



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 032-2016

28 April 2016

Re: Method of Procurement

Dear [REDACTED]:

This refers to your electronic mail seeking guidance on your procurement which has gone through two failures of bidding. The Bids and Awards Committee (BAC) then recommends the conduct of a Negotiated Procurement for Two-Failed Biddings. It is your concern, however, that the BAC cannot guarantee that a bidder will be awarded the contract even through the conduct of said negotiated modality, and that your office has been getting negative feedbacks on the delay of your procurement.

We assume that you are inquiring on the most effective method of procurement under the situation, that is, whether to conduct another competitive bidding or resort to the alternative method of procurement through Negotiated Procurement under the Two-Failed Biddings modality. Since there is limited information in your letter, we shall proceed with the discussion of the two (2) methods of procurement mentioned.

For guidance, we wish to clarify that it is the Procuring Entity (PE) that has the sole authority and is in the best position to determine the appropriate method of procurement for a specific project based on its identified needs and requirements and the attendant circumstances. It bears stressing, however, that Section 10 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) mandate that all procurement shall be done through Competitive Bidding, except when economy, efficiency and other relevant circumstances would justify resort to alternative methods of procurement. More importantly, these alternative methods of procurement shall be resorted to only in highly exceptional cases provided in Sections 49 to 53 of RA 9184 and its IRR. In the absence of these exceptional cases, procurement shall be done through Competitive Bidding.

Under Section 53.1 of the IRR of RA 9184, Negotiated Procurement through Two-Failed Biddings modality may be resorted to only where there has been failure of public bidding for the second time as provided in Section 35 of RA 9184 and its IRR. Thus, the BAC shall declare the bidding a failure 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 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.¹

In order to determine the reason for the failed bidding under Section 35.1, the BAC is mandated to conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates.² Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of this IRR.³ Should there occur a second failure of bidding, the procuring entity may resort to negotiated procurement, as provided for in Section 53.1 of this IRR.⁴ Accordingly, to warrant the use of this alternative method of procurement, there must be an occurrence of two failed Competitive Biddings under Section 35 of RA 9184 and its IRR, for which the BAC has conducted a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being issued on the basis of particular facts and 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.)

MELISSA A. SANTIAGO-YAN
Officer-in-Charge

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¹ Section 35.1 of the IRR of RA 9184.

² Section 35.2 of the IRR of RA 9184.

³ Section 35.3 of the IRR of RA 9184.

⁴ Section 35.5 of the IRR of RA 9184.