Republic of the Philippines
gppb
Government Procurement Policy Board

TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City, Philippines 1605

NPM No. 01-2009

5 January 2009

HON. JAIME M. FORTES, JR.
Deputy Commissioner
Chairman, Bids and Awards Committee
NATIONAL TELECOMMUNICATIONS COMMISSION
DEPARTMENT OF TRANSPORTATION AND COMMUNICATION
NTC Building, BIR Road, East Triangle, Diliman, Quezon City

Re : Eligibility Criteria for the Procurement of Goods-Single Largest Similar Contract [Section 23.11.1(2) of the IRR-A of R.A. 9184]

Dear Sir:

This pertains to your letter dated 15 December 2008 requesting for clarification on certain issues relative to the bidding of the National Telecommunications Commission's (NTC) CMTS and Broadband Test and Measurement Equipment Project costing Sixteen Million Nine Hundred Fifty Thousand Pesos (Php. 16,950,000.00).

As represented in your letter, the BAC declared a failure of bidding because the two (2) bidders who participated (hereinafter referred to as Bidders 1 and 2, respectively), failed to comply with the eligibility criteria on the single largest similar contract for the procurement of goods.

Specifically, Bidder 1's single largest completed contract was found to be below the minimum required amount of fifty percent (50%) of the Approved Budget for the Contract (ABC), while Bidder 2's largest single completed contract was determined by the BAC as not "similar" in nature to the project being bid out.

You further state that both bidders filed their respective motions for reconsiderations on the following grounds:

Bidder 1 invoked GPPB Resolution No. 08-2006 dated January 20, 2006 citing the exception to the eligibility requirement that the single largest completed contract be at least 50% of the ABC of the contract to be bid. Bidder 2, meanwhile, invoked that their submission entry to satisfy the requirement comes from NTC citing P.O. 07-02-168 which they claim falls under the same category of communication test and measurement equipment.

Section 23.11.1(2) of the IRR-A of R.A. 9184 prescribes, as one of the eligibility criteria in the procurement of goods, that the value of the largest single completed contract of the bidder should be at least fifty percent (50%) of the ABC to be bid, to wit:

> "The **prospective bidder** must have an **experience of having completed within the period specified in the IAEB concerned a single contract that is similar to the contract to be bid**, and **whose value**, adjusted to current prices using the wholesale consumer price index, must be **at least fifty percent (50%) of the approved budget for the contract to be bid."**
>
> **However, (a) when failure of bidding has resulted because no single bidder has complied with the said requirement; or (b) imposing the same will likely result to a monopoly that will defeat the purpose of public bidding, the procuring entity, in lieu of the above, may instead require the following:**
>
> **a) The prospective bidder should have completed at least three similar contracts and the aggregate contract amounts should be equivalent to at least fifty percent (50%) of the ABC of the project to be bid;**
>
> **b) The largest of these similar contracts must be equivalent to at least twenty-five percent (25%) of the ABC of the project to be bid; and**
>
> **c) The business/company of the prospective bidder willing to participate in the bidding has been in existence for at least three (3) consecutive years prior to the advertisement and/or posting of the IAEB.**
>
> **For this purpose, the similar contracts mentioned under 2(a) and 2(b) above must have been completed within the period specified in the Invitation to Apply for Eligibility and to Bid. The procuring entity can clarify in the bidding documents the similar projects that can be considered in the bidding.**
>
> Provided, further, that when the item/good to be procured is novel or its procurement is otherwise unprecedented or is unusual, and compliance to the requirement on a largest similar contract is impracticable, the prospective bidder will only have to comply with requirement (c) above." (Emphasis ours).

It is clear from the foregoing that the procuring entity is given an option to require, as a substitute to the fifty percent (50%) single largest similar contract, the bidder's compliance to the three (3) eligibility criteria cited above, in the event of either a failure of bidding, or to prevent monopoly that would defeat public bidding, or when the item/good to be procured is novel or its procurement is otherwise unprecedented or is unusual, and compliance to the requirement on a largest similar contract is impracticable.

Furthermore, it may be noted that Section 23.6 of the same IRR-A requires from the prospective bidder a statement of all its ongoing, completed and awarded but not yet started contracts within the relevant period, if any, which shall include specific details to describe these contracts. Thus, the bidders may likewise specify whether said contracts are similar or not similar in nature and complexity to the contract to be bid.

