

**NPM No. 51-2008**

17 December 2008

**MR. THEODORE A. ORTIZ**

*Assistant Vice-President*

**NATIONAL TRANSMISSION CORPORATION  
VISAYAS OPERATIONS AND MAINTENANCE  
Transco Visayas Power Center, Nasipit,  
Tambalan, Cebu City**

**Re : Negotiated Procurement Under Sec. 53 (a)**

Dear Mr. Ortiz:

This pertains to your letter dated 29 October 2008 requesting for clarification on certain matters pertaining to your procurement of Annual Physical Examination.

In your letter, you state that the public bidding for your company's Annual Physical Examination has failed twice. The first failure was due to the absence of interested bidders, while the second was due to the ineligibility of the lone prospective bidder who failed to comply with the Electronic Filing and Payment System (EFPS) requirement. In view of the second failure, you have decided to resort to Negotiated Procurement as provided in the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184).

Further, you state that you are now in a dilemma since your initial probe on various Medical Diagnostics companies in Cebu are not registered in the EFPS.

In this regard, you are seeking guidance in the conduct of Negotiated Procurement and in accepting an alternative document in place of tax returns filed and paid through EFPS.

Please be advised that under R. A. 9184 and its IRR-A, the procuring entity shall adopt public bidding as the general mode of procurement.<sup>1</sup> On the other hand, in order to promote economy and efficiency, procuring entities may resort to alternative methods in highly exceptional cases, provided there is a prior recommendation from the Bids and Awards Committee (BAC) and approval from the head of the procuring entity (HOPE); provided further, that the conditions under Sections 49-54 of R. A. 9184 and its IRR-A are complied with.<sup>2</sup>

<sup>1</sup> Section 10, R.A. 9184 and its IRR-A

<sup>2</sup> Sections 48.1 and 48.2, IRR-A, R. A. 9184.

Pursuant to Section 53 (a) of R.A. 9184 and its IRR-A, one of the conditions under which a procuring entity may resort to Negotiated Procurement is when there has been a failure of public bidding for the second time, for causes/circumstances provided under Section 35 of R.A. 9184 and its IRR-A, to wit:

- a) No prospective bidder submits an LOI or no bids are received;
- b) All prospective bidders are declared ineligible;
- c) All bids fail to comply with all the bid requirements or fail post-qualification, or, in the case of consulting services, there is no successful negotiation; or
- d) The bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid refuses, without justifiable cause to accept the award of contract, and no award is made in accordance with Section 40 of the Act and this IRR-A.

Furthermore, in the conduct of Negotiated Procurement under Section 53 (a) of R.A. 9184 and its IRR-A, the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant. The procedural requirements for the conduct thereof are as follows:

- a) 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;
- b) 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;
- c) The bidder whose bid is found to be responsive to the original specifications and ABC shall be considered for award; and,
- d) 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.<sup>3</sup>

We would also like to point out that in cases where the HOPE has made a determination that a government contract involving an amount of at least Five Hundred Million Pesos (Php. 500,000,000.00) or more falls under any of the exceptions from public bidding, the HOPE, before proceeding with the alternative methods of procurement, shall obtain the approval of the GPPB that said government proposed procurement undertaking falls within the exceptions from public bidding, and that the proposed specific alternative method of procurement is appropriate.<sup>4</sup>

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<sup>3</sup> Section 54.2 (b), IRR-A.

<sup>4</sup> Section 4 of Executive Order (E.O.) No. 423, dated 30 April 2005, as amended by E.O. No. 645, dated 31 July 2007

Anent your second concern, we would like to note that in Negotiated Procurement, the procuring entity must directly negotiate with a technically, legally, and financially capable supplier, contractor, or consultant. Hence, all eligibility and bidding requirements, including tax returns filed and paid through the EFPS, are still required to be submitted.

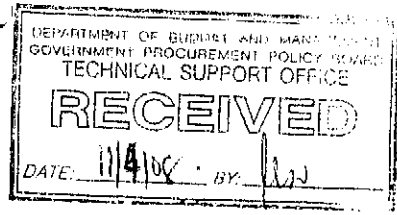
While we understand your constraints, until such time that the Bureau of Internal Revenue (BIR) Revenue Regulation No. 03-2005, specifically Section 4.2. thereof, is amended or modified, the requirement of submitting tax returns filed and paid through the EFPS remains. Rest assured, though, that the Government Procurement Policy Board (GPPB) had earlier raised this concern with the BIR, and the latter is already looking into it.

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

Very truly yours,

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

Kindly draft reply informing them of their options: ① new or third public bidding, ② negotiated procurement, provided that the conditions are complied with. Re: EFPS requirement, this is still being looked into by BIR - so, until there's a new issuance, the same is required.



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Emmie,  
Pls. handle. Sign in my behalf.  
11/15/08

Madame:

Warm Greetings!

This refers to our bidding of our Annual Physical Examination which has failed twice in the Public bidding mode of Procurement. The first failure was due to the absence of interested bidders while the second was due to the in-eligibility of the lone prospective bidder who was not able to comply with the EFPS requirement. In view of the second failure, we have resolved to go into Negotiated Procurement as provided in IRR-A of R.A. 9184.

However, we are in a dilemma after an initial probe on various Medical Diagnostics companies here in Cebu City revealed that they are not registered in the EFPS.

Considering the importance of a continued physical assessment on our personnel being the number one asset of the corporation who are regularly exposed to the risks and hazards of the power industry, we respectfully seek guidance in the conduct of Negotiated Procurement for this PR.

Are we allowed to accept an alternative document in place of the EFPS printed tax returns?

More power!

Very truly yours,  
  
**THEODORE A. ORTIZ**  
Assistant Vice President  
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