

NPM No. 26-2009

27 May 2009

MR. ENRIQUE P. BORJA
Administrative Officer IV
Officer-In-Charge
Head, BAC II Secretariat
DEPARTMENT OF EDUCATION
PROCUREMENT SERVICE
Room 507-508, 5th Floor Mabini Building
DepED Complex, Meralco Avenue
Pasig City

Re: Attendance of BAC Chair/Vice-chair in "Draw Lots" as a Tie-Breaking Method

Dear Mr. Borja:

We respond to your letter dated 14 May 2009 requesting legal opinion relative to the procedure for the conduct of draw lots as a tie-breaking method for the bidding of the *Supply and Delivery of Security Services to the DepED Central Office, EDPITAF and IMCS for Three (3) Years* (hereinafter, the "Project") by the Bids and Awards Committee II (BAC) of the Department of Education (DepED).

As per your representation, we gather the following factual antecedents:

1. On 25 February 2009, the BAC of the DepED conducted "Draw Lots" under Government Procurement Policy Board (GPPB) Circular No. 06-2005 dated 5 August 2005, to break the tie between three (3) bidders for the Project with their respective representatives present.
2. However, the Chairman and Vice-chairman of the BAC were not able to witness the draw lots for the reason that they were attending other official meetings. Another member of the BAC, Ms. Sonia R. de Leon, was instead authorized by the Chairman to preside over the meeting.
3. Based on the minutes of the said meeting, the prospective bidders, end-users and Commission on Audit (COA) representative interposed no objections to the said delegation.
4. The mechanics of the draw lots as agreed upon by the BAC, end-user and COA representative, as described in the minutes, are as follows:

- a. Each bidder shall pick a number to determine the sequence of the draw. The bidder who gets No.1 shall be the first, No.2 the second, and No. 3 the third, to draw from the pot containing three (3) rolled papers. The bidder who gets the paper containing the words "Congratulations" shall then be the winning bidder.
- b. The winning bidder shall submit within fifteen (15) days upon receipt of the Notice of Award all the required equipment for inspection. Failure to submit all the required equipment shall be ground for disqualification and forfeiture of bid security.
- c. In case of disqualification another draw lots shall be conducted between the two (2) remaining bidders.
- d. The end-user shall undertake the inspection of submitted equipment within fifteen (15) days upon receipt of all the required documents.

The bidders posed no objections to the said mechanics.

5. The results of the draw were as follows:

Sequence of Draw	Bidders	Results
First	Lockheed Detective & Watchman Agency, Inc	Congratulations (Winning Bidder)
Second	Right Eight Security	Thank you, better luck next time.
Third	Commander Security Services, Inc.	Thank you, better luck next time.

6. One of the non-winning bidders questioned the validity of the draw stating that the draw lots should have been presided by either the BAC Chairperson or Vice-chairperson. In defense, the BAC claimed that since the draw was merely conducted pursuant to the abovementioned GPPB Circular, it did not require BAC deliberations necessitating the attendance of its Chairperson or Vice-chairperson.

The basic issue therefore is whether the absence of the Chairperson and Vice-chairperson in the conduct of "draw lots" affects the validity of the said tie-breaking method.

It is expressly stated in Section 12.4 of the Implementing Rules and Regulations Part - A (IRR-A) of Republic Act No. 9184 (R.A. 9184) that the Chairman or, in his absence, the Vice-chairman, shall preside at all meetings of the BAC. The decision of at least a majority of those present at a meeting at which there is a *quorum* shall be valid and binding as an act of the BAC, provided that the Chairman or the Vice-chairman, shall vote only in case of a tie.

Pursuant to Section 12.3 of the IRR-A *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.

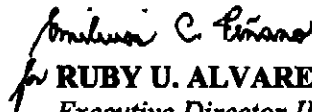
It can be readily gleaned from the foregoing that the Chairman and/or Vice-chairman are required to attend not only for the purpose of presiding in all meetings of the BAC, but also to satisfy the requirement of reaching a quorum for the

transaction of business. The attendance of the Chairman and/or Vice-chairman is required to ensure the proper implementation of procurement laws and to expedite the proceedings such that clarifications may be made when immediate resolutions from the BAC are necessary.