However, it bears stressing that the procuring entity should be fully responsible in clarifying in their bidding documents what are the similar projects that can be considered in the bidding, and/or the parameters for determining the same. In the end, it is entirely within the discretion of the procuring entity whether to consider a project as being similar or not similar in nature and complexity to the project being bid out.

We hope to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

Republic of the Philippines
gppb
Government Procurement Policy Board

TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City, Philippines 1605

Bry.
Pls. check NPM Single Largest Contract: NTC in my Shared Docs.
TY.
1/5/09

NPM No. 53-2008

23 December 2008

HON. JAIME M. FORTES, JR.
Deputy Commissioner
Chairman, Bids and Awards Committee
NATIONAL TELECOMMUNICATIONS COMISSION
DEPARTMENT OF TRANSPORTATION AND COMMUNICATION
NTC Building, BIR Road, East Triangle, Diliman, Quezon City

Re : Eligibility Criteria for the Procurement of Goods-Single Largest Similar Contract [Section 23.11.1(2) of the IRR-A of R.A. 9184]

Dear Sir:

This pertains to your letter dated 15 December 2008 requesting for clarification on certain issues relative to the on-going bidding of the National Telecommunications Commission's CMTS and Broadband Test and Measurement Equipment Project.

As represented in your letter, the BAC declared a failure of bidding because two (2) of the bidders who submitted their bids failed to comply with the eligibility criteria on the single largest similar contract for the procurement of goods provided under Section 23.11.1 (2) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184).

One of the bidders, Spectracom Company, has a single largest completed contract in the amount of Four Million Four Hundred Fifty Thousand Pesos (Php. 4,450,000.00) which is below the required minimum amount of Eight Million Four Hundred Seventy-five Thousand Pesos (Php. 8, 475,000.00), fifty percent (50%) of the Approved Budget for the Contract (ABC).

While the other bidder, i3 Technologies Corporation has a single largest completed contract in the amount of Thirty-two Million Nine Hundred Twenty-Nine Thousand Two Hundred Pesos (Php. 32,929, 200.00), however, after review of the submitted contracts the BAC did not consider the above-mentioned contract as "similar" to the contract to be bid which involves goods or related services of the same nature and complexity as those which are the subject of the public bidding.

Both bidders filed their respective motions for reconsiderations on the following, respective, grounds:

Spectracom Company cited the exceptions provided under Section 23.11.1 (2) of the IRR-A of R.A. 9184, as amended by Resolution No. 07-2006[1], dated 20 January 2006 of the Government Procurement Policy Board (GPPB).

i3 Technologies Corporation invoked that their submission entry to satisfy the requirement directly came from NTC itself, with Purchase Order (P.O.) No. 07-02-168 in the amount of Thirty-two Million Nine Hundred Twenty-Nine Thousand Two Hundred Pesos (Php. 32,929, 200.00) which falls under the same category of communication test and measurement equipment. They said that both CMTS and the Modular Monitoring System fall under the same or similar category of Communication Test and Measurement Equipment. It also mentioned that their office made a verification from the GPPB and their representative explains that similar does not necessarily mean "the same" but items or services belonging to the same classification or category.

Section 23.11.1(2) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184) prescribes, as one of the eligibility criteria in the procurement of goods, that the value of the largest single completed contract of the bidder should be at least fifty percent (50%) of the approved budget for the contract to be bid, to wit:

Section 23.11.1(2) of the IRR-A of R.A. 9184 read as follows:

> "The **prospective bidder** must have an experience of having **completed within the period specified in the IAEB** concerned a **single contract** that is **similar to the contract to be bid**, and **whose value**, adjusted to current prices using the wholesale consumer price index, must be **at least fifty percent (50%) of the approved budget for the contract to be bid."**
>
> **However, (a) when failure of bidding has resulted because no single bidder has complied with the said requirement; or (b) imposing the same will likely result to a monopoly that will defeat the purpose of public bidding, the procuring entity, in lieu of the above, may instead require the following**:
>
> a) The **prospective bidder should have completed at least three similar contracts and the aggregate contract amounts should be equivalent to at least fifty percent (50%) of the ABC of the project to be bid**;
>
> b) The **largest of these similar contracts must be equivalent to at least twenty-five percent (25%) of the ABC of the project to be bid**; and
>
> **c)** The **business/company of the prospective bidder** willing to participate in the bidding has been **in existence for at least**

[1] GPPB Resolution No.07-2006, dated 20 January 2006 and became effective on 24 September 2008

three (3) consecutive years prior to the advertisement and/or posting of the IAEB.

