



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 41-2011

28 December 2011

MR. PANTALEON LL. TABANAO

General Manager

LAGUNA WATER DISTRICT (LWD)

National Highway, Anos,

Los Baños, Laguna

Re: Procedures for Negotiated Procurement (Two-Failed Biddings)

Dear Mr. Tabanao:

We respond to your letter dated 7 September 2011 inquiring on (i) the procedures in the conduct of Negotiated Procurement for goods after two (2) failed biddings; and (ii) whether the disqualified bidders who participated in the two (2) failed biddings are allowed to join in the negotiated procurement process.

Based on your letter, the LWD conducted two (2) unsuccessful biddings for its rice subsidy requirement for the second semester of this year. On both occasions, the bidders were disqualified due to deficiencies in their eligibility documents or technical specifications. Thus, the LWD is now considering resort to Negotiated Procurement (Two-Failed Biddings).

Procedure for Negotiated Procurement (Two-Failed Biddings)

Please be advised that resort to Negotiated Procurement (Two-Failed Biddings) under Section 53.1 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 can only be adopted after there has been failure of bidding for the second time.

As provided under Sections 35.2 and 35.3 of the IRR, whenever a failure of bidding has occurred, the procuring entity is required to conduct a mandatory review of the terms, conditions, and specifications in the bidding documents, including its cost estimates. As the BAC deems fit, it may revise and agree on a new set of technical specifications; and, if necessary, may adjust the amount of the ABC, subject to the required approvals under the IRR. However, it should be emphasized that if the procuring entity will resort to Negotiated Procurement (Two-Failed Biddings), the increase in the ABC should not be more than twenty percent (20%) of the ABC for the last failed bidding.¹

¹ Section 53.1, RA 9184 IRR

After the mandatory review and the finalization of the revised bidding documents, the following procedures shall be adopted by the BAC in conducting Negotiated Procurement (Two-Failed Biddings) pursuant to Section 53.1 of the IRR of RA 9184:

1. The BAC, through its Secretariat, shall post the procurement opportunity in: (a) the PhilGEPS website; (b) the website of the procuring entity concerned, if available; and (c) any conspicuous place within the premises of the procuring entity, for a period of seven (7) calendar days.
2. The BAC shall invite a sufficient number of bidders to ensure effective competition to submit, on a specified date, an initial offer based on the revised bidding documents. The BAC shall also invite observers to be present in all activities of the process.
3. The BAC shall open the submitted bids on the date specified in the invitation. Thereafter, the procuring entity shall request all suppliers, contractors, or consultants remaining in the proceedings to submit, on a later date, a best and final offer with respect to all aspects of their proposals.
4. During the period between the dates of the opening of the initial offer and the submission of the best and final offer, the procuring entity shall negotiate with the bidders, with the condition that all requirements, guidelines, documents, clarifications, or other information relative thereto shall be communicated to them on an equal basis.
5. On the date of the submission of the best and final offer, the procuring entity shall open the proposals. The successful offer shall be selected by the procuring entity on the basis of such offer, provided that it complies with the minimum technical requirements and is within the ABC.
6. The BAC shall then issue a resolution recommending to the HOPE the award of contract for approval. The award shall be posted at the PhilGEPS website, website of the procuring entity, if any, and in conspicuous place within the premises of the procuring entity.

Participation of Bidders Disqualified During the Failed Biddings

We note that there is nothing in the rules prohibiting bidders disqualified from previous failed biddings from participating in the same procurement activity, *albeit* conducted through Negotiated Procurement (Two-Failed Biddings). In as much as RA 9184 and its IRR are governed by the principle of competition, it is in furtherance of such principle that bidders who failed to qualify during the previous failed biddings may be allowed to participate in a subsequent opportunity.


We have previously opined² that Section 35.2 of the IRR Part A³ should not be taken to mean that the re-bidding is limited to those who were declared eligible in the previous bidding. It goes on to state that after failure of the first bidding, any re-bidding to be conducted is to be treated as a new bidding. Such rule, to our view, may be analogously applied to the procurement through Negotiated Procurement (Two-Failed Biddings).

Nonetheless, we wish to emphasize that bidders disqualified by reason of its being blacklisted by any procuring entity, cannot be allowed to participate in the subsequent tender opportunity, unless the disqualified bidder has already been delisted at the time of submission of bids.

We hope that our advice sufficiently addresses your concern. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III 

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² Non-Policy Matter 83-2007, dated 7 December 2007.

³ Now Section 35.4 of the revised IRR of RA 9184.