



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 08-2014

28 March 2014

HON. FERNANDO I. MANALO

Undersecretary

Chairman, Special Bids and Awards Committee 1 (SBAC)

DEPARTMENT OF NATIONAL DEFENSE (DND)

DND Building, Segundo Avenue, Camp Emilio Aguinaldo,
Quezon City 1110

**Re: Net Financial Contracting Capacity (NFCC) and Statement of Ongoing
Government and Private Contracts**

Dear Undersecretary Manalo:

This is in response to the Honorable Undersecretary's letter dated 27 December 2013, which we received 9 January 2014, seeking our opinion on the following issues:

1. Is an incorrect NFCC computation, due to a mistakenly lifted figure from the Audited Financial Statements (AFS), considered "passed" if the entries in the AFS are used, the NFCC will still be more than the Approved Budget for the Contract (ABC)?
2. Is the list of "selected and relevant" ongoing and completed government and private contracts instead of a "statement of all ongoing and completed" government and private contracts" considered substantial compliance; hence, can be rated "passed"?
3. What is the meaning of "current" assets and liabilities that is required in the NFCC computations?

It is represented that the three proponents of the Frigate Acquisition Project (Project) of the DND, namely, STX France (STX), ThyssenKrupp Marine Systems (TMS), and Garden Research Shipbuilders & Engineers Ltd. (GRSE), filed their respective Motions for Reconsideration after the DND SBAC 1 declared them ineligible during the bid opening. STX has been declared ineligible because it made an error in computing its NFCC, although the recomputed NFCC is still above the ABC. On the other hand, TMS has been declared ineligible for submitting a list of "selected and relevant" ongoing and completed contracts instead of a "statement of all ongoing and completed" government and private contracts. GRSE has likewise been declared ineligible because its submitted NFCC does not reflect the current assets and current liabilities in its Annual Accounts Statement as of 31 March 2013. Hence, the opinion of this office is being sought on the above-stated issues.

At the outset, please be advised that the BAC is vested with the responsibility to examine, evaluate, and post-qualify bids utilizing a non-discretionary "pass/fail" criterion in

considering, among others, the completeness of the bids submitted. Accordingly, the Government Procurement Policy Board (GPPB) or its Technical Support Office (GPPB-TSO) cannot determine or rule for the BAC, neither dictate upon nor interfere with the BAC's functions, since these fall within the its authority, function, and discretion under the procurement law and its associated revised rules.¹

NFCC Computation

During the preliminary examination, the BAC merely checks the completeness of the documents submitted against the checklist of requirements specified in the Bidding Documents. Unless the bidder fails to submit the required eligibility, technical, and financial documents, such bidder will be deemed "passed".²

Among the eligibility requirements is the submission of an NFCC. The NFCC computation must be at least equal to the ABC for the project in order to be deemed compliant with the requirement. Under the rules,³ during preliminary examination, bids that fail to include any requirement or are incomplete or patently insufficient, such as an NFCC computation determined to be less than the ABC, shall be considered as failed.

Only bids declared "passed" after the preliminary examination shall be subjected to detailed bid evaluation. Such evaluation will check the completeness of bids and perform necessary arithmetical corrections to determine compliance with the required items in the Bidding Documents and identify the Lowest Calculated Bid (LCB).⁴

Accordingly, we wish to clarify that during the preliminary examination of bids, the BAC shall examine the NFCC computation submitted by the bidder based on a non-discretionary "pass/fail" criterion. Bidders shall be deemed compliant with the requirement if the submitted NFCC computation is at least equal to the ABC; otherwise, it will be declared "failed" regardless of the fact that the computation was based on an erroneous data or a mistake in arithmetical computation. This notwithstanding, the legal, technical, and financial documents submitted by a bidder determined to be eligible during preliminary examination of bids shall still be subjected to verification, validation and ascertainment during post-qualification.

Statement of Ongoing Contracts

Section 23(a)(iii) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, as amended by GPPB Resolution No. 29-2012⁶ provides that one of the eligibility requirements for the procurement of goods and infrastructure projects is a statement of the prospective bidder of all its ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid, within the relevant period as provided in the Bidding Documents. In addition, and as an eligibility criteria, Section 23.5.1.3 of the IRR requires that the prospective bidder must have completed, within the period specified in the Invitation to Bid, a single contract that is similar to the contract to be bid, and whose value,

¹ Section 11 of RA 9184 and its IRR.