For this purpose, the similar contracts mentioned under 2(a) and 2(b) above must have been completed within the period specified in the Invitation to Apply for Eligibility and to Bid. The procuring entity can clarify in the bidding documents the similar projects that can be considered in the bidding.

Provided, further, that when the item/good to be procured is novel or its procurement is otherwise unprecedented or is unusual, and compliance to the requirement on a largest similar contract is impracticable, the prospective bidder will only have to comply with requirement (c) above." *(Emphasis ours)*

Furthermore, it may be noted that Section 23.6 of the same IRR-A requires from the prospective bidder a statement whether an ongoing, completed, or awarded contract engaged by him, if any, stating also therein whether said completed projects is similar or not similar in nature and complexity to the contract to be bid. A contract shall be considered "similar" to the contract to be bid if it involves **goods or related services of the same nature and complexity** as those which are the subject of the public bidding concerned.[2]

It is clear from the foregoing that the procuring entity is only given an option to require, as a substitute to the fifty percent (50%) single largest similar contract, the bidder's compliance to the three (3) eligibility criteria cited above, in the event of either a failure of bidding or to prevent monopoly that would defeat public bidding or when the item/good to be procured is novel or its procurement is otherwise unprecedented or is unusual, and compliance to the requirement on a largest similar contract is impracticable.

It also bears stressing that the procuring entity should be fully responsible in clarifying in their bidding documents what are the similar projects that can be considered in the bidding. The single largest similar contract need not be entirely the same with the subject item of procurement but rather involved goods or related services of the same nature and complexity as those which are the subject of the public bidding concerned.

We hope to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

[2] Emphasis supplied, Non-Policy Matter (NPM) Opinion No. 30-2005, dated 21 June 2005.

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AN
NATIONAL TELECOMMUNICATIO

Emmie,
Pls. handle. Like priority. Sign in my behalf.
12/16/08

Boy,
Is this the same query you've received over the phone? Let's discuss and prepare reply.
TN.

DEPARTMENT OF BUDGET AND MANAGEMENT
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE
RECEIVED
DATE: 12/15/08 BY:

December 15, 2008

Atty. Ruby U. Alvarez
Executive Director III
Government Procurement Policy Board (GPPB)
Technical Support Office (TSO)
Unit 2506 Raffles, Corporate Center
F. Ortigas Avenue, Pasig City

Madam:

This refers to our on-going bidding re: CMTS and Broadband Test and Measurement Equipment Project in the Commission with a contract cost of P16,950.000.00.

The BAC declared a failure of bidding on the basis of the following:

a) **Spectracom Company** has a **single largest completed contract in the amount of P4,450,000.00** which is below the minimum required amount of contracts pursuant to Sec. 23.11.1.2 of the IRR of R.A. 9184.

b) **i3 Technologies Corporation** has a **single largest completed contract in the amount of P32,929,200.00**, however, after review of the submitted contracts the BAC did not consider the above-mentioned as "similar" to the contract to be bid which involves goods or related services of the same nature and complexity as those which are the subject of the public bidding.

Please take note that the **requirement of 50% of the Approved Budget of similar contract is P8,475,000.00**.

However, both bidders filed their respective motions for reconsideration on the following grounds:

1) **Spectracom Company**:

1.1. It **invoked Resolution 07-2006 dated Janaury 20, 2006 of GPPB**, an exception for the eligibility requirement for "largest single contract" xxx xxx xxx i.e. However, (a) when failure of bidding has resulted because no single bidder has complied with the said requirement; or (b) imposing the same will likely result to a monopoly that will defeat the purpose of public bidding, the procuring entity, in lieu of the above, may instead require the following:

1.1.1. The prospective bidder should have completed at least three similar contracts and the aggregate contract amounts should be equivalent to at least fifty percent (50%) of the ABC of the project to be bid;

1.1.2. The largest of these similar contracts must be equivalent to at least twenty-five percent (25%) of the ABC of the project to be bid; and

1.1.3. The business/company of the prospective bidder willing to participate in the bidding has been in existence for at least three (3) consecutive years prior to the advertisement and/or posting of the IAEB, under any of the following circumstances. (see attached letter dated 14 October 2008)

2) **i3 Technologies Corporation invoked that their submission entry to satisfy the requirement is coming from the NTC with reference to P.O. 07-02-168 in the amount of P32,929,200.00 which falls under same category of communication test and measurement equipment**. They said that both CMTS and the Modular Monitoring System fall under the same or similar category of Communication Test and Measurement Equipment. It made a verification from the office of GPPB and their representative explains that similar does not necessarily mean "the same" but items or services that belong to the same classification or category. (see attached dated 15 October 2008)

In view of the foregoing, we seek advise on the said issues. Since the funds allocated for the purchase of the equipment should be obligated within the current year, we respectfully request for an early response.

