



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 001-2023

20 July 2023

COMMISSIONER GEORGE ERWIN M. GARCIA

Chairperson

Commission on Elections

Intramuros, Manila

Dear Commissioner Garcia:

This refers to your letter¹ relative to the requirement of a Single Largest Completed Contract (SLCC) of at least fifty percent (50%) of the Approved Budget for the Contract (ABC) under Section (Sec.) 23.4.1.3 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, the Commission on Elections (COMELEC) is in the process of procuring election equipment and paraphernalia, such as vote-counting machines, ballots, and other related items in the pursuit of its conduct of free, fair, and credible elections in the country. In relation thereto, the COMELEC posited that the requirement of a prior SLCC equivalent to 50% of the ABC or at least two similar contracts with an aggregate amount equal to twenty-five percent (25%) of the ABC is unduly restrictive, limiting the pool of potential bidders, and possibly leading to higher costs for the government.

It was further argued that these requirements are not found in RA No. 9184 and are intended for the procurement of Goods and not for specialized software, hardware, and systems, as required in election activities. Moreover, there are other technical and financial requirements which would ensure the capability and reliability of prospective bidders, while adaptive to unique requirements.

GPPB Authority to issue Rules to Implement RA No. 9184

At the outset, it bears stressing that the authority of the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend, whenever necessary, the IRR emanates from Sec. 63 of RA No. 9184. Pursuant to Sec. 75 of the same law, the IRR-A of RA No. 9184 was formulated by the GPPB jointly with the members of the Oversight Committee.² This was then approved President Macapagal-Arroyo through Memorandum Order No. 119,³ and took effect on 8 October 2003. Secs. 23.11.1 and 23.11.2 of said IRR-A contains the precursor of the current SLCC requirement for Goods and Infrastructure Projects (now Secs. 23.4.1.3 and 23.4.2.4 under the 2016 revised IRR).

¹ Dated 19 April 2023, received via email on 20 April 2023.

² Identified under Sec. 74 of RA No. 9184. Oversight Committee is composed of the Chairman of the Senate Committee on Constitutional Amendments and Revision of Laws and two members thereof appointed by the Senate President, and the Chairman of the House Committee on Appropriations, and two members thereof to be appointed by the Speaker of the House of Representatives.

³ Dated 18 September 2003, and was published on 23 September 2003 in two (2) newspapers of general nationwide circulation, namely, Manila Times and Malaya.

The Purpose of the SLCC and Similarity of Contracts

At this juncture, allow us to clarify that the applicability of the SLCC requirement was a necessary consequence of the determination made by the COMELEC, as the Procuring Entity (PE) in this case, that the procurement typology to be used for election equipment and paraphernalia that includes specialized software, hardware, and systems is one of procurement of Goods.

As emphasized in a number of our Non-Policy Matter Opinions (NPMs), it is incumbent upon the PE to classify the procurement project it intends to undertake,⁴ based on its identified needs, with a concomitant duty that it be guided by the parameters and conditions in the relevant provisions of RA No. 9184 and its revised IRR on what should be considered as Goods, Infrastructure Project, and Consulting Services. The decision of the PE in the determination of the nature of procurement necessarily carries with the application of the rules for that procurement type.⁵

The submission of the SLCC, which is a requirement for the procurement of Goods and Infrastructure Projects, is not to unduly restrict the number of potential bidders but to determine whether a bidder has the technical experience and capability to perform and accomplish the project at hand, *vis-à-vis* the well-established concept in public procurement that the project shall be awarded to the bidder not only with the legal and financial capacity but also the technical capability to undertake the project to its completion.⁶ This is also consistent with the principle of Competitiveness under Sec. 3 (b) of RA No. 9184 that extends equal opportunity to eligible and qualified bidders to participate in government procurement.

More importantly, the PE is given reasonable 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.⁷ Essentially, what constitutes a similar contract is wholly dependent on how the PE defines it, such that it may be as flexible or limiting as how the PE has set it out to be. Thus, we have previously opined that similarity of a 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.⁸ Accordingly, the number of potential bidders is dependent on how a PE defines a SLCC in its Bidding Documents. The PE should be guided by its market study in defining or describing a similar contract and should not be unreasonably limiting competition and inequitably barring the participation of capable suppliers.⁹

On the other hand, if at the outset and after the conduct of market research, the PE can already determine that requiring an SLCC will likely result to: (a) failure of bidding, or (b) monopoly that will defeat the purpose of Competitive Bidding, the PE, in lieu thereof can make use of the option under the second and third paragraphs of Sec. 23.4.1.3 (for the procurement of Goods) to require the submission of at least two (2) similar contracts, with an

⁴ NPM No. 011-2013, dated 22 February 2013; NPM No. 088-2013 dated 25 November 2013; NPM No. 138-2013, dated 27 December 2013; NPM No. 004-2014, dated 10 March 2014; NPM No. 018-2014, dated 16 June 2014; NPM No. 022-2014, dated 17 June 2014; NPM No. 077-2014, dated 21 October 2014; NPM No. 180-2015, dated 29 December 2015; NPM No. 051-2016, dated 03 October 2016; NPM No. 130-2016, dated 29 December 2016.

⁵ NPM No. 077-2014 dated 21 October 2014.

⁶ NPM No. 073-2016 dated 15 November 2016, and NPM No. 031-2017 dated 20 December 2017.

⁷ NPM No. 143-2017, dated 29 December 2017.

⁸ NPM No. 143-2017 dated 29 December 2017.

⁹ NPM No. 110-2015 dated 2 November 2015.



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aggregate contract amount of at least the percentage of the required ABC (50% or in the case of Expendable Supplies, 25%), and where the largest of these contracts is equivalent to at least half of the percentage of the required ABC.

As elucidated above, the PE is given reasonable latitude in fully defining the details, specifications or requirements of its procurement projects, including the definition of similar contracts in determining SLCC compliance as well as the aggregation of contracts to prevent failure of, or monopoly in, the bidding.

Modifications in the Bidding Documents

The COMELEC may likewise consider Sec. 6.2 of the 2016 revised IRR which allows for the modification of the Philippine Bidding Documents (PBDs) whenever necessary, particularly for major and specialized procurement, subject to the approval of the GPPB. It may be instructive to note that the Board has in numerous instances approved the use of customized bidding documents, as in the case of the Department of Transportation,¹⁰ and the Bureau of Treasury and the Government Service Insurance System.¹¹

As a final note, may we state that the above discussion was based on the particular facts presented and circumstances disclosed, and may not, therefore, be applicable given a different set of facts and circumstances.

We hope to have sufficiently addressed your concerns.

Sincerely yours,

ROWENA CANDICE M. RUIZ
Executive Director V

Copy furnished:

Undersecretary Joseph J. Capuno
National Economic and Development Authority
Vice-Chairperson, GPPB
vaird@neda.gov.ph
jjcapuno@neda.gov.ph

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¹⁰ Approved in GPPB Resolution Nos. 23-2019, dated 07 October 2019, Resolution No. 03-2021, dated 03 February 2021, and Resolution No. 03-2022, dated 07 April 2022.

¹¹ Approved in GPPB Resolution No. 10-2020, dated 07 May 2020.