The conduct of "draw lots" for the purpose of breaking a tie is clearly one of those transactions necessitating BAC action. However, the absence of either the Chairman or the Vice-chairman, or both, will not automatically invalidate the proceedings, along with the transactions carried therein. In order to nullify the meeting, including the contracts arising therefrom, it must be proven in the proper forum that the BAC failed to follow the prescribed bidding procedures.

We hope to have provided guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


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

- a. Each bidder shall pick a number to determine the sequence of the draw. The bidder who gets No.1 shall be the first, No.2 the second, and No. 3 the third, to draw from the pot containing three (3) rolled papers. The bidder who gets the paper containing the words "Congratulations" shall then be the winning bidder.
- b. The winning bidder shall submit within fifteen (15) days upon receipt of the Notice of Award all the required equipment for inspection. Failure to submit all the required equipment shall be ground for disqualification and forfeiture of bid security.
- c. In case of disqualification another draw lots shall be conducted between the two (2) remaining bidders.
- d. The end-user shall undertake the inspection of submitted equipment within fifteen (15) days upon receipt of all the required documents.

The bidders posed no objections to the said mechanics.

5. The results of the draw were as follows:

Sequence of Draw	Bidders	Results
First	Lockheed Detective & Watchman Agency, Inc	Congratulations (Winning Bidder)
Second	Right Eight Security	Thank you, better luck next time.
Third	Commander Security Services, Inc.	Thank you, better luck next time.

6. One of the non-winning bidders questioned the validity of the draw stating that the draw lots should have been presided by either the BAC Chairperson or Vice-chairperson. In defense, the BAC claimed that since the draw was merely conducted pursuant to the abovementioned GPPB Circular, it did not require BAC deliberations necessitating the attendance of its Chairperson or Vice-chairperson.

The basic issue therefore is whether the absence of the Chairperson and Vice-chairperson in the conduct of "draw lots" affects the validity of the said tie-breaking method.

It is expressly stated in Section 12.4 of the Implementing Rules and Regulations Part – A (IRR-A) of Republic Act No. 9184 (R.A. 9184) that the Chairman or, in his absence, the Vice-chairman, shall preside at all meetings of the BAC. The decision of at least a majority of those present at a meeting at which there is a *quorum* shall be valid and binding as an act of the BAC, provided that the Chairman or the Vice-chairman, shall vote only in case of a tie.

Pursuant to Section 12.3 of the IRR-A, *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.

It can be readily gleaned from the foregoing that the Chair and/or Vice-chairperson are required to attend not only for the purpose of presiding in all meetings of the BAC, but also to satisfy the requirement of reaching a quorum. The attendance

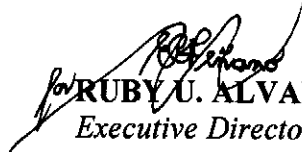
↑ for the transaction of business.

of the Chair and/or Vice-chairperson is required to ensure the proper implementation of procurement laws and to expedite the proceedings such that clarifications may be made when immediate resolutions from the BAC are necessary.

The conduct of "draw lots" for the purpose of breaking a tie is clearly one of those ~~meetings where the presence of the BAC Chair or Vice-chair is required.~~ ^{transactions necessitating BAC advice.} However, absence of ^{either the Chairman or Vice-Chairman, or} both will not automatically invalidate the proceedings, ~~including~~ ^{along with} the transactions carried therein. In order to nullify the meeting, ^{in the proper forum and through} including the contracts arising therefrom, it must be proven that the BAC failed to follow the prescribed bidding procedures.

We hope to have provided guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


for RUBY U. ALVAREZ
Executive Director III



5/25
 Ma'am Emmie,
 For review po.
 Last week po po
 nangyari ito.
 Thank you.