Thank you.

Very truly yours,

JAIME M. FORTES. JR.
Deputy Commissioner
Chairman, BAC

SPECTRACOM CO.
TELECOMMUNICATIONS EQUIPMENT AND CONSULTANCY

2nd Floor Colby Center Lot 3 Blk 60 Bayani Road, ATPOVAI Subd., Phase IV, Fort Bonifacio, Taguig City
Tel. # (632) 383-4022 : e-mail : spectracom_2100@yahoo.com
TIN: 230-583-299-000 VAT

October 14, 2008

NATIONAL TELECOMMUNICATIONS COMMISSION
Agham Road, Diliman, Quezon City

Attention : **HON. JAIME N. FORTES, JR.**
Deputy Commissioner
Chairman, BAC

Subject : **Motion for Reconsideration of The Post Evaluation Disqualification Of Spectracom for the Supply of CMTS and Broadband Service Benchmark/Drive Test Equipment Project**

Gentlemen:

We write in behalf of SPECTRACOM CO., the bidder with a lowest calculated bid in the NTC's CMTS and Broadband Service Benchmark/Drive Test Equipment Project.

This refers to the NTC's letter dated October 8, 2008, a copy of which was received on October 13, 2008. Hence, we have three (3) calendar days from October 3, 2008 or until October 16, 2008 to file a motion for reconsideration against the said disqualification pursuant to Section 34.4 of IRR of R.A. 9184 otherwise known as the Government Procurement Reform Act.

Although our company have the lowest calculated bid in the said Project and our company complied with all the eligibility requirements, our company was disqualified due to alleged failure to qualify under Section 23.11.1.2 of the IRR of R.A. 9184 otherwise known as the Government Procurement Reform Act. According to NTC TWG, they allegedly found out that our company's single largest completed contract in the amount of P4,450,000.00 is below the minimum value, adjusted to current prices using the wholesale consumer price index, of at least fifty percent (50%) of the approved budget for the contract to be bid.

We respectfully move for reconsideration of the said decision of the NTC TWG because our company clearly complied with the minimum requirements laid down by Section 23.11.1.2 of the IRR of R.A. 9184, as amended. Under Resolution 07-2006 dated January 20, 2006 of the Government Procurement Policy Board (**"GPPB"** for brevity), an exception for the eligibility requirement for "largest single contract" is provided, to wit:

> "Section 23.11. Eligibility Criteria
>
> 23.11.1. For the procurement of goods
>
> XXX XXX XXX
>
> 2. The prospective bidder must have an experience of having completed within the period specified in the IAEB concerned a single contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the wholesale consumer price index, must be at least fifty percent (50%) of the approved budget for the contract to be bid.
>
> However, (a) **when failure of bidding has resulted because no single bidder has complied**
>
> **with the said requirement**; or (b) imposing the same will likely result to a monopoly that will defeat the purpose of public bidding, the procuring entity, in lieu of the above, may instead require the following:
>
> a. The prospective bidder should have completed at least three similar contracts and the aggregate contract amounts should be equivalent to at least fifty percent (50%) of the ABC of the project to be bid;
>
> b. The largest of these similar contracts must be equivalent to at least twenty-five percent (25%) of the ABC of the project to be bid; and
>
> c. The business/company of the prospective bidder willing to participate in the bidding has been in existence for at least three (3) consecutive years prior to the advertisement and/or posting of the IAEB, under any of the following circumstances:

For this purpose, the similar contracts mentioned under 2(a) and 2(b) above must have been completed within the period specified in the Invitation to Apply for Eligibility and to Bid. The procuring entity can clarify in the bidding documents the similar projects that can be considered in the bidding.

Provided, further, that when the item/good to be procured is novel or its procurement is otherwise unprecedented or is unusual, and compliance to the requirement on a largest single similar contract is impracticable, the prospective bidder will only have to comply with requirement (c) above."

