

NPM No.150-2017

29 December 2017

MR. ALEJANDRO B. QUIAPOS

Operations Manager

HERBANA BUILDERS AND SUPPLY

31-2 Ramon Santos Ext.

Oro Site, Legazpi City.

Re: Similar Project

Dear Mr. Quiapos:

We respond to your electronic mail inquiring whether a Procuring Entity (PE) can require bidders to have a project exactly similar to the item to be bid.

It is represented that a PE with a proposed Public Market Building project requires bidders to also have a Market Building project. Hence, this inquiry.

In order to ensure one's technical eligibility and experience to undertake a project, the bidder shall submit its Single Largest Completed Contract (SLCC) in accordance with Section 23.5.1.3 of the IRR of RA 9184, thus:

23.4.1.3 The prospective bidder must have completed, within the period specified in the Invitation to Bid, an SLCC that is similar to the contract to be bid, and whose value, adjusted to current prices using the Philippine Statistics Authority (PSA) consumer price indices, must be at least fifty percent (50%) of the ABC. However, in the case of Expendable Supplies, said single contract must be at least twenty five percent (25%) of the ABC. (Emphasis supplied)

We wish to refer you to our previous opinion¹ relative to what can be considered as similar contract, to wit:

It is the responsibility of the PE to clarify in the Bidding Documents what projects can be considered similar to the contract being bid out, for purposes of determining compliance with the SLCC requirement. Thus, it is entirely within the discretion of the PE whether to consider a project as being similar or not similar in nature and complexity to the project being bid out.

For your guidance, 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

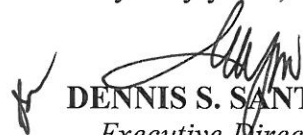
¹ NPM No. 042-2013 8 May 2013 citing NPM Nos. 123-2012 dated 8 October 2012, 001-2009 dated 9 October 2009 and 020-2012 dated 6 February 2012.

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.

Thus, while PEs are given the discretion to determine what contracts are similar to the contract being procured, the similarity should not refer to an exact parallel, but only to analogous ones of similar category in order to widen the competition among capable bidders.

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 there be other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director V

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