

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**Technical Support Office**

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**NPM No. 144-2004**

November 11, 2004

**MS. CARMELITA S. DIMZON, DPA**  
Deputy Administrator  
Chairperson, Bids and Awards Committee  
Philippine Overseas Employment Administration

**Re : Remedy in Case of Error or Mistake in Bidding Rules and Procedures.**

Dear Dr. Dimzon:

This refers to your letter, dated November 9, 2004, requesting for a written opinion on a matter arising from a bid procedure your agency's Bids and Awards Committee (BAC) earlier undertook. It is remembered that this office had the opportunity to render its view on the subject query in a meeting held at our office on 8 November 2004. The issue tackled and herein subject of written opinion is as follows:

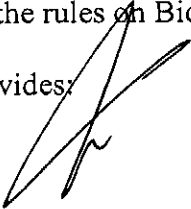
What legal remedy is available to the BAC in case it advertently stated on its Bid Documents that the required bond shall be at the rate of 2½% of the bid amount instead of 2½% of the Approved Budget for the Contract?

**The BAC's failure to comply with the rules: 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 the 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 rules and procedures.

Necessarily, in determining whether a declaration of bidding is in order under the circumstances attending the bid project of the Philippine Overseas Employment Administration (POEA), we go to the prescription of the rules on Bid Security, as follows:

Section 27.2 of the IRR-A provides:



The Bid security shall be in an amount at least equal to, and not lower than, a percentage of the **approved budget for the contract** to be bid, as advertised by the concerned procuring entity xxx<sup>1</sup>

As may be read from the foregoing provision of the IRR-A, the rule is categorical that the amount of the Bid Security shall be based on the approved budget for the contract and not on the bid amount. While it is true that the BAC committed the mistake of stating on its Bid Documents that the required Bid bond “be at the rate of 2½% of the bid amount,” the members are but deserving of commendation for the effort to rectify such error in view of complying with the express provision of law.

Appropriately, in the case of the POEA, 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 the IRR-A and conduct a re-bid in conformity with the prescribed rules.

The law and the rules are not without room to accommodate efforts to rectify mistakes by the BAC in their proceedings. Also, 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.<sup>2</sup>

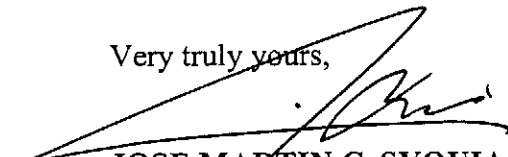
**Re-bid implies a fresh new bid and the participation of any and all bidders**

In this light, if it is not too much to add, 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 the IRR-A as if it is an entirely new proceeding, unless it is a second failed bidding. 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 during the first bidding.<sup>3</sup> The BAC will have to re-advertise and/or re-post in accordance with Section 21 of RA 9184 and IRR-A.<sup>4</sup>

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

/scm

<sup>1</sup> Emphasis ours.

<sup>2</sup> See Art. 1409 of the New Civil Code of the Philippines.

<sup>3</sup> See Section 35.2 of IRR-A

<sup>4</sup> See Section 35.1, Ibid.