

BIDS AND AWARDS COMMITTEE FOR GOODS (BAC-G)

**PROCUREMENT OF A SERVICE PROVIDER FOR THE INTERIM OPERATIONS AND
MAINTENANCE (O&M) OF THE NEW CLARK CITY (NCC) SPORTS FACILITIES UNDER A
TWENTY SEVEN (27) - MONTH SERVICE CONTRACT THROUGH NEGOTIATED
PROCUREMENT UNDER TWO FAILED BIDDINGS**

RESOLUTION NO. BG-2024-008

(Cancellation of NOA and Suspension of Sodexo On-site Services Philippines, Inc.)

WHEREAS, after two failed biddings, the Bases Conversion and Development Authority (BCDA), through the Bids and Awards Committee for Goods (BAC-G), posted the Invitation to Bid, including the bidding documents,¹ for the Procurement of a Service Provider for the Interim Operations and Maintenance (O&M) of the New Clark City (NCC) Sports Facilities under a Twenty-Seven (27)- Month Service Contract (the "Project") via a Negotiated Procurement pursuant to Section 53.1 - Negotiated Procurement - Two Failed Biddings of the 2016 Revised Implementing Rules and Regulations (RIRR) of Republic Act (RA) No. 9184 on 07 December 2023;

WHEREAS, the Invitation to Bid for the said procurement, which has an Approved Budget for the Contract (ABC) of One Hundred Fifty Seven Million Eight Hundred Seventy-Four Thousand Nine Hundred Eighty-Four Pesos & 25/100 Only (Php 157,874,984.25), inclusive of Value Added Tax (VAT) and all other applicable government taxes, fees, and charges,² was posted by BAC-G, through its Secretariat, in the following platforms:

- a. Department of Budget and Management (DBM) - Philippine Government Electronic Procurement System (PhilGEPS);
- b. BCDA Website; and
- c. In a conspicuous place reserved for the purpose within the premises of BCDA.

WHEREAS, Section V.D.1.b.ii of the 2016 RIRR of RA 9184 provides:

"ii. The BAC shall invite at least three (3) suppliers, contractors or consultants, including those disqualified in previous biddings for the project, for negotiations to ensure effective competition. This, notwithstanding, those who responded through any of the required postings shall be allowed to participate. Even if only one (1) bidder should respond to such invitation or posting, the BAC shall proceed with the negotiation subject to the rules prescribed hereunder." (Emphasis supplied)

WHEREAS, the BAC-G Secretariat, requested for quotations from the following prospective suppliers via electronic mail;

¹ Annex A - Invitation to Bid and Bidding Documents

² Annex B - Approved Annual Procurement Plan

*BAC Resolution No. BG-2024-008: Cancellation of NOA and Suspension of Sodexo On-site Services Philippines, Inc. for the Procurement of a Service Provider for the Interim Operations and Maintenance (O&M) of the New Clark City (NCC) Sports Facilities under a Twenty Seven (27) - Month Service Contract through Negotiated Procurement under Two Failed Biddings
February 2024 / Version 1*

- a. ATALIAN Global Services Philippines, Inc.;
- b. Jones Lang LaSalle Inc.;
- c. Philjaya Property Management Corporation; and
- d. Sodexo On-site Services Philippines, Inc.

WHEREAS, on 11 December 2023 at 1:00PM, BAC-G conducted a Pre-Bid Conference/Negotiations, which was attended by the following prospective suppliers;

- a. ATALIAN Global Services Philippines; and
- b. Sodexo On-site Services Philippines, Inc.;

WHEREAS, on 12 December 2023, BAC-G issued a bid bulletin to clarify and address the queries raised by the prospective suppliers during the Pre-Bid Conference/Negotiations, a copy of which was sent to all the prospective suppliers who attended the said conference via electronic mail, as well as posted in the PhilGEPS and BCDA websites and BCDA Bulletin Board;

A copy of Bid Bulletin No. 1 is attached as Annex "C".

WHEREAS, only three (3) out of four (4) invited suppliers submitted their bids on time, or prior to the deadline set for the submission of bids, which is 13 December 2023 (Wednesday) at 2:30PM, namely:

- a. Philjaya Property Management Corporation;
- b. ATALIAN Global Services Philippines (Atalian); and
- c. Sodexo On-site Services Philippines, Inc.