In the present case, our company completely complied with the said provision of Resolution 07-2006. Even assuming but not in anyway admitting that our company's single largest completed contract in the amount of P4,450,000.00 is below the minimum value, adjusted to current prices using the wholesale consumer price index, of at least fifty percent (50%) of the approved budget for the contract to be bid, still, our company would be eligible under the above-quoted exception under GPPB's Resolution 07-2006 dated January 20, 2006.

First, our company has completed at least three similar contracts and the aggregate contract amounts are more than and/or equivalent to at least fifty percent (50%) of the project to be bid as shown in our bid documents, to wit:

Name of Contract	Amount of Contract	Date Completed
NTC CMTS Quality of Service Monitoring Proj.	P4,450,000.00	Sept. 14, 2007
NTC CMTS Test Mobile Project	P1,112,500.00	Mar. 27, 2007
MG Exeo/Innove Globequest Data Access Node	P4,538,693.50	July 12, 2007
Iglesia Ni Cristo Tetra Project	P1,147,021.96	Aug. 17, 2007
MG Exeo/Innove Phase 3C and 4 Project	P7,609,579.17	Sept. 10, 2007
TOTAL	**P18,857,794.63**	

The aggregate amount of at least three of our abovesaid similar contracts are more than and/or equivalent to P8,475,000.00 or fifty percent (50%) of the approved budget cost which is P16,950,000.00.

Secondly, the largest of our company's similar contracts is more than or equivalent to at least twenty-five percent (25%) of the approved budget cost of the project to be bid. The approved budget cost of this project is P16,950,000.00 and 25% of which is P4,237,500.00. The MG Exeo/Innove Phase 3C and 4 Project is more than sufficient to comply with this requirement because it's contract price is P7,609,579.17. Even the NTC CMTS Quality of Service Monitoring Project which is very similar to the project subject of this bidding is likewise sufficient to comply with this requirement because it's contract price is P4,450,000.00.

Third, our company has been in existence since April 15, 2004 which is more than three (3) consecutive years prior to July 12, 2008, the date of the publication of the advertisement and/or posting of the Invitation to Apply for Eligibility to Bid of NTC for this project. Since 2004, our company has been participating in the bidding and delivering its undertaking/obligations in several government contracts which it won in the bidding.

Finally, the abovesaid similar contracts of our company in compliance with Section 2(a) and 2(b) of Resolution 07-2006 have been completed within the period specified in the Invitation to Apply for Eligibility and to Bid. Those projects were completed in 2007 while the date of the publication of the advertisement and/or posting of the Invitation to Apply for Eligibility to Bid of NTC for this project is only on July 12, 2008.

Thus, our company clearly complied with the said provision of Section 23.11.1.2 of the IRR of R.A. 9184 otherwise known as the Government Procurement Reform Act as amended by Resolution 07-2006 of the GPPB and there is no reason for our company's disqualification.

Lastly, assuming for the sake of argument but not in anyway conceding that our company is not in compliance with Section 2(a) and 2(b) of Resolution 07-2006, still, our company having the lowest calculated bid should be awarded the subject contract because this Project is a novel or unusual procurement wherein limited suppliers are participating in the bidding. Our company is not a novice supplier which might put government transactions and operations at risk and under conditions of uncertainty.

Our company is an experienced and dependable government supplier and we have the legal, technical and financial capacity to perform its obligation to the government judging from the two (2) very similar projects that was dutifully completed by our company with the NTC. The disqualification of our company, despite clear and indubitable compliance with the eligibility requirements of NTC would be prejudicial to the principles of open competition and efficiency and effectiveness in procurement processes.

To reiterate our stand, government procurement must be in line with Government's commitment to good governance and its effort to adhere to the

principle of transparency, accountability, equity, efficiency, and economy in its procurement process. While we understand the NTC's duty to safeguard its interest by ensuring that the bidder has the experience and resources to perform the contract to be awarded strictly in accordance with the terms thereof and to complete the project to be bid, the said apprehension was erased by our company's track record with NTC when it duly completed its two (2) very similar project with NTC. Our company made the lowest calculated bid of P13.5 million against another bid of P15 million, which saved the government of at least P1.5 million.