² Section 30 of the IRR of RA 9184.

³ *Id.*

⁴ Section 32 of the IRR of RA 9184.

⁶ Issued on 23 November 2012 and published at the Malaya Business Insight on 9 September 2013.

adjusted to the current prices using the National Statistics Office consumer price indices, must be at least fifty percent (50%) of the ABC.

GPPB Resolution No. 29-2012 also provides that the failure to include an immaterial ongoing contract or failure to disclose complete information in the statement of contracts shall result in the “disqualification of the bidder for non-compliance with the eligibility requirement under Sections 23.1 or 24.1 of the revised IRR.”

Anent the foregoing, the statement of ongoing government and private contracts to be submitted by the bidder should include **all** of its ongoing government and private contracts, even if they are immaterial or dissimilar to the contract to be bid.

Faithful Compliance with GPPB Resolution No. 29-2012

Since GPPB Resolution No. 29-2012 categorically mandates that the bidder’s statement of ongoing government and private contracts should include **all** of its ongoing government and private contracts, we wish to emphasize that compliance with such requirement should be full and complete. Thus, if the bidder fails to submit a statement of all its ongoing government and private contracts, or the same is incomplete or patently insufficient for failure to include immaterial or dissimilar contracts vis-à-vis the contract to be bid, then the bid shall be considered as “failed” under the rules; otherwise, the BAC shall rate the said bid as “passed”.

We wish to clarify that the same level of compliance, *i.e.*, full and complete compliance, is required from joint venture bidders. However, since one of the primary reasons for entering into joint venture agreements (JVAs) is for joint venture partners to pool their resources together, the concept of “collective compliance” is used for the joint venture to be considered technically and financially compliant and capable of undertaking a specific government project. Allowing “collective compliance” relative to the technical and financial eligibility requirements of joint venture bidders is consistent with the policy that the government recognizes the need to encourage small and medium businesses, which are unable, either technically or financially, to carry out a business undertaking on its own, to solicit the assistance of capable or bigger businesses through a joint venture.⁷

Hence, we have previously opined that the submission of legal documents by all members of the joint venture is mandatory, while the submission of technical and financial eligibility documents by any member of the joint venture constitutes compliance.⁸ Consequently, since the statement of all ongoing government and private contracts is a technical eligibility requirement, the compliance by one joint venture partner shall render the joint venture fully and completely compliant with the technical requirement based on the concept of collective compliance.

Current Assets

Section 23.1(v) of the IRR of RA 9184 provides that the prospective bidder’s AFS that shows among others the prospective bidder’s total and current assets and liabilities, (stamped “received” by the BIR or its duly accredited and authorized institutions, for the

⁷ Section 23.1(b) of the IRR of RA 9184.

⁸ NPM No. 62-2009 dated 27 November 2009.

preceding calendar year, which should not be earlier than two (2) years from date of bid submission), is one of the eligibility requirements for the procurement of goods and infrastructure projects. The AFS becomes the basis for the computation of the prospective bidder's NFCC.

Thus, the total "current" assets and liabilities as indicated in the prospective bidder's AFS, which is stamped "received" by the BIR or its duly accredited and authorized institutions for the preceding calendar year, should be the basis for computing the NFCC.

Summary

All told, we wish to clarify the following matters:

1. During preliminary examination of bids, the NFCC computation submitted by the bidder shall be deemed compliant with the requirement if the submitted NFCC computation is at least equal to the ABC, subject to post-qualification.
2. The statement of ongoing government and private contracts to be submitted by the bidder should include **all** of its ongoing government and private contracts, even if they are immaterial or dissimilar to the contract to be bid.
3. The NFCC is computed using the values of the current assets and liabilities appearing in the bidder's submitted AFS stamped "received" by the BIR or its duly accredited and authorized institutions for the preceding calendar year.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and 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