WHEREAS, during the Opening of the Bids on 13 December 2023 (Wednesday) at 2:30PM, BAC-G, through its Technical Working Group (TWG), opened the first envelope containing the eligibility and technical documents of the above-named suppliers. Using the "pass/fail" criterion, BAC-G determined that:

Bidder	Eligibility Requirements	Technical Proposal
1. Philjaya Property Management Corporation	PASSED	PASSED
2. Atalian Global Services Philippines, Inc.	PASSED	PASSED
3. Sodexo On-site Services Philippines, Inc.	PASSED	PASSED

A copy of Abstract of Bids as Read during the Opening of Bids is attached as Annex "D".

*BAC Resolution No. BG-2024-008: Cancellation of NOA and Suspension of Sodexo On-site Services Philippines, Inc. for the Procurement of a Service Provider for the Interim Operations and Maintenance (O&M) of the New Clark City (NCC) Sports Facilities under a Twenty Seven (27) - Month Service Contract through Negotiated Procurement under Two Failed Biddings
February 2024 / Version 1*

WHEREAS, the financial envelopes of the bidders who “passed” the preliminary examination of the eligibility and technical documents were opened and subjected to a preliminary evaluation by determining the presence or absence of the required financial documents using a “pass/fail” criterion. During the preliminary evaluation, it was determined by the BAC-G that:

Bidder	Financial Bid as Read (in Php)	Ranking
1. Philjaya Property Management Corporation	Php 187,585,346.32	DISQUALIFIED ABOVE ABC
2. Atalian Global Services Philippines, Inc.	Php 154,829,059.45	1
3. Sodexo On-site Services Philippines, Inc.	Php 156,890,446.92	2

WHEREAS, based on the preliminary evaluation, the financial bid of Philjaya Property Management Corporation amounting to **One Hundred Eighty-Seven Million Five Hundred Eighty-Five Thousand Three Hundred Forty-Six Pesos and 32/100 Only (Php 187,585,346.32)** was determined to exceed the ABC of this Project. Thus, the bid of Philjaya Property Management Corporation was marked as “failed”, and as a result, was disqualified pursuant to Section 31.1. of the 2016 RIRR of RA 9184, viz:

*“31.1 The ABC shall be the upper limit or ceiling for acceptable bid prices. **If a bid price, as evaluated and calculated in accordance with this IRR, is higher than the ABC, the bidder submitting the same shall be automatically disqualified.** There shall be no lower limit or floor on the amount of the award.”
(Emphasis supplied)*

WHEREAS, the BAC-G TWG conducted a detailed evaluation of the submitted financial proposals of the two (2) eligible bidders and recommended **Sodexo On-site Services Philippines, Inc.** as the Lowest Calculated Bidder (LCB). On the other hand, the bid of **Atalian Global Services Philippines, Inc.** was declared as “non-responsive” for its failure to indicate the bid amount/price in words on the required item pursuant to Section 32.2.1 (a) of 2016 RIRR of R.A. No. 9184, to wit:

“The BAC shall immediately conduct a detailed evaluation of all bids using nondiscretionary criteria in considering the following:

*a) Completeness of the bid. Unless the Instructions to Bidders specifically allow partial bids, bids not addressing or providing all of the required items in the Bidding Documents including, where applicable, bill of quantities, shall be considered non-responsive and, thus, automatically disqualified. **In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive,** but specifying a zero (0) or a dash (-) for the said item would mean that it is being offered for free to the Government,*

except those required by law or regulations to be provided for; (Emphasis supplied)

xxx.”

Copies of the Detailed Bid Evaluation Report and the Abstract of Bids as Calculated are hereto attached as Annexes “E” and “F”, respectively.

WHEREAS, on 18 December 2023 (Monday), BAC-G deliberated the results of the post-qualification of **Sodexo On-site Services Philippines, Inc.** and concurred with the recommendation of the BAC-G TWG to declare **Sodexo On-site Services Philippines, Inc.** as technically and financially capable to undertake the Project;

A copy of the Post-Qualification Report is hereby attached as Annex “G”.

WHEREAS, BCDA has awarded the Project to Sodexo On-Site Services Philippines, Inc. pursuant to BCDA Board Resolution No. 2023-04-059.³ A Notice of Award⁴ was issued to Sodexo On-site Services Philippines, Inc., wherein it signified its conformity to the award of the Project on 27 December 2023;

WHEREAS, the Procurement and Property Management Department (PPMD), the end-user unit, endorsed to the Legal Services Department (LSD) the letters of Sodexo On-site Services Philippines, Inc. dated 09 January 2024⁵ and 19 January 2024⁶, requesting BCDA to consider its proposed addendum to the terms and conditions of the contract. In its Opinion dated 22 January 2024,⁷ LSD has opined that the proposed addendum constitutes a material deviation of the terms of the contract and violates the doctrine enunciated in the pertinent case law;