In view thereof, our company most respectfully moves for the reconsideration of the NTC's letter dated October 8, 2008 disqualifying Spectracom under Section 23.11.1.2 of the IRR of R.A. 9184, as amended and to issue a Notice of Award in favor of Spectracom. Other reliefs just and equitable in the premises are likewise prayed for.

The foregoing is most respectfully submitted for your consideration.

Very truly yours,

SPECTRACOM CO.

By:

VIENNAH F. RUFINO
Authorized Representative

VERIFICATION

I, **VIENNAH F. RUFINO**, of legal age, single, with postal address at 2nd Floor Colby Center Lot 3 Blk 60 Bayani Road, AFPOVAI Subd., Phase IV, Fort Bonifacio, Taguig City, after having been sworn in accordance with law, do hereby depose and state that:

1. I am the authorized representative of Spectracom Co., one of the bidders in the above-entitled Project;
2. I have caused the preparation of the foregoing Motion for Reconsideration;
3. I have read and understood the contents of said Motion for Reconsideration and the same are true and correct of my own personal knowledge and based on authentic documents;

VIENNAH F. RUFINO

SUBSCRIBED AND SWORN to before me this _____day of _____ 2008 at _____. Affiant exhibited to me her Community Tax Certificate No. _____ issued on _____ at _____ and Government Issued I.D. No. _____ issued on _____ at _____.

Doc. No. 51;
Page No 12;
Book No. 23;
Series of 2008.

NOTARY PUBLIC

[illegible]
NOTARY PUBLIC
[illegible]

NAME OF CONTRACT	DATE OF CONTRACT	KINDS OF GOODS & SERVICES SOLD	AMOUNT OF CONTRACT	DATE OF DELIVERY/ COMPLETION	END USER'S ACCEPTANCE	SPECIFICATION	NATURE OF PROJECT
[illegible] / INNOVE PHASE 5B [illegible]BLAZER PROJECT	11-Mar-08	TELECOM ENGINEERING	PHP 9,458,802.82	ON GOING		TELECOM/ BROADBAND INTERNET	SIMILAR
[illegible]KEO / ETPI NASUGBO [illegible]KINPAUL PROJECT	24-Apr-08	TELECOM ENGINEERING	PHP 1,420,000.00	ON GOING		TELECOM/ BROADBAND INTERNET	SIMILAR
[illegible] / CMTS TEST MOBILE PROJECT	18-Jun-07	SUPPLY OF CMTS TEST MOBILE	PHP 1,112,500.00	14-Sep-07	28-Sep-07	SUPPLY MATERIAL	SIMILAR
[illegible] / INNOVE PHASE 5A [illegible]	3-Dec-07	TELECOM ENGINEERING	PHP 7,[illegible]000.00	ON GOING		TELECOM/ BROADBAND INTERNET	SIMILAR
[illegible] / INNOVE PHASE 3C & 4 PROJECT	23-May-07	TELECOM ENGINEERING	PHP 7,609,579.17	10-Sep-07	25-Sep-07	TELECOM/ BROADBAND INTERNET	SIMILAR
[illegible] / INNOVE GLOBE QUEST [illegible]TA ACCESS NODE	12-Feb-07	SPOT MAPPING AND DETAILED ENGINEERING	PHP 4,538,693.50	12-Jul-07	25-Sep-07	TELECOM / DATA ACCESS	SIMILAR
[illegible]LESIA NI CRISTO [illegible]MENTATION OF TETRA PROJECT	24-Apr-07	SUPPLY & INSTALLATION MATERIALS & TETRA RADIO EQUIPMENT	PHP 1,147,021.96	17-Aug-07	14-Sep-07	SUPPLY AND INSTALLATION	SIMILAR
[illegible]T QUALITY OF SERVICE [illegible]NITORING PROJECT	28-Dec-07	SUPPLY & INSTALLATION OF CMTS MONITORING TEST EQUIPMENT	PHP 4,450,000.00	27-Mar-07	4-May-07	SUPPLY AND INSTALLATION	SIMILAR
[illegible] / SHPC PROJECT	7-Aug-06	INSTALLATION, COMMISSIONING & TESTING OF MICROWAVE RADIO	PHP 120,000.00	7-Mar-07	23-Mar-07	TELECOM INSTALLATION	NOT SIMILAR
[illegible] / GLOBE 3G PROJECT	1-Feb-06	INSTALLATION OF NODE B 3G EQUIPMENTS	PHP 16,000.00	3-Mar-06	19-May-06	TELECOM INSTALLATION	NOT SIMILAR
[illegible] / GLOBE 3G PROJECT	1-Feb-06	INSTALLATION OF NODE B 3G EQUIPMENTS	PHP 16,000.00	7-Mar-06	19-May-06	TELECOM INSTALLATION	NOT SIMILAR
[illegible] / GLOBE 3G PROJECT	1-Feb-06	INSTALLATION OF NODE B 3G EQUIPMENTS	PHP 16,000.00	13-Mar-06	19-May-06	TELECOM INSTALLATION	NOT SIMILAR
[illegible]OBE PHASE 12 PROJECT	19-Oct-06	2G FULL SITE INST. / COMMISSIONING WORKS	PHP 72,800.00	20-Jun-07	26-Jun-07	TELECOM INSTALLATION	NOT SIMILAR