26 May 2009

MR. ENRIQUE P. BORJA
 Administrative Officer IV
 Officer-In-Charge
 Head, BAC II Secretariat
 DEPARTMENT OF EDUCATION
 PROCUREMENT SERVICE
 Room 507-508, 5th Floor Mabini Building
 DepED Complex, Meralco Avenue
 Pasig City

FN: DepED, 5.14.2009

hyccc

Re: Attendance of BAC Chair/Vice-chair in "Draw Lots" as a Tie-Breaking Method

Dear Mr. Borja:

We respond to your letter dated 14 May 2009 requesting legal opinion relative to the procedure for the conduct of draw lots as a tie-breaking method for the bidding of the *Supply and Delivery of Security Services to the DepED Central Office, EDPITAF and IMCS for Three (3) Years* (hereinafter, the "Project") by the Bids and Awards Committee II (BAC) of the Department of Education (DepED).

As per your representation, we gather the following factual antecedents:

1. On 25 February 2009, the BAC of the DepED conducted "Draw Lots" under Government Procurement Policy Board (GPPB) Circular No. 06-2005 dated 5 August 2005, to break the tie between three (3) bidders for the Project with their respective representatives present.
2. However, the Chairman and Vice-chairman of the BAC were not able to witness the draw lots for the reason that they were attending other official meetings. Another member of the BAC, Ms. Sonia R. de Leon, was instead authorized by the Chairman to preside over the meeting.
3. Based on the minutes of the said meeting, the prospective bidders, end-users and Commission on Audit (COA) representative interposed no objections to the said delegation.
4. The mechanics of the draw lots as agreed upon by the BAC, end-user and COA representative, as described in the minutes, are as follows:
 - a. Each bidder shall pick a number to determine the sequence of the draw. The bidder who gets No.1 shall be the first, No.2 the second, and No. 3

the third, to draw from the pot containing three (3) rolled papers. The bidder who gets the paper containing the words "Congratulations" shall then be the winning bidder.

- b. The winning bidder shall submit within fifteen (15) days upon receipt of the Notice of Award all the required equipment for inspection. Failure to submit all the required equipment shall be ground for disqualification and forfeiture of bid security.
- c. In case of disqualification another draw lots shall be conducted between the two (2) remaining bidders.
- d. The end-user shall undertake the inspection of submitted equipment within fifteen (15) days upon receipt of all the required documents.

The bidders posed no objections to the said mechanics.

5. The results of the draw were as follows:

Sequence of Draw	Bidders	Results
<i>First</i>	<i>Lockheed Detective & Watchman Agency, Inc</i>	<i>Congratulations (Winning Bidder)</i>
Second	Right Eight Security	Thank you, better luck next time.
Third	Commander Security Services, Inc.	Thank you, better luck next time.

6. One of the non-winning bidders questioned the validity of the draw stating that the draw lots should have been presided by either the BAC Chairperson or Vice-chairperson. In defense, the BAC claimed that since the draw was merely conducted pursuant to the GPPB Circular, it did not require BAC deliberations necessitating the attendance of its Chairperson or Vice-chairperson.

The basic issue therefore is whether the absence of the Chairperson and Vice-chairperson in the conduct of "draw lots" affects the validity of the said tie-breaking method.

It is expressly stated in Section 12.4 of the Implementing Rules and regulations Part – A (IRR-A) of Republic Act No. 9184 (R.A. 9184) that the Chairman or, in his absence, the Vice-chairman, shall preside at all meetings of the BAC. The decision of at least a majority of those present at a meeting at which there is a *quorum* shall be valid and binding as an act of the BAC, provided that the Chairman or the Vice-chairman, shall vote only in case of a tie.

Pursuant to Section 12.3 of the IRR-A *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.

It can be readily gleaned from the foregoing that the Chair and/or Vice-chairperson are required to attend not only for the purpose of presiding in all meetings of the BAC, but also to satisfy the requirement of reaching a quorum. The attendance of the Chair and/or Vice-chairperson is required to ensure the proper implementation

of procurement laws and to expedite the proceedings such that clarifications may be made when immediate resolutions from the BAC are necessary.

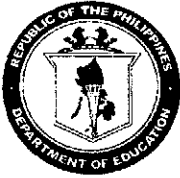
The conduct of "draw lots" for the purpose of breaking a tie is clearly one of those meetings where the presence of the BAC Chair or Vice-chair is required. However, absence of both will not automatically invalidate the proceedings including the transactions carried therein. In order to nullify the meeting including the contracts arising therefrom, the procuring entity must prove in the proper forum and through the presentation of relevant documents for the purpose that the BAC is found to have failed in following the prescribed bidding procedures.

