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NEA PROCUREMENT GUIDELINES AND SIMPLIFIED BIDDING PROCEDURES FOR ELECTRIC COOPERATIVES

, November 06, 2013

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I. Rationale

Rule II, Section 5 (I) of the IRR of RA 10531 specifically provides that the NEA, in order to strengthen the ECs, shall develop, set and enforce institutional and governance standards for the operation of ECs such as, but not limited to, the observance of appropriate procurement procedure, including transparent and competitive bidding.

Rule II, Section 7 (a.v) of the IRR also provides that the NEA in the exercise of its quasi-judicial functions, shall have primary and exclusive jurisdiction over administrative cases involving complaints against EC officers which also it referred to Members of the Bids and Awards Committee.

II. Objectives

To enforce governance standards for the efficient operation of ECs such as the observance of appropriate procurement procedures; and to conform with RA 9184 (Government Procurement Reform Act), the following principles shall govern:

1)

Transparency in the procurement process and in the implementation of procurement contracts.

2)

Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.

3)

Accountability of BAC and EC officials who are directly or indirectly involved in the procurement process where they shall be held liable for their actions relative thereto.

4)

Streamlined and Simplified Procurement Process that will uniformly be applied to both stock and non-stock ECs.

III. Definition of Terms

1)

Approved Budget of the Contract (ABC) – refers to the budget for the contract duly approved by the EC Board as provided for in the EC's approved Cash Operating Budget, Annual Procurement Plan, E-ICPM or ERC approved CAPEX. The ABC shall be the upper limit or ceiling for the Bid prices.

2)

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BAC – Bids and Awards Committee

3)

TWG – Technical Working Group

4)

Bidding Documents – refers to documents issued by the EC (duly approved by the Board) as basis for bids, furnishing all informations necessary for a prospective bidder to prepare a bid.

5)

Bid – refers to a signed offer or proposal submitted by a bidder in response to the Bidding Documents.

6)

E-ICPM – refers to the NEA approved Enhanced-Integrated Computerized Planning Model of the EC.

7)

CAPEX – refers to the ERC approved capital expenditures of the EC to be recovered through rate increase.

8)

Procuring Entity – refers to the Electric Cooperative (EC)

9)

Head of Procuring Entity – refers to the EC Board or its duly authorized official. (If the Board authorizes the General Manager, it must be through a Board Resolution).

10)

Lowest Calculated Responsive Bid – refers to the bid which was determined to be the Lowest Calculated Bid after evaluation and passed all the criteria for post qualification.

IV. EC Procurement Planning

All procurements by the EC shall be based on the approved Cash Operating Budget, Supplemental Budget, E-ICPM, and CAPEX which were consolidated into an Annual Procurement Plan (APP) (ANNEX A*).

The Annual Procurement Plan, shall also include provisions for foreseeable emergencies based on historical data/records. Implementation of projects not included in the APP shall not be allowed.

V. Public Bidding (Competitive Bidding)

This is a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post qualification, award of contract, contract signing and Notice to Proceed.

This method shall be used for procurement or contracts amounting to P1 Million and above.

A. GUIDELINES ON PUBLIC BIDDING

1.

Preparation of Bid Documents by the EC

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The Bidding Documents shall include the following:

a)

Approved Budget for the Contract (ABC)

b)

Eligibility Requirements (ANNEX B*)

c)

Instructions to Bidders which include the following:

- criteria for eligibility

- bid evaluation and post qualification

- date, time, and place of the pre-bid conference

- submission of bids and opening of bids

d)

Terms of Reference

e)

Plans and Technical Specifications

The specifications and other terms in the Bidding Documents shall reflect minimum requirements or relevant characteristics and or performance requirements to meet the needs of the EC in clear and unambiguous terms. Reference to brand names shall not be allowed.

f)

Form of Bid, Price Form, List of Goods or Bill of Quantities

g)

Delivery time or Completion Schedule

h)

Form, Amount and Validity Period of Bid Security

i)

Form and Amount of Performance Security and Warranty

j)

Form of contract, General Conditions of the contract and Special Conditions of the contract. Include in the contract a provision for liquidated damages/penalty clause and warranty.

k)

Certification of availability of funds for the project.