CERTIFIED TRUE COPY
SIGNATURE

2nd Floor Colby Center Lot 3 Blk 60 Bayani Road, AFPOVAI Subd., Phase IV, Fort Bonifacio, Taguig City
Tel. # (632) 385-4022 : e-mail : spectracom_2100@yahoo.com
TIN: 230-583-299-000 VAT

RECEIVED
BY: Alex
DATE: 11-25-08
TIME: 3:20 pm

November 25, 2008

BIDS AND AWARDS COMMITTEE
National Telecommunications Commission
Agham Road, Diliman, Quezon City

Attention : HON. JAIME N. FORTES, JR.
Deputy Commissioner
Chairman, BAC

Subject : **Motion for Early Resolution of Spectracom's Motion for Reconsideration dated October 13, 2008 of the Post Evaluation Disqualification Of Spectracom for the Supply of CMTS and Broadband Service Benchmark/Drive Test Equipment Project**

Gentlemen:

We write in behalf of SPECTRACOM CO., the bidder with a lowest calculated bid in the NTC's CMTS and Broadband Service Benchmark/Drive Test Equipment Project.

This has reference to our Motion for Reconsideration dated October 13, 2008 requesting for the reconsideration of the NTC's letter dated October 8, 2008, a copy of which was received on October 13, 2008. Our Motion for Reconsideration dated October 13, 2008 was received by NTC on October 14, 2008.

Pursuant to Section 34.4 of IRR of R.A. 9184 otherwise known as the Government Procurement Reform Act, "the BAC shall evaluate the request for reconsideration, if any, using the same non-discretionary criteria, and shall issue its final determination of the said request within *seven (7) calendar days* from receipt thereof.

However, as of this date or after the lapse of more or less **ONE (1) MONTH** or **FORTY ONE (41) DAYS** from receipt by NTC of our Motion for Reconsideration dated October 13, 2008, NTC has yet to issue any letter or order regarding its final determination of the said Motion for Reconsideration.

The NTC's inaction on our said motion is not only a violation of Section 34.4 of IRR of R.A. 9184 but also a clear violation of Section 5 of Republic Act No. 6713, otherwise known as "The Code of Conduct and Ethical Standards for Public Officials and Employees," which states that "all public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request."

In view thereof, our company most respectfully request for the early resolution of Motion for Reconsideration dated October 13, 2008 within three (3) days from receipt hereof. Otherwise, we will be constrained to seek appropriate legal action on this matter. Other reliefs just and equitable in the premises are likewise prayed for.

The foregoing is most respectfully submitted for your consideration.

Very truly yours,

SPECTRACOM CO.
By:

VIENNAH R. BUFINO
Authorized Representative

Assisted by:

ATTY. MARLON P. VALDERAMA
Legal Counsel

i3 Technologies Corporation

15 October 2008

NATIONAL TELECOMMUNICATIONS COMMISSION
BIR Road, East Triangle,
Quezon City

Attention: **MR. JAIME M. FORTES, JR.**
Deputy Commissioner
Chairman, BAC

Cc: Office of the Commissioner
Commission on Audit (COA) Central Office

Subject: **Letter of appeal regarding the results of the bidding for CMTS and Broadband Test and Measurement Equipment**

Dear Sir,

We are writing to make an appeal and seek clarification on the decision of the BAC declaring the bidding for the CMTS and Broadband Test and measurement Equipment as a failed bidding based on the grounds mentioned as below:

- *That based on the evaluation of the TWG, your company has a single largest completed contract in the amount of P32,929,200.00, however, after review of the submitted contracts we found that it is not considered "similar" to the contract to be bid which involves goods or related services of the same nature and complexity of those which are the subject of the public bidding.*

