

**BAC RESOLUTION NO. 2023-88**  
27 September 2023

**RECOMMENDING TO THE POSTMASTER GENERAL AND CEO TO  
DECLARE A FAILURE OF BIDDING PURSUANT TO SECTION 41.(b) OF  
THE REVISED IMPLEMENTING RULES AND REGULATIONS (IRR) OF  
R.A. 9184**

**WHEREAS**, there was a letter dated September 26, 2023 from the Commission on Audit (COA) Supervising Auditor, Liza A. Perido, regarding her observations on the issuance of Bid Bulletin of the Bids and Awards Committee (BAC) rescheduling the deadline for submission of bids and the opening thereof, as well as the non-posting of the Supplemental/Bid Bulletin at the PHLPost website for the following procurement projects;

1. Procurement of seventy (70) units of Brand New and Branded Laptop Computers bundled with Licensed Microsoft Office and Antivirus for 3 Years Subscription with a total ABC of ₱ 4,781,000.00; and
2. Procurement of six (6) Sets of Server bundled with Uninterruptible Power Supply (UPS) with a total ABC of ₱4,500,000.00.

**WHEREAS**, the BAC instructed its Technical Working Group (TWG) to prepare a report pertaining to the said observations of COA Supervising Auditor;

**WHEREAS**, during the regular meeting on 27 September 2023, the BAC-TWG rendered its report stating that these projects may be declared as failure of bidding under Section 35.6 of the Revised IRR of RA 9184 in view of the need to revise the TOR to remove anti-competitive provisions and under Section 41.(b) for the erroneous issuance of bid bulletin a day prior to intended opening day; and recommended that the BAC recommends to the HoPE to declare a failure of bidding in accordance with Section 41.(b) of the Revised Implementing Rules and Regulations of R.A. 9184 as recommended by COA, a copy of the said report is hereto attached and form part of this Resolution;

**WHEREAS**, the BAC adopted the recommendation of its TWG to recommend to the Postmaster General and CEO to declare a failure of bidding for the said projects in accordance with Section 41.(b) of the Revised IRR of R.A. 9184;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE  
FOREGOING PREMISES**, the PHLPost-BAC hereby resolves to recommend to the Postmaster General and CEO to declare a failure of bidding for the said projects in accordance with Section 41.(b) of the Revised IRR of R.A. 9184;



**RESOLVED, FURTHER**, that BAC hereby recommends that the payment for bidding documents be refunded to the concerned bidders there being no fault on their part pursuant to Section 17.5 of the Revised IRR of R.A. 9184;

**APPROVED**, this 27<sup>th</sup> day of September 2023, Pasay City.



**ENGR. ELIEZER V. ROSALES**  
*Member*



**CAROL C. TERRADO**  
*Member*



**PETER S. BARTOLOME**  
*Vice-Chairman*



**ATTY. BENJIE S. YOTOKO, CPA**  
*Chairman*

**APPROVED/DISAPPROVED:**



**LUIS D. CARLOS**  
Acting Postmaster General and CEO

**FOR** : **THE CHAIRPERSON AND MEMBERS**  
Bids and Awards Committee (BAC)

**THRU** : **THE HEAD**  
BAC Secretariat

**SUBJECT** : **RECOMMENDATION TO DECLARE A FAILURE OF BIDDING**

**DATE** : **27 SEPTEMBER 2023**

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This is to respectfully recommend that the BAC recommend to the HoPE the declaration of a failure of bidding in accordance with Section 41. b. of the Implementing Rules and Regulations of R.A. 9184 for the following procurement projects:

1. Procurement of seventy (70) units of Brand New and Branded Laptop Computers bundled with Licensed Microsoft Office and Antivirus for 3 Years Subscription with a total ABC of ₱ 4,781,000.00; and
2. Procurement of six (6) Sets of Server bundled with Uninterruptible Power Supply (UPS) with a total ABC of ₱4,500,000.00.

This recommendation is in view of the letter dated September 26, 2023 by COA Supervising Auditor Liza Perido, regarding the issuance of our bid bulletin rescheduling the deadline for submission of bids and the opening thereof, as well as the non-posting of the Supplemental Bid Bulletin at the PHLPost website.

Under said COA observation/ recommendation, they invited our attention to Section 41 b of R.A. 9184.