For your guidance, we would like to remind you that under GPPB Circular 06-20005, procuring entities are required to identify at the onset of the bidding process, and, to include in the bidding documents as instruction or matter of information, a ready and clear measure to be used in the event two or more of the bidders have been post-qualified as LCRB or HRRB. In lieu of the pre-determined criteria, however, the concerned entity may opt to bring the bidders to agree on a better selection method. Nonetheless, in all cases, the measure shall be non-discretionary and non-discriminatory such that the same is based on sheer luck and chance.

We hope to have provided guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III



REPUBLIKA NG PILIPINAS
REPUBLIC OF THE PHILIPPINES
KAGAWARAN NG EDUKASYON
DEPARTMENT OF EDUCATION



PROCUREMENT SERVICE

Room 507-508, 5th Floor Mabini Building, DepED Complex, Meralco Avenue, Pasig City, Philippines
Website: <http://www.deped.gov.ph>; e-mail: deped_procurement@yaho.com.ph
Direct Line: 636-65-43 / Telefax: 636-65-42, 633-93-43 Trunk Line: 632-13-61 Local: 2019

May 14, 2009

ATTY. RUBY U. ALVAREZ
Executive Director III
Government Procurement Policy Board
25th Floor Raffle Building
Ortigas Avenue, Pasig City

SUBJECT : Conduct of "Draw Lots"

Dear Atty. Alvarez:

We are transmitting herewith the letter of query to seek opinion from your good office relevant to the procedure in conducting a draw lots to break the tie among three (3) bidders.

At present, our Resolution to Award is still pending for approval of our Secretary, while we are waiting for your immediate action on this query,

Thank you very much and more power.

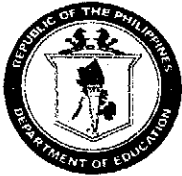
Very truly yours,

Enrique P. Borja
ENRIQUE P. BORJA
Administrative Officer IV
Officer-In-Charge
Head, BAC II Secretariat
ric_borgs@yahoo.com

see Circular 06-2005

5/15/09 pen
*Hyee, pls handle. Let's
prioritize. Pfs 5/15/09*

pen,



REPUBLIKA NG PILIPINAS
REPUBLIC OF THE PHILIPPINES
KAGAWARAN NG EDUKASYON
DEPARTMENT OF EDUCATION



PROCUREMENT SERVICE

Room 507-508, 5th Floor Mabini Building, DepED Complex, Meralco Avenue, Pasig City, Philippines
Website: <http://www.deped.gov.ph>; e-mail: deped_procurementsservice@yahoo.com.ph
Direct Line: 636-65-43 / Telefax: 636-65-42, 633-93-43 Trunk Line: 632-13-61 Local: 2019

May 14, 2009

ATTY. RUBY U. ALVAREZ
Executive Director III
Government Procurement Policy Board

SUBJECT : Conduct of "Draw Lots"

Dear Atty. Alvarez:

We would like to refer the matter to and seek opinion from your good Office relevant to the Supply and Delivery of Security Services to DepEd Central Office, EDPITAF and IMCS for Three (3) Years.

This Department conducted "draw lots" last February 25, 2009 to break the tie among three (3) post-qualified bidders who agreed to proceed with the activity without the BAC Chairperson or Vice-Chairperson. The said activity was presided by one of the members, as authorized by the Chairperson who was at that time attending a meeting assigned by the Secretary. The Vice-Chairperson was also attending another official meeting.

The "draw lots" was based on GPPB Circular No. 06-2005 dated August 5, 2005, and sufficiently provided in the Bidding Documents so that its administration, if necessary, will no longer have to be deliberated by the BAC necessitating the presence of the BAC Chairperson or Vice-Chairperson.

However, one of the post-qualified bidders who lost in the "draw lots" raised a concern afterwards that said activity should have been presided by either the BAC Chairperson or Vice-Chairperson. The BAC already replied to the letter of said bidder regarding this concern through a formal letter dated March 26, 2009, and has not received any reply to date. Attached is a copy of the minutes of the draw lots activity for reference.