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2.

Invitation to Bid advertised at least once in a newspaper of general and national circulation and posted in a conspicuous place in the EC premises (certified by BAC Chairman).

*Advertisement of Invitation to Bid (Contents) .

- Name of Contract to be bid and brief description

- General statement on the criteria for eligibility check, examination and evaluation of bids and post qualification.

- Date, time and place of the deadline for the submission and receipt of eligibility requirements, technical and financial proposals, the pre-bid conference, and the opening of bids.

- The Approved Budget for the Contract (ABC), cite whether exclusive or inclusive of VAT.

- Source of Funding.

- Period of availability of bidding documents, place where they may be secured, and price of bidding documents (non-refundable).

- Delivery Schedule/Completion of Project.

- Name, address, telephone number, fax number, e-mail and website addresses as well as the designated contact persons.

- Reservation Clause

EC reserves the right to:

- Reject Any and All Bids

- Declare Failure of Bidding

- Not Award Contract

SITUATIONS:

- Prima Facie Evidence of COLLUSION between any employee or appropriate officer of the EC

- Collusion between or among the bidder themselves.

- BAC failed in following the Prescribed Bidding Procedures

- Project no longer necessary as determined by the EC

3.

Pre-Bid Conference

A pre-bid conference should be conducted (at least 12 calendar days) before the deadline for the submission and receipt of bids. The pre-bid conference shall discuss among other things the eligibility requirements and the technical and financial components of the contract to be bid as stipulated in the Bid Documents. Attendance of the bidders to the pre-bid conference is optional, except when specifically stated in the Invitation to Bid. Only those who have purchased the Bidding Documents shall be allowed to participate in the pre-bid conference and raise or submit written queries or clarifications

*Conduct of Pre - Bid Conference

- Attendees to the pre-bid conference are only the prospective bidders who have bought bid documents, or their authorized representative (duly notarized).

- The secretariat shall take the minutes of the meeting and preferably video taped; and made available to all participants not later than three (3) calendar days after the pre-bid conference.

- Any statement made at the pre-bid conference shall not modify the terms of the bidding documents unless such statement is specifically identified in writing as an amendment or as Supplemental Bulletin.

- Bidders who have submitted bids before the Issuance of Supplemental/Bid Bulletin have to be informed in writing and allowed to modify or withdraw their respective bids.

- Supplemental Bulletin by BAC must be issued not later than 7 calendar days before the deadline for the submission and receipt of bids.

- The BAC and the prospective bidders shall synchronize their timepieces in preparation for the scheduled Bid opening. The BAC shall have an official timer.

4.

Receipt / Opening of Bids / Pre-qualification

4.a

For purposes of determining the eligibility of bidders, the checklist of criteria stated in Section I of Annex B shall be required, using Non- Discretionary “Pass/Fail” Criteria.

4.b

In the opening of bids, the Two Envelope System shall be adopted using Annex B as the working tool.

Envelope 1 containing the Class A and B documents segregatedly filed and labeled shall be opened in the following order:

Folder 1 - Legal Documents }

Folder 2 - Technical Documents } See Annex B

Folder 3 - Financial Documents }

Folder 4 - Class “B Documents }

The submitted documents of each bidders shall be examined and checked to ascertain they are all present using a non-discretionary “pass/fail” criterion. If a bidder submits the required document, it shall be rated “passed” for that particular requirement. Hence, bids that fail to include any requirement or are incomplete or insufficient shall be considered “failed” otherwise, the first envelope shall be rated as “passed”.

The second envelope (ENVELOPE 2) of the Bid proposal of bidders that were rated failed or ineligible shall no longer be opened and should be returned to the bidder.

