



Republic of the Philippines  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**



**NPM No. 143-2017**

29 December 2017

**MR. RAED CARAGA**  
*raedcaraga@gmail.com*

**Re: Single Largest Completed Contract (SLCC) -**

Dear Mr. Caraga:

This refers to your electronic mail requesting for guidance relative to the interpretation of Section 23.5.2.5 of the revised Implementing Rules and Regulations (2009 IRR) of Republic Act (RA) No. 9184.

As represented, you are conducting a post-qualification process for public bidding for the Diversion Dam with an Approved Budget for the Contract (ABC) of PhP 5,750,000.00. The bidder having the Lowest Calculated Bid is LGTD Construction and Development, which is under the Small B category for purposes of its Philippine Contractors Accreditation Board (PCAB) registration. You wish to inquire whether the LGTD Construction's claim is justified to declare it as Lowest Calculated and Responsive Bid under the subject provision.

At the outset, the GPPB and its TSO have no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions under the law. Hence, this office has consistently refrained from passing upon decisions of the BAC in an actual and/or ongoing procurement activity pertaining to the determination of compliance of a bidder with RA 9184 or its IRR. Nonetheless, we shall limit our discussion on the relevant provisions of the procurement law, rules and regulations that are pertinent to the issues presented.

It must be noted that Section 23.5.2.5 is found under the 2009 revised IRR, which provides that:

The prospective bidder must have an experience of having completed at least one (1) contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the NSO consumer price indices, must be at least fifty percent (50%) of the ABC to be bid: *Provided, however,* That contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than fifty percent (50%) of the Allowable Range of Contract Cost (ARCC) of their registration based on the guidelines as prescribed by the PCAB.

Please note that Sec. 23.5.2.5 of the 2009 revised IRR is now Sec.23.4.2.4 of the 2016 revised IRR, which amended the second sentence, providing for the following, thus, "contractors under Small A and Small B categories without similar experience on the contract to be bid may be

allowed to bid if the cost of such contract is not more than the ARCC of their registration based on the guidelines as prescribed by the PCAB.”

Since the project is on-going post-qualification process at present, the IRR that governs in the procurement activity is the 2016 revised Implementing Rules and Regulations. Thus, the following discussion will be based on the 2016 revised IRR, particularly Section 23.4.2.4.<sup>1</sup>

### **SLCC Requirement -**

For your guidance, the first paragraph of Section 23.4.2.4 of the 2016 revised IRR of RA 9184 is a mandatory provision. It is mandatory for a prospective bidder to show that the value of its Single Largest Completed Contract (SLCC), that is similar to the contract to be bid, is at least 50% of the ABC to be able to bid in such project. Thus, this eligibility criterion cannot be dispensed with or compromised as this is one of the minimum requirements that a prospective bidder has to satisfy to establish its track record and capacity to perform contractual obligations.

The SLCC criterion is so required in order to ensure that the government is contracting with an entity that has accomplished at least one project with a value no less than fifty percent (50%) of the contract to be bid. This assures the government that the bidder has sufficient experience and reliable track record or it is not the first time that the prospective bidder will be required to accomplish such an undertaking, and therefore, provides the government a level of security that such bidder, if awarded the contract, will be able to satisfactorily fulfill the contract requirements.<sup>2</sup>

### **Definition of Similar Contract -**

Section 23.4.2.4 states that Procuring Entities (PEs) may clarify in the bidding documents the definition or description of what it considers to be a project similar to the contract to be bid. It is within the discretion of the PE whether to consider a project as being similar or not similar in nature and complexity to the project to be bid, but the same has to be clearly stated in the Bidding Documents. The PE is given the discretion to further define the word “similar” in the SLCC requirement because it is in the best position to do so as it knows the technical components needed in the contract to be bid. However, such discretion is not without limit.

We wish to note that we have discussed in a previous opinion<sup>3</sup> that a contract shall be considered "similar" to the contract to be bid if it involves goods or services of the same nature and complexity as the subject matter of the project being procured. This requirement should not be interpreted strictly as to unreasonably limit competition and inequitably bar participation of capable suppliers, manufacturers, distributors, and service providers; much more, to constrain PEs in the performance of their constituent and ministrant functions. Hence, similarity of contract should be interpreted liberally in the sense that it should not refer to an exact parallel but only to an analogous one of similar category.

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<sup>1</sup>The prospective bidder must have completed an SLCC that is similar to the contract to be bid, and whose value, adjusted to current prices using the PSA consumer price indices, must be at least fifty percent (50%) of the ABC to be bid: *Provided, however*, That contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than the Allowable Range of Contract Cost (ARCC) of their registration based on the guidelines as prescribed by the PCAB.

<sup>2</sup> NPM No. 020-2005 dated 17 March 2005.

<sup>3</sup> NPM No. 057-2004 dated 30 April 2004.

## **Proof Required for the SLCC -**

It will be noted that neither RA 9184 nor its 2016 revised IRR categorically defines “completed contract.” Thus, in interpreting this term, we rely on its commonly accepted meaning. Nonetheless, in determining the appropriate documentary basis for the SLCC requirement, we ought to consider the intent of the IRR as shown in its relevant provisions.

The term “completion” in the case of infrastructure projects is generally understood as the fulfilment by the contractor of all the required works as evidenced by the certificate of completion issued by the owner. It means then that “completed contract” refers to a contract where a certificate of completion has been issued by the owner. It would thus appear that for purposes of a bidder’s compliance with the SLCC requirement, the procuring entity (PE) may consider contracts that were issued their corresponding certificate of completion.

However, it should be stressed that the rationale for the SLCC requirement is to ensure that the PE will deal with bidders that have adequate experience and have performed all its contractual obligations through a showing of at least one (1) contract that has been fulfilled, not just completely, but satisfactorily. Accordingly, it is in this wise that Section 23.4.2.5 of the 2016 revised IRR requires that the Owner’s Certificate of Final Acceptance issued by the project owner other than the contractor; or the Constructors Performance Evaluation System (CPES) rating must be at least satisfactory.

## **Exception to the SLCC Requirement**

As a general rule, a prospective bidder must meet two conditions to comply with the SLCC requirement under Sec.23.4.2.4 of the 2016 revised IRR: 1) completed contract must be similar to the contract being bid out, and 2) it must be valued at least fifty percent (50%) of the ABC of the contract being bid out. However, contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than the Allowable Range of Contract Cost (ARCC) of their registration based on the guidelines as prescribed by the PCAB.

Thus, bidders under Small A or Small B category who do not have a previous completed contract are allowed to participate if the cost of such contract is not more than the ARCC under its PCAB registration.

## **Summary –**

Based on the foregoing, we wish to stress the following:

1. The SLCC criterion is required in order to ensure that the government is contracting with an entity that has accomplished at least one project with a value no less than fifty percent (50%) of the contract to be bid.
2. A similar contract must be supported by a satisfactory CPES rating and/or an owner’s certificate of acceptance in order that the bidder may be considered fully compliant with the eligibility criteria of the 2016 revised IRR of RA 9184.
3. It is within the discretion of the procuring entity to further define the word “similar” in SLCC requirement because it is in the best position to do so as it knows the technical components needed in the contract to be bid.

However, similarity of contract should be interpreted liberally in the sense that it should not refer to an exact parallel but only to an analogous one of similar category.

4. Bidders under Small A or Small B category who do not have a previous completed contract are allowed to participate if the cost of such contract is not more than the ARCC under their PCAB registration.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*Executive Director V*

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