Your advice on this matter will be highly appreciated.

Thank you.

Very truly yours,

RAMON C. BACANI
Undersecretary and
BAC II Chairperson



REPUBLIKA NG PILIPINAS
REPUBLIC OF THE PHILIPPINES
KAGAWARAN NG EDUKASYON
DEPARTMENT OF EDUCATION



BIDS AND AWARDS COMMITTEE II

Room 507-508, 5th Floor Mabini Building, DepED Complex, Meralco Avenue, Pasig City, Philippines

Website: <http://www.deped.gov.ph>; e-mail: deped_procurementservice@yahoo.com.ph

Direct Line: 636-65-43 / Telefax: 636-65-42, 633-93-43

Trunk Line: 632-13-61 local 2019

Minutes of Draw Lots

Project: Supply of Security Services for DepED Central Office, IMCS and EDPITAF for 3 years

Date : **February 25, 2009; 1:00 P.M.**

Venue : **Bulwagan ng Karunungan, G/F, Rizal II Building, DepEd Complex**

Present

Bids and Awards Committee (BAC) II: Ms. Sonia R. de Leon (Presiding Member), Engr. Annabelle R. Ramos, and Mr. Deogracias B. Genito, Jr., Members

BAC II Secretariat: Enrique P. Borja, Gino Alvin S. Camilon.

End-User Representative(s): Noel G De Vera & Rogelio Estavillo (SSU); COA : Juliana F. Laso

Prospective Bidders: [1] Ma. Roxanne Sing & Fatima Laureanson (Right Eight Security); [2] C. Ayson & S. Espinoulla (Commander Security Services, Inc.); [3] Rhodora V. Delgado & Atty. Rolyne D. Torio (Lockheed Detective & Watchman Agency, Inc.)

I. CALL TO ORDER

Ms. Sonia De Leon was instructed by the BAC II Chairperson to preside at the draw lots. She asked the prospective bidders and all parties present if they have any objection to her being designated as the presiding member. The prospective bidders, end-users and COA representative expressed no objection. The BAC Secretariat documented the minutes of meeting.

II. CERTIFICATION OF QUORUM

Ms. Sonia De Leon acknowledged the presence of the other BAC members, BAC Secretariat, and made a roll-call of the eligible bidders listed on the attendance sheet. She proceeded to read the briefing of the project.

III. HIGHLIGHTS OF DISCUSSION

Ms. Sonia De Leon explained the mechanics of the draw lots as agreed upon by the BAC, the end-user and COA representative:

1. Bidder shall pick a number to determine the sequence of the draw lots.
2. The bidder who gets No. 1 will be first to draw from the pot and so on.
3. The pot contain three pieces of rolled paper with corresponding notes, as follows:
 - Congratulation for the winning bidder
 - Thank you. Better luck next time
 - Thank you. Better luck next time
4. The bidder who picks the Congratulation note shall submit within fifteen (15) days upon receipt of Notice of Award (NOA) all the required equipment for inspection.

Failure to submit all required equipment shall be ground for disqualification and forfeiture of bid security.

5. In case of disqualification, a draw lots between the two (2) remaining bidders shall be conducted.
6. Inspection of submitted equipment shall be conducted by the end-user within fifteen (15) days upon receipt of all the required equipment.

After having explained the mechanics of the Draw Lots, Ms. De Leon asked the prospective bidders if they have any objection to said mechanics. The bidders expressed no objection to the mechanics.

Sequence of Draw lots:

- First - **Lockheed Detective & Watchman Agency, Inc**
- Second - **Right Eight Security**
- Third - **Commander Security Services, Inc.**

Result of Draw Lots:

- Congratulations - **Lockheed Detective & Watchman Agency, Inc**
- Thank you, Better luck next time - **Right Eight Security**
- Thank you, Better luck next time - **Commander Security Services, Inc.**

Prepared by:


Gino Alvin S. Camilon
BAC II Secretariat

Concurred by:

BIDS AND AWARDS COMMITTEE II


SONIA R. DE LEON
Member


ENGR. ANNABELLE R. RAMOS
Member


DEOGRACIAS B. GENITO, JR.
Member