

NPM No. 014-2018

30 April 2018

MR. RAUL V. AUSTRIA

Chairman, Bids and Awards Committee (BAC)

MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA)

MIAA Administration Building,

MIA Road, Pasay City

Re: Lone Bidder as a Ground for Disqualification -

Dear Mr. Austria:

This refers to your letter seeking clarification on the following:

1. Whether the MIAA can adopt as a matter of policy that there should be at least more than one participating bidder in a project in order for MIAA to award a contract; and
2. Whether the MIAA Board (as HOPE) could invoke Section 41 of the 2016 IRR and cancel the bidding if there is only a lone bidder and not award the contract (to the lone bidder) or declare a failure of bidding, and conduct another bidding until such time that there are at least two (2) qualified bidders.

As represented, there have been instances where only one bidder either participated or qualified and the MIAA Board raised the concern that having several bidders for a project may be more advantageous to the Government in terms of getting the lowest possible bid price, better product offered, and better service to be provided, than if there is only a single bidder. Hence, this request.

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. This office has consistently refrained from passing upon decisions of the Bids and Awards Committee (BAC) in an actual and/or ongoing procurement activity pertaining to the determination of compliance of a bidder with Republic Act No. 9184 (RA 9184) or its Implementing Rules and Regulations (IRR). Nonetheless, we shall limit our discussion on the relevant provisions of the procurement law, rules and regulations that are pertinent to the issues presented.



Award to a Single Bidder; Requiring More than One Bidder for Contract Award -

For your guidance please refer to Section 36 of the RA 9184 and its 2016 IRR which provides for the instances when a Single Calculated and Responsive Bid (SCRB) or a Single Rated and Responsive Bid (SRRB) shall be considered for award, to wit:

- a) If after advertisement, **only one prospective bidder applies for eligibility check**, in accordance with the provisions of this IRR, and it meets the eligibility requirements or criteria, **after which it submits a bid which is found to be responsive to the bidding requirements**;
- b) If after advertisement, more than one prospective bidder applies for eligibility check, in accordance with the provisions of this IRR, **but only one bidder meets the eligibility requirements or criteria**, after which it submits a bid which is found to be responsive to the bidding requirements;
or
- c) If after the eligibility check, more than one bidder meets the eligibility requirements, but **only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements**. (Emphasis supplied)

Based on the provision above cited, award of contract in a bidding opportunity with a lone bidder is a situation contemplated by the law as acceptable, provided that the lone bidder meets all the necessary eligibility requirements or criteria and is found to be responsive to the bidding requirements.

Moreover, the authority of the BAC to declare a failure of bidding is limited to instances enumerated in Section 35.1 of the 2016 IRR of RA 9184, specifically, when:

- (a) 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 LCRB, HRRB, SCRБ or SRRB refuses, without justifiable cause, to accept the award of contract, and no award is made.

In this wise, the BAC is not permitted to provide an additional ground for declaration of a failure of bidding. The list provided above is an exclusive and exhaustive list of the allowable grounds for such declaration. Hence, the MIAA cannot adopt as a matter of policy that there should be at least more than one participating bidder in a project in order for MIAA to award a contract. In so doing, MIAA would violate Sections 35 and 36 of RA 9184 and the 2016 IRR.

Additional Grounds for Exercising the Procuring Entity's Reserved Right under Section 41 of the 2016 IRR -

The right of the Head of the Procuring Entity (HOPE) to reject any and all Bids, declare a failure of bidding or not award the contract is embodied in Section 41 of RA 9184 and its 2016 IRR, otherwise known as the Reservation Clause. The right under the Reservation Clause may only be exercised under the following situations, thus:

1. If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any



- of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
2. If the BAC is found to have failed in following the prescribed bidding procedures; or
 3. For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government of the Philippines, as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the Head of the Procuring Entity; (ii) if the project is no longer necessary as determined by the Head of the Procuring Entity; and (iii) if the source of funds for the project has been withheld or reduced through no fault of the procuring entity.

It bears stressing, however, that the right to reject any and all Bids, declare a failure of bidding or not award the contract should not be exercised whimsically, arbitrarily or capriciously. Section 37.1.3 of the 2016 IRR of RA 9184 mandates that the disapproval by the HOPE of the recommendation of the BAC to award the contract with the LCRB shall be based only on valid, reasonable and justifiable grounds, *i.e.*, grounds enumerated under Section 41 of RA 9184 and its 2016 IRR. In the absence of any of these grounds, the HOPE has no basis to disapprove the recommendation of the BAC to award the contract to the LCRB.

Summary –

In sum, the MIAA is precluded from adopting a policy that is contrary to RA 9184 and its 2016 IRR, which already provides for a list of grounds for declaring a failure of bidding under Section 35, and another list of instances when the HOPE may exercise the Reservation Clause under Section 41. While having several bidders for a project is beneficial to the Government in terms of getting the lowest possible bid price, better product offered, and better service to be provided, having only one bidder participating or qualifying in a procurement project cannot be a ground for the declaration of failure of bidding under Sections 35 and 41 of RA 9184 and the 2016 IRR, as this situation likewise provides for efficiency and economy in government procurement, by addressing the need of the procuring entity at the right time.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,
(sgd.)

~~DENNIS S. SANTIAGO~~
Executive Director *V. P. M.*

Arce