5.

Bid Evaluation

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5.a

After determining compliance with the requirements in the first envelope, the second bid envelope (envelope 2) of each remaining eligible bidder whose first bid envelope (envelope 1) was rated “passed” shall forthwith be opened In the following order:

Envelope 2

Folder 1 - Technical }

Folder 2 - Financial } See Annex B

5.b The bidder whose technical bid proposal passed the technical requirements and specifications shall be rated as “passed”, afterwhich Folder 2 of the second envelope containing the financial proposal shall be opened.

5.c Financial bid proposals higher than the ABC shall outrightly be disqualified for post-qualification. Computational errors and omissions are considered for proper comparison of bids.

5.d In the evaluation of bids, the BAC shall evaluate all bids on an equal footing to ensure fair and competitive bid evaluation. For this purpose, all bidders shall be required to include the cost of all taxes such as but not limited to Value Added Tax (VAT), Income tax, local taxes and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including taxes, shall be the bases for bid evaluation, comparison and for determining the LOWEST CALCULATED BID.

5.e Bids shall then be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, and other bid modifications to identify the “Lowest Calculated Bid”

5.f The bid which Is determined to be the Lowest Calculated Bid shall be subjected to post qualification.

EVALUATION OF BIDS

In case of discrepancies

1)

Figures against words

-

Words shall prevail

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2)

Total price per item against price per item multiplied by the quantity

-

Price per item multiplied by shall prevail the quantity

3)

STATED TOTAL PRICE against actual sum of prices of component items

-

Actual sum of prices of component shall prevail

4)

Unit cost in the detailed estimate against unit cost in Bill of quantities

-

Unit cost in its bill of quantities shall prevail

6.

Post-Qualification - the stage where the bidder with the Lowest Calculated Bid undergoes verification and validation whether he has passed all the requirements and conditions as specified in the Bidding Documents

Objectives

6.a To verify and validate the authenticity of documents submitted by the Bidder with the Lowest Calculated Bid.

6.b To determine whether the Bidder with the Lowest Calculated Bid complies with and is responsive to all the requirements and conditions for eligibility and bidding.

Legal Requirements - Licenses and agreements submitted and the fact that he is not included in any Government "blacklist"

Technical Requirements - Performance in on-going and completed projects, competence and experience

Financial Requirements - The required bank commitment to provide a credit line to bidder In the amount specified and over the period stipulated in the Instructions to Bidders, Net Financing Contracting Capacity (NFCC), and audited financial statements to ensure that the bidder can sustain the operating cash flow of the transaction

6.c To declare the "LOWEST CALCULATED RESPONSIVE BID"

If the Lowest Calculated Bid failed in the post-qualification, the BAC shall proceed with its post-qualification process to the next Lowest Calculated Bid until a responsive bid shall have been determined.

7.

Notice of Award

7.a The BAC shall recommend to the EC Board through the General Manager the award of contract to the

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LOWEST CALCULATED RESPONSIVE BID.

7.b After Board approval, the bidder with the Lowest Calculated Responsive Bid shall post a performance security.

8.

Contract Signing - within ten (10) calendar days from the receipt of Notice of Award and posting of performance security by the bidder with the “Lowest Calculated Responsive Bid”.

9.

Notice to Proceed to be Issued by the EC - not later than seven (7) calendar days from the date of approval of the contract.

B. FAILURE OF BIDDING

*There shall be a failure of bidding if:

a)

No bids are received

b)

No bid qualifies as the Lowest Calculated Responsive Bid.

c)

The bidder determined to be the “Lowest Calculated Responsive Bid” refuses without justifiable cause to accept the award of contract.

Under any of the above instances, the contract shall be re-advertised and re-bid observing the same process.

