

NPM No. 056-2017

21 December 2017

BAC Secretariat
NAVAL STATE UNIVERSITY
Nsubac2017@gmail.com

Re: Declaration of Failure of Bidding -

Dear BAC Secretariat:

This refers to your electronic mail (e-mail) requesting for guidance on the declaration of failure of bidding.

It is represented that two (2) bidders participated in the procurement of a 35-seater Mini Bus and that the lowest bidder did not meet the required specifications having only offered a 30-seater Mini Bus. Hence, you inquire whether you may declare a failure of bidding.

Section 35 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184¹, the Government Procurement Reform Act, provides for the grounds where the Bids and Awards Committee (BAC) may declare a failure of bidding. In an earlier Opinion², we reiterated this rule on the limited authority of the BAC to a declare failure of bidding, thus:

The authority of the BAC to declare a failure of bidding is limited to instances enumerated in Section 35.1 of the 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 negotiations, or (d) the bidder with the LCB or HRB refuses to accept the award.

The BAC cannot declare a failure of bidding for reasons other than those provided in Section 35 of the IRR of RA 9184. It cannot exercise the reservation clause provided in Section 41 of the IRR in declaring a failure of bidding since such authority exclusively belongs to the HoPE.

Based on the abovementioned rule on declaration of failure of bidding, it is necessary that the BAC determines whether or not any of the grounds for declaration of failure of bidding is present. The BAC may determine non-compliance of all the bidders with the

¹ Published on 29 August 2017 and took effect on 28 October 2016

² NPM No. 122-2013 dated 26 December 2013

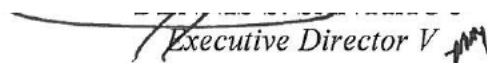
eligibility criteria or bid requirements either during the conduct of Preliminary Examination of Bids, Bid Evaluation and/or Post-Qualification under Sections 30, 32 and 34 of the 2016 Revised IRR of RA 9184, respectively.

Pursuant to Section 30.2 of the 2016 IRR, during the preliminary examination of bids, only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison. Should non-compliance be determined during bid evaluation, the non-compliant bidder shall be disqualified and shall not be considered for ranking pursuant to Section 32.2.4 of the 2016 IRR of RA 9184. Should the non-compliance be determined during the post-qualification, the non-compliant bidder shall be post-disqualified and shall not be considered for award of contract pursuant to Section 34.5 of the 2016 IRR of RA 9184.

Only when no bids are received on the deadline for submission and receipt of bids; or upon determination that all bidders are ineligible during the preliminary examination of bids; or 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 negotiations; or the lone bidder would not accept the award of contract, may the BAC declare a failure of bidding under Section 35 of the procurement law and its associated rules.

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.)


Executive Director V


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