



16 AUG 2018

Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
CENTRAL OFFICE
Manila

097, 13 DPWH
08-17-2018

DEPARTMENT ORDER)
)
No. 127)
Series 2018)

SUBJECT : Strict Application of R.A. 9184 in the Conduct of Post-Qualification of Bidders with Delayed On-going Contracts with the DPWH

Pursuant to item 34.3(b)(ii) of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184 and to ensure that all DPWH's projects are completed without delay, All Bids and Awards Committees (Central, Regional, District) are hereby directed to **strictly apply, among others, during the conduct of post-qualification/ award of contract** the following guidelines: During post-qualification, the BAC shall determine the bidder's compliance through –

1. Verification and validation of the bidders stated competence and experience, including the declared Single Largest Completed Contract (SLCC) similar to the contract being procured;
2. Verification of competence and experience of the bidder's key personnel to be assigned to the contract, as against the minimum requirements under the Bid Data Sheet;

If a proposed Key Technical Personnel is an employee of the bidder and working on another project at the time of the bidding, the bidder shall submit a Certification that (1) the personnel will be pulled out from the ongoing project once the bidder is awarded the contract; and (2) He/She will be replaced with another person with equal or better qualifications, as certified by the Head of the Implementing Office, pursuant to Department Order No. 9, series 2012. The proposed Key Personnel and replacement must be named in the bidding document.

3. Verification of availability and commitment, and/or inspection and testing for the required capacities and operating conditions, of major equipment units to be owned/leased/under purchase by the bidder for use in the contract under bidding;
4. **Checking the performance of the bidder in its on-going government and private contracts. If any of these on-going contracts shows:**
 - a. **A reported negative slippage of at least fifteen percent (15%) in a single contract; or**
 - b. **A reported negative slippage of at least ten percent (10%) in two or more contracts;**
 - c. **Failure of the contractor to commence repair works on on-going contracts within seven (7) days and to complete them within thirty (30) days after receipt of the procuring entity's notice of defects and deficiencies; or**

- d. **Failure of the contractor to commence repair works on contracts with pending certificate of acceptance within thirty (30) days and to complete the works within ninety (90) days after receipt of the procuring entity's notice of defects and failures; or**
 - e. **Substandard quality of work as per contract plans and specifications; or**
 - f. **Unsatisfactory performance of the contractor's obligations as per contract terms and conditions, at the time of inspection; or**
 - g. **Liquidated damages currently imposed on the contractor.**
5. The result/s of the Contractors Performance Evaluation System (CPES) should also be considered by the concerned BAC in determining the responsiveness of the contractor's bid before any award of contract can take place as stated in item 12.5 Annex "E" of the 2016 Revised IRR of RA 9184.

If the BAC verifies any of these deficiencies to be due to the contractor's fault or negligence, the agency shall disqualify the contractor from the award, for the procurement of Infrastructure Projects.

The Implementing Offices are hereby directed to include in the Invitation To Bid that *"if at the time of the post-qualification procedure, the BAC verifies that any of the deficiencies is due to the contractor's fault or negligence pursuant to 34.3(b)(ii)(c) of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184 (2016 RIRR of RA 9184), the Procuring Entity shall disqualify the contractor from the award without any right to reimburse fees and incidental cost paid for the procurement of infrastructure contract subject of the Bid"*.

If the ground for post-disqualification is based on above requirements, the concerned BAC shall issue a Notice of Post-Disqualification to the bidder with a statement that *"the DPWH shall not qualify your bid for any of its Projects until and/or unless the reason for your post-disqualification was already cleared by the concerned Implementing Office"*. Upon presentation of required documentary evidence, the concerned Implementing Office shall issue a certification if the contractor has already eliminated the negative slippages and other deficiencies. However, nothing herein shall delay the procurement process of the concerned Implementing Office in accordance with periods provided under 2016 RIRR of RA 9184.

The DPWH shall regularly update the list of contractors whose awarded Infrastructure Projects are in ICU and Terminal Stages due to its fault. The Bureau of Construction (BOC) shall see to it that the said list of contractors is updated regularly to ascertain accuracy of the information given hereof for purposes of determining the qualification of bidders during Opening and Submission of Bids with the concerned BAC.

The concerned Implementing Offices should ensure that this directive is strictly enforced. Failure to do so, **after due process**, shall make the concerned officials or employees, including the concerned BAC members, liable to the administrative penalties, in accordance with the range of penalties prescribed under Sections 50(B)(4), and 50(D)(1), and 50(F), Rule 10 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), as the case may be, to wit:

	<i>Violation of Reasonable Office Rules and Regulations - Section 50(F)(3)</i>	<i>Simple Neglect of Duty - Section 50(D)(1)</i>	<i>Inefficiency and Incompetence in the Performance of Official Duties - Section 50(B)(4)</i>
First Offense	Reprimand	Suspension of 1 month and 1 day to 6 months	Suspension of 6 months and 1 day to 1 year
Second Offense	Suspension of 1 day to 30 days	Dismissal	Dismissal
Third Offense	Dismissal		

The violation of Section 50(B)(4), Rule 10 of the 2017 RACCS may be accompanied by the penalty of Demotion as provided in Section 50(C) Rule 10 of 2017 RACCS. Further, this without prejudice to the filing of appropriate criminal action/s under Section 65 of the 2016 RIRR of RA 9184.

All ROs and DEOs, through its BAC Secretariat, shall submit to the Procurement Service (PrS) the list of contractor/s with at least negative (-) 10% slippage and above, and those that failed to commence repair works as required under Items 4(c), 4(d), 4(e), 4(f), 4(g), 4(h) and 4(i). The PrS shall prepare a consolidated report, review the submitted report, consolidate, disseminate and post in the DPWH website for reference in the conduct of post-qualification.

Effective immediately.


MARK A. VILLAR
 Secretary

1.1. RGVS/SMAV

Department of Public Works and Highways
 Office of the Secretary



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