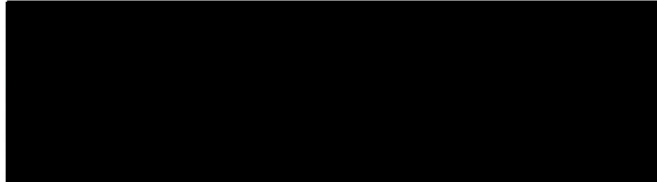


NPM No. 081-2016

15 November 2016



Re: Delinquent Debtor as Bidder

Dear [REDACTED]:

This refers to your letter requesting for an opinion on whether a delinquent debtor may bid under Negotiated Procurement (Two-Failed Bidding) under Section 53.1 of the Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, PostBank resorted to Negotiated Procurement (Two-Failed Bidding) under Section 53.1 of the IRR of RA 9184 for the renovation of its branch in Sorsogon. One of the participating bidders is a debtor with an outstanding loan obligation with PostBank. Hence, this request.

At the outset, the Government Procurement Policy Board (GPPB) or its Technical Support Office (GPPB-TSO) cannot determine or rule for the BAC, whether to allow or disqualify a bidder, since such function falls within the authority and discretion of the BAC under the procurement law and its associated revised rules.¹ Nevertheless, we shall limit our discussion on the relevant provisions of the procurement law, rules and regulations pertinent to the issues presented.

Under Section 53 of the IRR of RA 9184, a Procuring Entity may resort to Negotiated Procurement (Two-Failed Bidding) by directly negotiating a contract with a technically, legally and financially capable supplier, contractor or consultant. These qualifications must be ascertained by the Procuring Entity through documentary requirements it has required to be submitted. Hence, a bidder may only be disqualified should it fail to comply with the documentary requirements, or is found to be not technically, legally and financially capable for the project being procured.

Accordingly, a bidder who has an outstanding debt with the Procuring Entity (a Savings Bank) is not disqualified by virtue of such obligation. However, in such instance, the Procuring Entity is cautioned to verify the financial capability of such bidder to undertake the project at hand based on available information. *B*

¹ Section 11 of RA 9184 and its IRR.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

(sgd.)

~~DENNIS S. SANTIAGO~~
Executive Director 

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