Section 41. of the 2016 Revised Implementing Rules and Regulations of R.A. 9184 provides:

“Section 41. The HoPE reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations:

- a) 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;
- b) If the BAC is found to have failed in following the prescribed bidding procedures; or**
- c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GoP, 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 HoPE;
  - (ii) if the project is no longer necessary as determined by the HoPE;or





- (iii) if the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.” (Emphasis Supplied)

It may be recalled that a postponement of the bidding process was done in view of the comment of one bidder finding that our Terms of Reference contains a provision that is contrary to the principle of competitiveness under R.A. 9184.

Finding merit thereto, despite the lapse of period for the issuance of Bid Bulletin, said letter was still considered, and in order to have ample time to remedy the situation, the BAC decided to issue a postponement.

In view of the foregoing, and considering that the End User will need ample time to revise the Terms of Reference in order to remove provisions that are found to be anti-competitive and include whatever it may deem appropriate to maintain the quality of goods to be delivered.

“35.6 Without prejudice to Sec. 35.1 hereof, the BAC is authorized, upon consultation with the end-user unit, to cancel or terminate the conduct of procurement activities, **for any justifiable reason**, such as but not limited to:67

- a) 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 end-user unit;68
- b) the project is no longer necessary as determined by the end-user unit;69
- c) the source of funds for the project has been withheld or reduced through no fault of the PE; or70
- d) brought about by the declaration of a State of Calamity, or implementation of community quarantine or similar restrictions.”

Considering this, and considering COA’s recommendation, the TWG deems it best that the BAC recommend with the HoPE to declare a failure of bidding under Section 41.

This is consistent with GPPB NPM No. 122-2013 which we hereinafter reproduce as follows:

“Requesting Entity: Alenia Aermacchi

Issues Concern: Extension of Bid Closing Time; Late Issuance of Supplemental/Bid Bulletin; Declaration of Failure of Bidding

Details

#### **Extension of the Bid Closing Time**

If the procuring entity intends to postpone or reschedule the deadline for the submission and receipt of bids, it may do so by issuing a Supplemental/Bid Bulletin specifying the revised schedule for the procurement activity. It should be noted, however, that Section 22.5.2 of the IRR of RA 9184 provides that “Supplemental/Bid Bulletins may be issued upon the procuring entity’s initiative for purposes of clarifying or modifying any provision of the Bidding Documents at least seven (7) calendar days before the deadline for the submission and receipt of bids.”

#### **Late Issuance of Supplemental/Bid Bulletin**

In light of the mandatory directive to issue Supplemental/Bid Bulletin not later than the period prescribed in Section 22.5 of the IRR, we are of the view that Supplemental/Bid Bulletins issued by the BAC within seven (7) calendar days from the deadline of the submission and receipt of bids will be considered invalid and ineffective in modifying the Bidding Documents. If the BAC decides to carry the modifications made by an invalid Supplemental/Bid Bulletin in proceeding with the procurement activity, the BAC may be considered to have failed in following with the prescribed bidding procedures.

### **Declaration of Failure of Bidding by the BAC**

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 negotiation, or (d) the bidder with the LCB or HRB refuses to accept the award.

[T]he 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."

Thus, the TWG respectfully recommends that the BAC recommend to the HoPE the declaration of a failure of bidding in accordance with Section 41. b. of the Implementing Rules and Regulations of R.A. 9184 in order to allow review of the Terms of Reference by the End User, without committing any violation of the bidding process.

In addition to this, the TWG further recommends that the payment for bidding documents be refunded to the bidders there being no fault on their part.

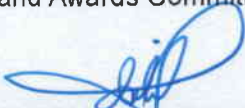
As basis of this refund, we cite Section 17.5 of the 2016 Revised Implementing Rules and Regulations of R.A. 9184. *To wit:*

"17.5 Bidding Documents Fee may be refunded in accordance with the aforementioned Guidelines based on the grounds provided for under Section 41 of the Act and this IRR."

For the BAC Chairperson and members guidance and appropriate action.

Respectfully,

Bids and Awards Committee – Technical Working Group.

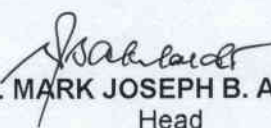
  
VALERIANO C. DELITO  
Member

  
JERWIN I. ENRILE  
Member

  
ENGR. REYNALDO D. CADANO  
Member

  
ROSARIO A. ADRIANO  
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ATTY. MARK JOSEPH B. ABELARDO  
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