

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos. (02) 735-4962; (02) 736-5758

NPM No. 036-2004 (B)

March 29, 2004

ATTY. ROMAN C. TORRES
BAC-A Chairman
Philippine Charity Sweepstakes Office

Dear Atty. Torres:

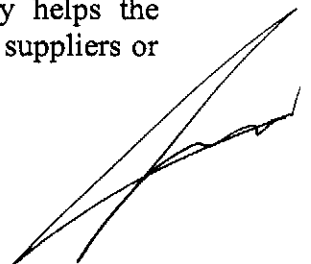
This refers to your letter dated March 2, 2004, which we received on March 4, 2004, requesting for clarification on the following:

1. Whether or not a procuring entity may limit the conduct of its negotiated procurement to only three (3) bidders;
2. Whether or not, in case of a negotiated procurement, may the conduct of a pre-bid conference be dispensed with; and
3. Whether or not the submission and opening of bids be conducted within five (5) days or less after the pre-bid conference.

Negotiated Procurement May Be Limited to Three Bidders

The requirement under Section 54.2 (b) of the IRR-A of R.A. 9184 is for the procuring entity to draw up a list of at least three (3) suppliers or contractors which will be invited to submit bids. This applies only in cases where there has been two (2) failed biddings or in case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. The circumstances earlier mentioned contemplates a situation where immediate determination of a supplier or contractor which will satisfy the procurement requirement is a necessity.

For this reason, a procuring entity is given the authority to draw up a list of at least three (3) suppliers or contractors known to be technically, legally and financially capable. Limiting the list into three (3) suppliers or contractors of known capability helps the procuring entity in focusing on the proposals rather than the qualification of the suppliers or



contractors. In this light, procuring entities may be able to shorten the time for the evaluation of the proposals and determine that which will be most advantageous to the government.

Pre-Bid Conference in Negotiated Procurement Required

Under Section 54.2 (b) of the IRR-A of R.A. 9184, the procedures for the conduct of public bidding shall be observed in case negotiated procurement is resorted to due to the following cases specified in Section 53 (a) and (b) of IRR-A:

1. Where there has been failure of public bidding for the second time as provided in Section 35 of the Act and this IRR-A; and
2. In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damages to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk area, through the AFP.

As defined in Section 5 (h) of IRR-A competitive bidding or public bidding involves the following process: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract.

In this regard, when there has been a failure of bidding for the second time and negotiated procurement is resorted to, the conduct of a pre-bid conference is required. Please note, however, that the conduct of a pre-bid conference is required only for contracts to be bid with an approved budget of one million pesos (P1,000,000.00) or more. For projects costing less than one million pesos (P1,000,000.00), holding a pre-bid conference is at the discretion of the Bids and Awards Committee. Section 22.1 of the IRR-A specifically provides as follows:

For contracts to be bid with an approved budget of one million pesos (P1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions and specifications stipulated in the bidding documents. For contracts to be bid costing less than one million pesos (P1,000,000.00), pre-bid conferences may be conducted at the discretion of the BAC. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon written request of any prospective bidder.

Submission and Opening of Bids Five Days or Less After Pre-Bid Conference Not Allowed

Based on the above-discussion, the rules and procedures for the conduct of a public bidding should be followed when a negotiated procurement is resorted to in case there have been two (2) failed biddings. As such, the period required for each stage of procurement

should also be followed. Section 22.2 of the IRR-A provides a period of at least twelve (12) calendar days between the pre-bid conference and the submission and opening of bids, to wit:

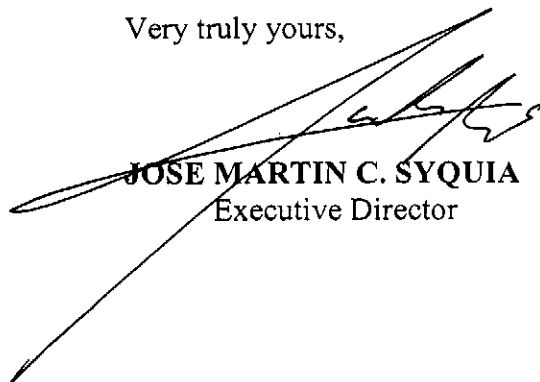
The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. However, attendance of the bidders shall not be mandatory. (Emphasis supplied)

In this light, the submission and opening of bids cannot be conducted five (5) days or less after the pre-bid conference regardless of the fact that the procurement is through negotiated procurement.

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

/dlsn/npm/pcso/03.04

RESPONSE SHEET FOR PHONE OPINIONS

PHO No. 013-2004

Date Received/Date Called : March 4, 2014 / 03.22.04

Requesting Agency : Philippine Charity Sweepstakes Office

Contact Person : Atty. Roman C. Torres 749-4385

Issues/Requests :

① Can PCSO limit the players to be negotiated under Section 54.2(b) of IRR-A ?

② May Pre-bid Conf. be dispensed with in case the same bidders are being dealt with ?

③ If not, immediately after the posting in the EPS web-site of the planned negotiation, may the submission & opening of bids be conducted within 5 days or less after the pre-bid conference?

Response : ① Yes. The requirement is to draw up at a list of at least 5 suppliers or contractors. This is ~~the~~ a situation where the procuring entity has the discretion of choosing among those suppliers or contractors whom they who are of reputable character and has passed the eligibility check.

② Pre-bid conference may only be dispensed with if in consideration of the amount of the proj., but not ~~to~~ solely because the same bidders are being dealt with by the procuring entity.

③ No. 54.2(b) provides that the procedures for the conduct of public bidding shall be observed. And as provided under 52.2 the pre-bid conference shall be held at least 12 calendar days before the deadline for the submission and receipt of bids.

Remarks : Letter still requested

Assigned to: Dennis