RA 9184. Another Negotiated Procurement was conducted, but only one (1) bidder responded to the invitation. It is in this context that DSWD BAC-I is requesting for an interpretation of Section 53.1.2, particularly, whether it can evaluate a lone bidder that responded to their notice.


Section 53.1.2 of the IRR of RA 9184 provides that where there has been a failure of public bidding for the second time, the BAC shall invite and engage in negotiations with a sufficient number of suppliers, contractors or consultants to ensure effective negotiations. Unlike in Shopping under Section 52.1(b), which requires at least three (3) quotations¹, the rules do not impose the same requirement to Negotiated Procurement (Two-Failed Biddings) under Section 53.1 of the IRR.

¹ Section 3(f), GPPB Resolution No. 09-2009 dated 23 November 2009, Guidelines for Shopping and Small Value Procurement.

The phrase “sufficient number of suppliers, contractors or consultant” refers to the minimum number of contractors that the PE must invite for the purpose of engaging in negotiation. Accordingly, if only one bidder responded to such invitation, the PE may proceed with the Negotiated Procurement as long as it has invited contractors of a number that it deems sufficient to ensure competition in accordance with Section 53.1.2 of the IRR of RA 9184.

We hope that this opinion by the GPPB-TSO provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS LORNE S. NACARIO
Officer-in-Charge

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