C. In case of two consecutive Failure of Biddings

*The BAC shall,

- conduct mandatory review & evaluation of the terms, conditions & specifications (TCS), including its cost estimates

- revise the TCS and if necessary adjust the ABC, and conduct a re-bidding with re-advertisement The ABC however cannot be increased by more than 20 % of the ABC for the last failed bidding

- allow all eligible bidders who have previously offered their bid to submit new bids and observe the same process and set the new periods according to the same rules followed during the previous bidding.

D. Bid Security

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1.

All bids shall be accompanied by a bid security payable to the electric cooperative as guarantee that the successful bidder shall enter into contract from receipt of the Notice of Award.

Required Bid Security are the following:

Form of Security Amount

1) Cash, Cashier's check, Manager's check, bank draft 2% of ABC

2) Bank Guarantee (from universal and/or commercial bank) 2 ½ of ABC

2.

Bid securities shall be returned to bidders that were rated ineligible. However, bids that were rated eligible, bid securities shall be returned only after the bidder with the Lowest Calculated Responsive Bid has signed the contract and furnished the performance security.

E. Performance Security

To guarantee the faithful performance of the winning bidder of its obligations under the contract prepared in accordance with the bidding documents, it shall post a performance security upon the signing of the contract.

Form of Security

Amount

1) Cash, Cashier's check, Manager's check, bank draft, Irrevocable letter of credit 5% of Contract Price

2) Bank Guarantee (from universal and/or commercial bank) 10% of Contract Price

*Failure to Enter into Contract and Post Performance Security

a)

If for justifiable causes, the bidder with the Lowest Calculated Responsive Bid fails or refuses or is otherwise unable to enter into contract with the EC, or if the bidder fails to post the required performance security within the period stipulated in the Bidding Documents, the BAC shall disqualify the said bidder and shall undertake post qualification for the next ranked Lowest Calculated Bid. This procedure shall be repeated until an award is made. However, if no award is possible, the contract shall be subjected to a new bidding.

b)

In the case of a failure to post the required performance security, the bid security shall be forfeited without prejudice to the Imposition of sanctions.

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F. Bid Validity

Bids and Bid Securities shall be valid for a reasonable period as determined by the head of the procuring entity concerned, and shall be indicated in the bidding documents, but in no case shall exceed one hundred twenty (120) calendar days from the date of the opening of bids.

G. Liquidated Damages

All contracts executed shall contain a provision on liquidated damages which will be payable in case of breach of contract.

For the procurement of goods the amount of liquidated damages shall be at least equal to 1/10 of 1% (.01%) of the cost of the unperformed portion for every day of delay.

Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract the contract shall be rescinded without prejudice to other courses of action and remedies to be undertaken.

H. Warranty

To assure that manufacturing defects shall be corrected by the supplier a warranty shall be required from the contract awardee.

a)

for supplies - minimum of 3 months

b)

for equipment - 1 year after performance of the contract

I. Computation of Net Financial Contracting Capacity (NFCC)

NFCC

= [(Current assets minus current liabilities) (K)] minus the value of all outstanding projects under ongoing contracts, including awarded contracts yet to be started.

Where:

K

=10 for a contract duration of one year or less, 15 for a contract duration of more than one year up to two years, and 20 for a contract duration of more than 2 years.

Note: Use Illustrations A,B,C as tools to simplify computation and as reference for the validation of the bidder's track record in the post qualification process.

J. Timetable of Activities (Annex C) K. Selling of Bid Documents

- To defray the expenses incurred in the preparation of Bid Documents, the Bid Documents will be for sale to interested bidders.

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- Setting the price for the Bidding Documents. Direct costs - Includes development costs, reproduction costs, communication costs.
Indirect costs - Overhead, supervisions, and administrative costs, honoraria

The price of the Bidding Documents should not have an effect of discouraging competition.

L. The Bids and Awards Committee (BAC) and Its Composition

- The BAC shall have at least five (5) members, but not to exceed 7 members.

- The Chairman and the Vice chairman of the BAC should be an official occupying a department level plantilla position and of permanent status of employment in the cooperative.

