



TECHNICAL SUPPORT OFFICE

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NPM No. 027-2005

May 23, 2005

HON. FORTUNATO T. DE LA PENA
Undersecretary
Bids and Award Committee, Chairperson
Department of Science and Technology

**Re : Clarification on the provisions of Republic Act 9184 (R.A. 9184)
and its Implementing Rules and Regulations Part A (IRR-A)**

Dear Undersecretary De la Pena:

This refers to your letter dated 20 April 2005 which we received on 25 April 2005, requesting for opinion on the following issues:

1. Whether or not the security agency which was awarded the contract during the bidding conducted by the Department of Science and Technology (DOST) Central Office be automatically employed by other DOST agencies; and
2. Whether or not a two-stage bidding procedure may be conducted for the services abovementioned.

In said letter, it is mentioned that DOST has its Central Office and several of its attached agencies located within a single compound. For better management of security in the area, it was determined that only one security agency shall be hired to handle the security services for the compound. To this end, the DOST Central Office Bids and Awards Committee (BAC) plans to conduct the bidding for the services of security guards for the Central Office, whereupon the awardee shall be hired, under separate contracts, by the said DOST attached agencies located in the same premises for their own security requirements.

General Rule: Competitive Bidding for all procurement contracts

The policy of the law is for the Government to procure through competitive, transparent and public bidding.¹ Only in exceptional cases may the alternative methods

¹ See Section 2 and 10, IRR-A of R.A. 9184

of procurement under Republic Act No. 9184 (R.A. 9184) be resorted to.² The implication of this policy is to require that all procurement contracts are acquired only through the modes prescribed by law. Hence, no other mode of acquisition of procurement contract is allowed.

It bears stressing that every procurement opportunity opened to the public should sufficiently describe the exact requirement of the procuring entity and the approved budget for the contract. Interestingly, the procurement undertaking by the DOST Central Office, as defined in its Annual Procurement Plan (APP) and its Procurement Project Management Plan (PPMP), makes specific reference to its own requirements and does not contemplate that of the other agencies.

Parenthetically, by advertising the procurement opportunity, DOST Central Office opened an opportunity only to the extent of its own requirements. And, to allow the attached agencies to conveniently contract with the awardee in the procurement undertaking of DOST Central Office to dispense with the bidding process required for the procurement, would amount to a violation of the principle of open and public competition in government procurement.

In light of the foregoing premises, the DOST Central Office and the other Agencies may consider a joint undertaking on the hiring of the services of a single security agency to manage the whole compound, as a single procurement project. Following this suggestion, it may be wise that participating agencies, including DOST Central Office, agree on the terms of their joint undertaking.

Two-Stage Competitive Bidding

The Two-Stage Competitive Bidding Procedure is not applicable in the procurement of security services where specifications/Terms of Reference are determinable and easily defined.

The Two-Stage Competitive Bidding Procedure may be employed for the procurement of goods, where: (1) Due to the nature of the project requirements, the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding; or (2) the problem of technically unequal bids is likely to occur.³

Under this procedure, the procuring entity concerned shall prepare the bidding documents, including the technical specification only in the form of performance criteria. Prospective bidders are then requested to submit their respective Letters of Intent (LOI), their eligibility requirements if needed and their initial technical proposals. During this stage, no price tenders are required. The BAC shall then evaluate the technical merits of the proposals received from eligible bidders vis-à-vis the required performance standards. After this, a meeting/discussion shall be held by the BAC with those eligible bidders whose technical tenders meet the minimum required standards stipulated in the bidding documents for purposes of drawing up the final

² See Rule XVI, *ibid.*

³ See Section 30.4, *ibid.*

revised technical specifications/requirements of the contract. This revised technical specifications shall become the reference requirements for bidding among eligible bidders who are then required to submit revised technical tenders including price proposals, in accordance with the rules on competitive bidding under the IRR-A.⁴

The detailed procedure above is manifest as to the intention of the law in allowing the use of a two-stage competitive bidding process. The procedure is exclusive to situations where preparing a complete and detailed technical specification at the outset is undesirable or virtually impractical, by reason of the likely occurrence of technically unequal bids. It is specific to procurement undertakings involving complex items or services and comes as an exceptional remedy to address limited conditions. Thus, it does not contemplate procurement of general services where specifications may be easily determined from the beginning, as in the case of security services.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

⁴ Ibid.