WHEREAS, on 23 January 2024, BCDA, through BAC-G, replied to Sodexo On-site Services Philippines Inc. to convey the denial of its request to amend the terms of the contract, and advised the latter to enter into contract and submit the required documents; otherwise, BCDA will be constrained to cancel the award and proceed with the blacklisting of Sodexo On-site Services Philippines, Inc.;⁸

WHEREAS, after receipt of BCDA’s letter, Sodexo On-site Services Philippines, Inc. wrote again to BCDA, addressed to BAC-G’s Chairperson, asking for reconsideration of the denial of its request to amend the terms of the contract, which was again denied by BAC-G;⁹

³Annex H - Secretary’s Certificate dated 11 May 2023

⁴Annex I - Notice of Award

⁵Annex J - Letter of Sodexo dated 09 January 2024

⁶Annex K - Letter of Sodexo dated 19 January 2024

⁷Annex L - LSG Opinion dated 22 January 2024

⁸Annex M - Letter of BCDA to Sodexo dated 23 January 2024

⁹Annex N - Letter of Sodexo to BCDA dated 25 January 2024

*BAC Resolution No. BG-2024-008: Cancellation of NOA and Suspension of Sodexo On-site Services Philippines, Inc. for the Procurement of a Service Provider for the Interim Operations and Maintenance (O&M) of the New Clark City (NCC) Sports Facilities under a Twenty Seven (27) - Month Service Contract through Negotiated Procurement under Two Failed Biddings
February 2024 / Version 1*

WHEREAS, on 01 February 2024, BAC-G issued a notice to Sodexo On-site Services Philippines, Inc. giving the latter the opportunity to show cause, within five (5) calendar days from receipt thereof, why it should not be blacklisted. Moreover, BAC-G directed Sodexo On-site Services Philippines, Inc. to file its Answer with documentary evidence and manifest its intent to attend the hearing for blacklisting;

WHEREAS, Sodexo On-site Services Philippines, Inc., in a letter dated 06 February 2024, requested for a hearing at the earliest convenience of BCDA to be able to present its side;

WHEREAS, upon the request of Sodexo On-site Services Philippines Inc, BAC-G conducted a hearing on 15 February 2024, which was attended by BAC-G members, TWG, Secretariat, and the end-user unit. The Managing Director, Mr. Debaprteem Paul and head of the Business Department, Ms. Kaye Del Rosario of Sodexo On-site Services Philippines, Inc. were also present during the hearing. However, Philippine Chamber of Commerce and Industry (PCCI) and Philippine Institute for Supply Management (PISM), who have been invited by BAC-G as observers failed to attend the hearing despite notice;

WHEREAS, while Sodexo On-site Services Philippines, Inc. pleaded good faith in submitting its request for the amendment of the terms of the contract, it has been confirmed during the hearing conducted by BAC-G that Sodexo On-site Services Philippines, Inc. deliberately failed to post the required Performance Security until BCDA grants their request for the amendment of the terms of the contract;

Copies of the Attendance Sheet and Minutes of the Hearing are attached as *Annexes "O" and "P"*.

WHEREAS, BAC-G has determined that Sodexo On-site Services Philippines, Inc. failed to comply with the requirements specified in the NOA, specifically the posting of Performance Security, despite its conformity to the NOA and the denial by BAC-G of its request for the amendment of the terms of the contract;

WHEREAS, Section 37.1.4 of the 2016 RIRR of RA 9184 provides the conditions for the award of the Contract, to wit:

"37.1.4 Within ten (10) days from receipt of by the winning bidder of the Notice of Award, the following conditions should be complied before the contract may be awarded:

xxx

*b) **Posting of performance security** in accordance with Section 39 of this IRR;
(Emphasis supplied)*

xxx."