- The chairman and the members of the BAC shall be designated by the General Manager and confirmed by the Board.

- No member of the Board nor the General Manager and nor the Internal Auditor can sit as member of the BAC however, they can sit as observers only during the opening of bids.

Composition of the BAC

Chairman

}

Department Level or Area Manager except the

Vice Chairman

}

Finance Manager

Members

}

Department Manager, Area Manager, Division Manager

Members

}

or Section Manager or Section Head from any of the

Members

}

Departments

The members of the BAC shall have a fixed term of one (1) year reckoned from the date of appointment. Term of office can be extended only for another 6 months but for a justifiable reason.

Technical Working Group

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Chairman

}

Chairman and Members may be composed of

Members

}

department managers, division managers and section

Members

}

chiefs from a pool of technical, financial and or legal

Members

}

experts to assists the BAC in the procurement process.

Functions of the BAC

1)

Prepares the bid documents

2)

Advertise or post the invitations to bid.

3)

Conduct pre-bid conference

4)

Determine the eligibility of the prospective bidders

5)

Receive bids

6)

Conduct the evaluation of bids

7)

Undertake post qualification proceedings

8)

Recommend award of contracts to the General Manager and to the Board

9)

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Under special cases, recommends the use of alternative Methods of Procurement.

M. Functions of the Technical Working Group

Assists the BAC in the conduct of its functions particularly in the preparation of Bid Documents, eligibility screening, evaluation of bids and post qualification.

N. Functions of the BAC Secretariat

1)

Provides administrative support to the BAC.

2)

To record attendance during the pre-bid conference and during the opening of bids.

3)

To maintain all records pertaining to the BAC.

4)

Organize and make all necessary arrangements for the BAC meetings, attend BAC meetings as secretary and prepare minutes of meeting.

5)

Prepare BAC resolutions that pertains to recommendations and other matters.

6)

Responsible for the sale/distribution of Bid Documents to Interested bidders.

O. OBSERVERS

To enhance the transparency of the process, the BAC shall, in all stages of the procurement process invite in addition to the representative of the Internal Audit, at least an observer coming from the employees' union or association and from a duly recognized private group in a sector or discipline relevant to the procurement at hand (who shall not have the right to vote) or to sit in its proceedings.

Observers should be invited in writing at least three (3) days before the opening of bids.

Responsibilities of the Observers:

- To prepare a report indicating their observations made on the procurement activities for submission to the Head of the procuring entity (General Manager and the Board), copy furnished the BAC chairman.

- If no report is submitted by the observer, then It is understood that the bidding activity conducted by the BAC followed the correct procedure.

P. QUORUM

A majority of the total BAC composition shall constitute a quorum for the transaction of business, provided that the presence of the Chairman or Vice- Chairman shall be required.

Q. MEETINGS of the BAC

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The chairman or, in his absence, the Vice-Chairman, shall preside at all meetings of the BAC. The decision of at least a majority of those present at a meeting at which there is quorum shall be valid and binding as an act of the BAC. Provided, however, that the chairman or, in his absence, the Vice-Chairman shall vote only in case of a tie.

R. Honoraria of the BAC, TWG and BAC Secretariat

The EC may grant honoraria to the BAC, TWG and BAC Secretariat for every successful bidding conducted, funding of which will be sourced from the following:

1)

Proceeds from sale of Bid Documents (Net of expenses)

2)

Forfeited Security and Performance Security

3)

Accreditation Fees

4)

Protest Fees

5)

Fees charged for copies of minutes of bid openings, BAC resolutions and other BAC Documents

The Honoraria of each person for every successful bidding conducted shall not exceed the rates indicated below:

BAC Chairman -

P 3,000

BAC members -

2,500

TWG Chairman and members and Secretariat -

2,000

Successful bidding means the contract has been awarded to the winning bidder.

