

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 143-2004

November 10, 2004

SSUPT MR. JOSE E. COLLADO
Deputy Chief for Administration
Chairman, Bids and Awards Committee
Bureau of Fire Protection

Re : Queries on Republic Act 9184 (R.A. 9184) and Its Implementing Rules and Regulations Part A (IRR-A)

Dear Mr. Collado:

This refers to your letter dated October 14, 2004 which we received on October 22, 2004 requesting guidance on the following issues, to wit:

1. Is the failure of the BAC to require a simultaneous submission of the first and second envelopes sufficient ground to declare a failure of bidding?
2. In the event of a failure of bidding, are the bidders who rated failed in the previous bidding allowed participation?

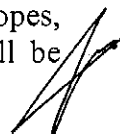
The BAC's failure to require the simultaneous submission of the two (2) envelopes is sufficient ground to declare failure of bidding

The reservation clause in Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations part A (IRR-A) explicitly grants the prerogative of the procuring entity to declare a failure of bidding under certain conditions. Section 41.1 of IRR-A provides that the procuring entity reserves the right to reject any and all bids, declare a failure of bidding or not award the contract if, inter alia, the BAC is found to have failed in following the prescribed bidding procedures.

Necessarily, in determining whether a declaration of bidding is in order under the circumstances attending the bid project of the Bureau of Fire Protection (BFP), we go to the prescription of the law and the rules as regards the bidding procedures, as follows:

Section 23.1 of the IRR-A provides:

xxx The eligibility envelopes of prospective bidders for the procurement of goods shall be submitted, **together** with the technical and financial envelopes, on or before the deadline specified in the Instruction to Bidders, and shall be



opened on the date of the bid opening to determine eligibility of each of the prospective bidders. xxx¹

Section 25.1 of the same rules also provides:

Eligible bidders shall submit their bids through their authorized managing officer or their duly authorized representative (i) in the prescribed Bid Form, including its annexes, as specified in the bidding documents, (ii) on or before the specified deadline, and (iii) in two (2) separate sealed bid envelopes, the first containing the technical component of the bid, and the second containing the financial component of the bid, xxx **Both envelopes shall then be sealed in an outer envelope** which shall be addressed to the BAC and shall be marked as specified in the Instructions to Bidders.²

Section 25 of R.A. 9184 is even more emphatic and categorical on this note. The provision states:

Sec. 25. Submission and Receipt of Bids.-- A bid shall have two (2) components, namely the technical financial and components which should be in separate sealed envelopes, and which shall be **submitted simultaneously**. xxx.³

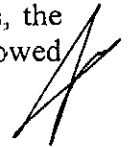
A careful study of the foregoing prescriptions of the rules and the law yields the intention of the law to require the simultaneous submission of the two (2) envelopes to avoid any window for modification or variation of the bids. Thus, the provisions of the law, being mandatory in character, should be complied with according to its letter and intent. Any procedural failure in the conduct of the bidding necessarily results in the failure of bidding.

Appropriately, in the case of the BFP, with regard to the circumstances raised for this office's consideration, the right and prudent remedy for the BAC to rectify the already-identified error is to declare a failure of bidding under Section. 41 of IRR-A and conduct a re-bid in conformity with the prescribed rules.

The rules provide a mechanism to avoid the awkward and ill-ridden consequence of government agencies -- and private enterprises as well -- in having to deal with and operate under a void contract that was acquired in violation of an express provision of law.⁴

Re-bid implies a fresh new bid and the participation of any and all bidders

There are no special procedures provided under the law and the rules in case of a re-bid. The procedures to be observed in the re-bid shall be those prescribed under IRR-A as if it is an entirely new proceeding. Thus, except those that are found to be non-compliant to the rules, the BAC shall observe the same process and set the new periods according to the same rules followed



¹ Emphasis ours

² Ibid.

³ Ibid.

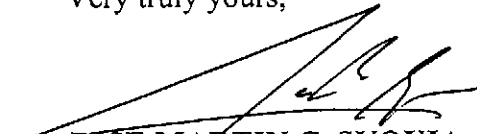
⁴ See Art. 1409 of the New Civil Code of the Philippines.

during the first bidding.⁵ The BAC will have to re-advertise and/or re-post in accordance with Section 21 of RA 9184 and IRR-A.⁶

As a necessary consequence of the procedures, the invitation to apply for eligibility and to bid opens the whole system to any and all desirous bidders. In this way, the principle of open competition in public bidding is conserved even in cases of re-bid.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

⁵ See Section 35.2 of IRR-A

⁶ See Section 35.1, Ibid.