



## LOCAL WATER UTILITIES ADMINISTRATION

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10 June 2015

### MEMORANDUM CIRCULAR

No. 006-15

Series of 2015

**TO: THE BIDS AND AWARDS COMMITTEES (BACs) OF LWUA AND LOCAL WATER DISTRICTS (LWDs)**

**SUBJECT: THREE (3) STRIKE POLICY IN THE PROCUREMENT OF – (i) INFRASTRUCTURE WORKS, GOODS, AND CONSULTING SERVICES FOR WATER SUPPLY, SANITATION AND SEPTAGE PROJECTS, AND (ii) CAPITAL EXPENDITURE REQUIREMENTS AND OTHER OFFICE MATERIALS, EQUIPMENT AND SUPPLIES, THROUGH PUBLIC BIDDING**

To further strengthen the integrity of the competitive bidding process, the LWUA Board, in its Resolution No. 38 Series of 2015, approved the following "Three (3) Strike Policy Guidelines" relative to the implementation of Section 69.1(i) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9184, which provides as follows:

*"In addition to the provisions of Rules XXI and XXII of this IRR, the Head of the Procuring Entity, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, as well as disqualification from further participating in the public bidding being undertaken by the procuring entity concerned, where applicable, for the following violations: - 69.1i. All other acts that tend to defeat the purpose of competitive bidding, such as habitually withdrawing from bidding, submitting late bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons."*

As approved, the Three (3) Strike Policy shall apply to all procurement activities of the LWUA and Local Water Districts (LWDs) for (i) water supply, sanitation and septage projects, and (ii) capital expenditure requirements, office materials, equipment and supplies that may be conducted by the LWUA Bids and Awards

Committee (BAC) or Local Water Districts BAC, funded wholly or partially by LWUA and/or the National Government or International Financial Institutions, as well as Projects funded wholly or partially by the LWD's Internally Generated Funds.

1. The following shall be considered as acts that tend to defeat the purpose of public bidding under Section 69.1 (i) of the IRR of R.A No. 9184:
  - a. A bidder that had purchased bidding documents, but subsequently (a) withdrawn from the bidding or (b) submitted a letter of non-participation, or (c) did not submit a bid – without a valid cause, as determined by the Bids and Awards Committees (BACs) of LWUA or LWDs, as the case may be;
  - b. A bidder submitting a late bid without a valid cause, as determined by the BAC concerned;
  - c. A bidder submitting insufficient/defective documents, such as insufficient bid securities and other deficiencies;
  - d. Other acts that tend to defeat the purpose of public bidding, as determined by the BAC concerned, provided that these acts had been indicated or discussed in the Instruction to Bidders, Bid Bulletins, Notices, Minutes of Pre-Bid Conference or other similar instruments.
2. Each "offense" by a bidder referred to in Section 69.1(i) of the IRR, consists of three (3) violations or strikes within a period of one (1) year starting from the date of the first strike, for all procurements;
3. Every time a bidder is observed to have done any of the four (4) acts enumerated in Item 1 of this MC, the Chairperson of the BAC concerned shall immediately serve a written notice to the bidder informing him of his act, and giving him five (5) days to show cause why he could not be sanctioned under this MC for committing an act which tends to defeat the purpose of public bidding under the 3-strike policy ;
4. Based on the evaluation of the bidder's response to the show-cause notice mentioned in Item (3) of this MC, the BAC concerned shall, within seven (7) days from receipt of the bidder's response, determine whether the bidder's act was done with or without a valid cause;
5. For every bidding conducted – regardless of whether or not any violation of the 3-strike policy is committed – the BAC concerned, thru its Chairperson, shall submit to the LWUA Administrator or the LWD General Manager (GM) concerned, a 3-Strike Policy Report, using the attached form, (Annex A) which shall contain the information in Items 1, 2 and 3 of this MC. The Report must be "verified" i.e., properly subscribed and sworn to and notarized, and must be received by the LWUA Administrator or the LWD GM concerned, within fifteen (15) days after the date of opening of the bids;

6. The BAC concerned shall monitor the participation of bidders in all of its projects and maintain a tally of violations by each bidder of the 3-strike policy as well as of the violations by the bidder of the said policy;
7. The BAC shall monitor the violations of the 3-strike policy in all procurements undertaken based on the verified 3-Strike Reports mentioned in Item 5 of this MC. For this purpose, the BAC concerned shall maintain an up-to-date database on violations of the 3-strike policy, by bidders which shall be posted on the LWUA website or the LWD website if available;
8. Based on the verified 3-Strike Reports received from the BAC concerned, the Office of the LWUA Administrator or the LWD GM as the case may be, in coordination with the LWUA Legal Department, or the LWD External Counsel, if any, shall recommend to the LWUA Board of Trustees/ LWD Board of Directors as the case may be,, for approval, the following administrative sanctions on the erring bidder for violation of the 3-strike policy.
  - a. For the first violation or strike – a first warning.
  - b. For the second strike – a second warning.
  - c. For the third strike, which together with the first two strikes constitutes the first offense against the 3-strike policy – an administrative penalty of suspension for one (1) year from participating in any procurement to be conducted by the BAC concerned;
  - d. For the second offense – i.e, the second set of three strikes committed by the bidder – an administrative penalty of suspension for two (2) years from participating in any procurement process to be conducted by the BAC concerned;
  - e. The LWUA Administrator or the LWD GM as the case may be,, shall recommend to the Board of Trustees/LWD Board of Directors, for approval, the following administrative sanctions on the erring BAC members, for failing to submit a complete and verified 3-Strike Report for each procurement as required in Item 5 of this MC, within the prescribed 15-day period, pursuant to the provisions of Section 52, C(3) of Civil Service Resolution No. 991936 dated August 31, 1999, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service:
    - (a) For the first offense (first set of 3 strikes) – Reprimand.
    - (b) For the second offense (second set of 3 strikes) – Suspension for 1-30 days.

(c) For the third offense (third set of 3 strikes) – Dismissal

This Order shall take effect immediately.



ANDRES F. IBARRA

Administrator



3 – STRIKE REPORT

LWUA Form No. \_\_\_\_\_

Date of Report: \_\_\_\_\_

Contract Name: \_\_\_\_\_

No.	Bidder	Submitted Bid	A. No Bid/ B. Bid withdrawn/ C. Non-participation	Late Bid	Insufficient/ Defective Documents	Other Acts that Defeat Bidding	Cause Given by Bidder for Acts under Col. (4)-(7)	BAC's Determination as to Whether cause in Col. (8) is Valid or Not
(1)	Col. (2)	Col. (3)	Col. (4)	Col. (5)	Col. (6)	Col. (7)	Col. (8)	Col. (9)

Submitted by Bids and Awards Committee:

\_\_\_\_\_ Chairman

Member \_\_\_\_\_ Member \_\_\_\_\_ Member \_\_\_\_\_ Member \_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this (\_\_\_\_) day of (month and year) at (place), affiants exhibiting to me their (PRC license/BIR TIN/GSIS ID/LWUA ID):

Affiant \_\_\_\_\_ Identity No. \_\_\_\_\_ Date Issued \_\_\_\_\_ Place Issued \_\_\_\_\_

Notary Public  
 Doc. No. \_\_\_\_\_  
 Page No. \_\_\_\_\_  
 Book No. \_\_\_\_\_  
 Series of 20 \_\_\_\_\_