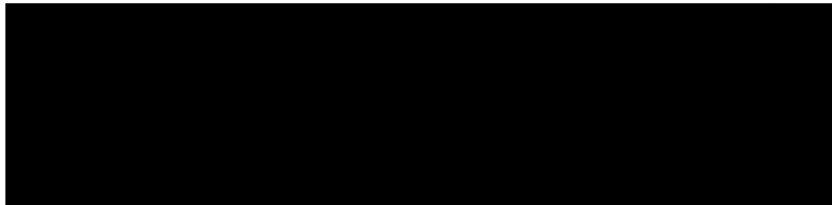


NPM No. 067-2016

15 November 2016



Re: Conduct of Mandatory Review after Failure of Bidding

Dear [REDACTED]:

This refers to your electronic mail (e-mail) inquiring on the conduct of mandatory review after a failure of bidding and our corresponding issuance/s on the matter.

In our earlier opinions,¹ we opined that under Sections 35.2 and 35.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 the procuring entity is required to conduct a mandatory review of the terms, conditions, specifications in the bidding documents, including its cost estimates whenever a failure of bidding has occurred. As the BAC deems it fit, and based on the findings in its mandatory review, it may revise and agree on a new set of technical specifications; and, if necessary, may adjust the amount of the ABC, subject to the required approvals under the IRR, and conduct a re-bidding with re-advertisement and/or posting as provided in Sections 21.2.1 of the IRR.

Should there occur a second failure of bidding under Section 35 of the IRR, such that: 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 RA 9184 and its IRR, the procuring entity may decide to resort to Negotiated Procurement (Two-Failed Biddings). Section 53.1.1 of the IRR requires the BAC to conduct a mandatory review of the terms, conditions, specifications, and cost estimates; and, when necessary, increase the ABC provided that it is not more than twenty percent (20%) of the ABC for the last failed bidding.

The abovementioned provisions of the IRR are instructive on the conduct of mandatory review of the terms, conditions, specifications in the bidding documents as well as cost estimates in the event that there is a failure of bidding. With this mandatory review, the

¹NPM Nos. 093-2013 dated December 19, 2013; 018-2013 dated March 27, 2013-03-27; 036-2014 dated October 09, 2014

BAC may revise the technical specifications or adjust the ABC subject to the amendment of the APP and approval of the HOPE. The BAC shall then conduct a re-bidding with re-advertisement and/or posting.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is 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.

~~Vernon...~~
(sgd.)

~~DEENNIS S. SANTIAGO~~
Executive Director *V*

/lrd2