VI. Alternative Modes of Procurement

A. Simplified Bidding (Sealed Canvass)

This method of procurement involves direct invitation to bid from a set of accredited/pre-selected suppliers with known experience and proven capability on the requirements of the particular contract.

This method shall be used under the following circumstances:

1) Approved Budget of the Contract is P300,000.00 and above but below P1 Million provided that there is no splitting of procurement.

Splitting of contracts - the division or breaking up of contracts in smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the

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necessity of public bidding.

2) Accreditation of suppliers/contractors is updated for the last six (6) months using the prescribed accreditation procedure/requirements.

Accreditation Requirements

1)

DTI Business name registration or SEC registration certificate

2)

Valid and current Mayor’s permit/municipal license

3)

Tax payer's Identification number

4)

BIR Value Added Tax registration

5)

Certification that the supplier/contractor is not black listed or banned from bidding by the government or any of its agencies and other private corporations or electric cooperatives.

6)

Compliance with EO #398

- Proof of VAT payment for the past six months

- Tax clearance from the BIR for the last two quarters

7)

On-going, completed or awarded contract not yet started within the relevant period specifying the following:

- Name of the contract

- Date of contract

- Amount of contract and value of outstanding contracts

- Date of Delivery

- End-user's acceptance if completed

For Accreditation - The EC may opt to require accreditation fee and expiration period which shall be determined by the BAC.

B. Repeat Order

This is a method of procurement of goods from the previous winning bidder of contract awarded through competitive bidding.

Repeat order must only be resorted to under the following conditions:

a)

Contract on unit price of the repeat order must be the same or lower than those in the original contract, provided that such prices are still the most advantageous to the coop after price verification

b)

The repeat order will not result in splitting of contracts.

c)

The repeat order shall be availed of only within 6 months from the date of the Notice to Proceed arising from the original contract that was a result of competitive bidding.

d)

The repeat order shall not exceed twenty five percent (25%) of the quantity of each item in the original contract that was a result of competitive bidding.

C. Open Canvass/Shopping/Emergency Purchase

This method of procurement simply requests for the submission of price quotations for readily available off the shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications.

This mode of procurement can be resorted to when there Is an unforeseen contingency requiring immediate purchase, provided, that amount shall not exceed P300 Thousand; provided further that at least three (3) price quotations from accredited suppliers shall be obtained.

D. Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a capable supplier, contractor or consultant In any of the following cases:

a)

Two- failed Biddings - There has been a second failure of public bidding.

b)

Emergency Cases - There exist imminent danger to life or property during a state of calamity, or when time is of the essence arising from actual or manmade calamities.

c)

Take-Over of Contracts. A contract has been rescinded or terminated for causes provided for in the contract and existing laws, procuring entity decides to take over, infrastructure facilities and other public utilities.

d)

Adjacent or contiguous. Where the subject contract is to an on-going infrastructure project, provided, however, that:

d.1

The original contract is the result of a competitive bidding;

d.2

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The subject contract to be negotiated has similar or related scopes of work;

d.3

It Is within the contracting capacity of the contractor/consultant;

d.4

The contractor/consultant uses the same prices or lower unit prices as in the original contract less mobilization cost;

d.5

The amount involved does not exceed the amount of ongoing project;

d.6

The contractor/consultant has no slippage/delay.

VII. AMENDMENTS

In the implementation of these guidelines, the National Electrification Administration (NEA) may issue additional guidelines or introduce modification thereto through the amendment of its specific provisions as the need arises.

VIII. EFFECTIVITY

These guidelines shall immediately take effect fifteen (15) days following its publication In a newspaper of general circulation. Let three (3) copies hereof be filed with the University of the Philippines (UP) Law Center pursuant to Presidential Memorandum Circular No. 11, dated 09 October 1992.

(SGD) EDITA S. BUENO
Administrator

Approved by the NEA Board of Administrators on November 6, 2013 under Resolution No. 130.

* Text Available at Office of the National Administrative Register, U.P. Law Complex, Diliman, Quezon City

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