

NPM No. 48-2007

14 August 2007

MR. ROGER M. TUMLOS
Head Secretariat, Bids and Awards Committee
PHILIPPINE POSTAL CORPORATION
Ground Floor Mezzanine, PPC Main Building
Liwasang Bonifacio, Manila 1000

Re: Application of Section 54. 2 (b) and (d) of the Implementing Rules and Regulations of Republic Act No. 9184

Dear Mr. Tumlos:

We respond to your letter dated 5 April 2006, which we received last 15 May 2006, requesting for the correct application/interpretation of Section 54.2 paragraphs (b) and (d) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R. A. 9184) in relation to Section 53 (b) of the IRR-A.

The relevant provisions read, as follows:

Section 53. Negotiated Procurement.

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

x x x

- (b) 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 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 areas, through the AFP;

Section 54.2 In addition to the specific terms, conditions, limitations and restrictions on the application of each of the alternative methods specified in Sections 48 to 53 of this IRR-A, the following shall also apply:

x x x

- b) For item (a) of Section 53, the procuring entity shall draw up a list of at least three (3) suppliers, contractors, or consultants in good standing which will be invited to submit bids and negotiate with the bidder who submitted the lowest calculated bid or highest rated bid, whichever is applicable. If the offer of the bidder who submitted the lowest calculated bid or highest rated bid, whichever is applicable, is not responsive to the original specifications and ABC, negotiation shall be made in ascending order starting from the lowest offer. The bidder whose bid is found to be responsive to the original specifications and ABC shall be considered for award. In all cases, the award of contract shall be posted at the G-EPS website, website of the procuring entity, if any, and in conspicuous place within the premises of the procuring entity.

x x x

- d) For Item (b) of Section 53 of the Act and this IRR-A, the negotiation shall be made with a previous supplier, contractor or consultant of good standing of the procuring entity concerned, or a supplier, contractor or consultant of good standing situated within the vicinity where the calamity or emergency occurred. The award of contract shall be posted at the G-EPS website, website of the procuring entity, if any, and in conspicuous place within the premises of the procuring entity.


Section 54.2 (b) is applicable when there has been failure of public bidding for the second time as provided in Section 53 (a) of the IRR-A. In such instance, the procuring entity shall draw up a list of at least three (3) suppliers or contractors in good standing, which will be invited to submit bids and negotiate with the bidder who has submitted the lowest calculated bid. If the offer of the bidder who submitted the lowest calculated bid is not responsive to the original specification and approved budget for the contract (ABC), negotiation shall be made in the ascending order starting from the lowest offer. The bidder whose bid is found to be responsive to the original specifications and the ABC shall be considered for award.

On the other hand, **Section 54.2 (d) is proper when negotiated procurement is justified and resorted to under Section 53 (b) of the IRR-A** 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 or other causes where immediate action is necessary to prevent damage to, or loss of life or property, to restore vital public services, infrastructure facilities and other public utilities. In such case, the procuring entity may directly negotiate with a previous supplier or contractor of good standing of the procuring entity, or a supplier or contractor or consultant of good standing situated within the vicinity where the calamity or emergency occurred.

In both methods, the award of contract shall be posted at the G-EPS website, website of the procuring entity, if any, and in conspicuous place within the premises of the procuring entity (Section 54.2 (b) and (d), IRR-A). The BAC must also ensure the most advantageous price is obtained for the Government (Section 48, IRR-A).

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

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