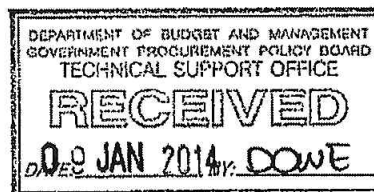
Republika ng Pilipinas
Republic of the Philippines

Kagawaran ng Tanggulang Pambansa
Department of National Defense

Special Bids and Awards Committee 1

DEC 27 2013

The Government Procurement Policy Board
Unit 2506, Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City



Attention: Atty. Dennis B. Santiago
Executive Director

This pertains to the Frigate Acquisition Project of the Department of National Defense wherein three of the proponents, namely, STX France, ThyssenKrupp Marine Systems, and Garden Research Shipbuilders & Engineers Ltd., filed Motions for Reconsideration after the Special Bids and Awards Committee 1 ("Committee" for brevity) declared them ineligible to bid during the Submission and Opening of Bids for said project. Hence, undersigned wishes to request for guidance/opinion on the following matters:

STX France

STX France ("STX") made a computational error in determining its NFCC. Said error can be attributed in transposing the amount of Current Assets and Liabilities from the Audited Financial submitted. Instead of stating therein that the Current Liabilities of STX is US\$796 Million corresponding to EUR588,147,000.00, as mentioned in the Audited Financial Statement, what was encoded in the NFCC submitted before the Committee was US\$756 Million corresponding to EUR558,147,000.00. STX, however, claims that it had no intention to mislead or engage in deliberately falsifying documents in order to qualify. Furthermore, STX claimed that after the computation done by the Technical Working Group (TWG) along with the DND SBAC 1 Secretariat, the NFCC of STX is more or less One Billion Seven Hundred Fifty Million US Dollars (US\$1,750,000,000.00) or roughly Seventy-Six Billion Four Hundred Fifty-Four Million Pesos (PHP76,454,000,000.00) which is well above the Approved Budget for the Contract of Eighteen Billion Pesos (PHP18,000,000,000.00). Lastly, STX submitted that Section 32.2.1(b)¹ of the IRR of RA9184 should also apply analogously in the instant case since the error attributed therein is considered arithmetical.

Hence, this Query: Can a mistakenly lifted figure from the submitted audited financial statements, which resulted to a screwed NFCC computation, be corrected by just checking the accurate entry in the financial statements? Otherwise stated, is an incorrect

¹ B) Arithmetical corrections. Consider computational errors and omissions to enable proper comparison of all eligible bids. It may also consider bid modifications if expressly allowed in the Bidding Documents. x x x

Computations, GRSE submitted with their Motion for Reconsideration a Balance Sheet as of 31 August 2013 and a Calculation Sheet for Outstanding Project Cost.

Thus, the following queries:

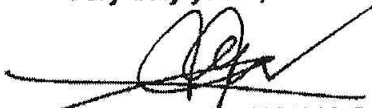
- A. What is the meaning of "current" assets and liabilities that is required in the NFCC computations?
- B. Accordingly, was GRSE correct in their NFCC computations although the figures appearing there are not based on the Audited Financial Statements submitted to their Tax Authorities but based on the Balance Sheet as of 31 August 2013 and a Calculation Sheet for Outstanding Project Cost which were only submitted during the filing of their Motion for Reconsideration?

As a recap, undersigned would respectfully like to ask for guidance and assistance on the following matters in order that this Committee can appropriately respond to the bidders' Motions for Reconsideration:

1. Is an incorrect NFCC computation, due to a mistakenly lifted figure from the audited financial statements, be rated "PASS" considering that if the entry in the financial statements are used, the NFCC will still be more than the ABC?
2. Is the list of selected and relevant ongoing and completed contracts instead of a "statement of all ongoing and completed government and private contracts" be considered substantial compliance; hence, can be rated "PASS"?; and
3. What is the meaning of "current" assets and liabilities that is required in the NFCC computations? Incidentally, was GRSE correct in their NFCC computations although the figures appearing there are not based on the Audited Financial Statements submitted to their Tax Authorities but based on the Balance Sheet as of 31 August 2013 and a Calculation Sheet for Outstanding Project Cost which was submitted together with its Motion for Reconsideration?

Thank you very much.

Very truly yours,



FERNANDO I MANALO
Chairman, Special Bids and
Awards Committee 1