*BAC Resolution No. BG-2024-008: Cancellation of NOA and Suspension of Sodexo On-site Services Philippines, Inc. for the Procurement of a Service Provider for the Interim Operations and Maintenance (O&M) of the New Clark City (NCC) Sports Facilities under a Twenty Seven (27) - Month Service Contract through Negotiated Procurement under Two Failed Biddings
February 2024 / Version 1*

WHEREAS, Section 40.1 of the 2016 RIRR of RA 9184 provides for consequences if the bidder with the Lowest Calculated and Responsive Bid (LCRB) or Single Calculated and Responsive Bid (SCRB), as the case may be, fails to enter into contract with the Procuring Entity and post a performance security to wit:

"40.1 If the bidder with the LCRB, HRRB, SCRБ or SRRB fails, refuses or is unable to submit the documents required under Section 37.1 of this IRR or to make good its bid by entering into a contract with the Procuring Entity or post the required Performance Security within the period stipulated in this IRR or in the Bidding Documents, the bid security shall be forfeited and the appropriate sanctions provided in this IRR and existing laws shall be imposed, except where such failure, refusal or inability is through no fault of the said bidder."(Emphasis supplied)

WHEREAS, Section 35 of the RIRR of RA 9184 provides for the authority of the BAC to declare a failure of bidding, including the effects of such declaration, viz:

35.1 The BAC shall declare the bidding a failure when:

a) xxx

d) The bidder with the LCRB, HRRB, SCRБ or SRRB refuses, without justifiable cause, to accept the award of contract, and no award is made in accordance with Section 40 of the Act and this IRR.

35.2 In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates.

35.3 Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a rebidding with re-advertisement and/or posting, as provided for in Section 21.2 of this IRR.

WHEREAS, BAC-G is constrained to recommend the cancellation of the NOA and the declaration of failure of bidding for non-compliance with the requirements or conditions provided in Section 37.1.4 in relation to Section 40.1 of the 2016 RIRR of RA 9184;

WHEREAS, after due hearing, BAC-G has found sufficient ground to recommend the blacklisting of Sodexo On-site Services Philippines, Inc. pursuant to Section 4.0 of Appendix 17 of the Uniform

*BAC Resolution No. BG-2024-008: Cancellation of NOA and Suspension of Sodexo On-site Services Philippines, Inc. for the Procurement of a Service Provider for the Interim Operations and Maintenance (O&M) of the New Clark City (NCC) Sports Facilities under a Twenty Seven (27) - Month Service Contract through Negotiated Procurement under Two Failed Biddings
February 2024 / Version 1*

Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants of 2016 RIRR of R.A. No. 9184, to wit:

"Section 4.0 Sanctions and Grounds for Blacklisting

4.1 Procurement Stage

xxx

d) Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

e) Refusal or failure to post the required performance security within the prescribed time. (Emphasis supplied)

xxx"

ACCORDINGLY, We, the members of the Bids and Awards Committee for Goods, hereby RESOLVE, as it is hereby RESOLVED, to RECOMMEND the following:

1. Cancellation of the NOA issued to Sodexo On-site Services Philippines, Inc. in accordance with the provisions of RA 9184 and its RIRR;
2. Declaration of failure of bidding for the Project;
3. Directing the Property and Procurement Management Department (PPMD), as the end-user unit, to conduct a mandatory review and evaluation of the terms, conditions, and specifications of the Bidding Documents, including the cost estimates, and other requirements relative to this Procurement pursuant to Section 35.2 of the 2016 RIRR of R.A. No. 9184;
4. Suspension of Sodexo On-site Services Philippines, Inc. from participating in any bidding process of BCDA; and
5. Forfeiture/enforcement of Sodexo's Bid Security.

*BAC Resolution No. BG-2024-008: Cancellation of NOA and Suspension of Sodexo On-site Services Philippines, Inc. for the Procurement of a Service Provider for the Interim Operations and Maintenance (O&M) of the New Clark City (NCC) Sports Facilities under a Twenty Seven (27) - Month Service Contract through Negotiated Procurement under Two Failed Biddings
February 2024 / Version 1*

RESOLVED, at the BCDA Corporate Center Office, Bonifacio Global City, Taguig City, this **15 February 2024**.

BIDS AND AWARDS COMMITTEE FOR GOODS (BAC-G)

[REDACTED]
ATTY. ELVIRA V. ESTANISLAO
Chairperson

[REDACTED]
LEILANI BARLONGAY-MACASAET
Vice Chairperson

[REDACTED]
MARIA JOSEFINA V. PE
Member

[REDACTED]
ATTY. MARIA CELINE ERIKA A. LABRADOR
Member

[REDACTED]
ATTY. MARICEL C. SANTOS
Member

Approved by:

[REDACTED]
JOSHUA M. BINGCANG
President and CEO



*BAC Resolution No. BG-2024-008: Cancellation of NOA and Suspension of Sodexo On-site Services Philippines, Inc. for the Procurement of a Service Provider for the Interim Operations and Maintenance (O&M) of the New Clark City (NCC) Sports Facilities under a Twenty Seven (27) - Month Service Contract through Negotiated Procurement under Two Failed Biddings
February 2024 / Version 1*