Our confidence is unequalled as far as this 50% single largest similar project is concerned because we have verified and double checked our submission entry with utmost care. Following the rules of RA 9184 on the 50% single largest similar contract wherein there is absolutely no provision whatsoever that it must be exactly the same with the item(s) of the project being on bid. In normal cases, since the implementation of RA 9184, the interpretation of the provision means falling on the same category or classification which in this case, ***"Test and Measurement Equipment"*** as clearly indicated in the title of this bidding. Our submission entry to satisfy this requirement is coming from this government agency, the NTC (with reference PO 07-12-168, please see attached) which falls under the same category of communication test and measurement equipment. Both CMTS and the Modular Monitoring System fall under the **same or similar category of Communication Test and Measurement Equipment.**

- *RA 9184 Section 23.11.2. Eligibility Criteria: The value of the prospective bidder's largest single contract, adjusted to current prices using the wholesale consumer price index, completed within the period specified in the Invitation to Apply for Eligibility and to Bid, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid.*

  For the procurement of goods, a contract shall be considered "similar" to the contract to be bid if it involves goods or related services of the same nature and complexity as those which are the subject of the public bidding concerned.

To further support this, we have made a verification from the office of Government Procurement and Policy Board (GPPB) and their representative explains that similar does not necessarily mean "the same" but items or services should that belong to the same classification or category. He further elaborated that if the BAC would require for an exemption for an extra ordinary interpretation of 50% similar bid requirement, they should have brought it out and discussed in detail during the pre bid conference.

Example 1.0

Project to be bid	Allowed 50% similar project requirement
10 Million worth of Laptop Computers	5 Million worth of desktop computers

The example above shows the category computers as indicated in the project name. In this case the bidder was allowed to submit the 50% similar project even if it is not exactly the same as laptop computers because they fall in same category or classification. Should the BAC require that they will only accept 50% similar with the category specifically on laptop computers, they should discuss it in the pre bid conference and it should be reflected in the bid bulletin.

In this case, the category "test or monitoring equipment" is clear because it is indicated in the title of the bid project. It was not mentioned in the pre-bid conference nor reflected in the bid bulletin that the 50% similar project should also be specifically CMTS benchmark and broadband test equipment. Therefore it follows that we can submit a 50% similar project that falls on the category of test equipment which is exactly what we have done. We can ask for a certification coming from the GPPB if the need arises.

To further illustrate the similarities of the submission entry for the 50% single largest similar contract and the current item to be bid, we have enumerated below the similar characteristics of the Modular Monitoring System and the CMTS Benchmark and Broadband Test Equipment

1. Both bids are under the category and classification of COMMUNICATION TEST & MEASUREMENT EQUIPMENT
2. They are both capable of mobile operations as both come with AUV
3. They are both test and monitoring equipment that aids the NTC with its regulatory functions.

Declaring our submission as NOT SIMILAR is like declaring a desktop computer as a non computer item following the example mentioned above. If we have submitted projects such as manpower services, technical service, cabling installation, civil works, or supply of furniture, computers, office supplies and the like, then by all means the BAC have all the reason to declare it as NOT SIMILAR. But the Modular Monitoring System we submitted is clearly similar in nature to the CMTS Equipment.

We have been in business for more than seven years and have provided our clients and customers (government and private) with products and services to their satisfaction. We have also participated in numerous government bids and have been carefully following the rules and guidelines of the bidding process in accordance to RA9184. We are very much aware of the **"similar single largest completed project of 50% of ABC"** requirement for a government bid. If we do not have the necessary document requirement to meet the Eligibility Requirements (legal, technical, financial, class A and class B documents) then we would not have participated in the bid. This is the first time we have been denied eligibility to a project. We are confident that we have met all the requirements of the CMTS bid. In fact, we firmly believe that we have even exceeded some of these requirements.

While we do not wish to question the integrity of the BAC, this simply seek for an appeal for a fair evaluation of bid document requirements specifically on what has been mentioned above. We firmly believe that the BAC will do its own verification and investigation on the matter to eliminate any cloud of doubt. Thus, we hope and pray for the BAC to carefully consider our appeal and finally come up with a rightful decision.

Very truly yours;

MICHAEL L. ROQUE
Executive Vice President

National Telecommunications Commission

Agency

Supplier :	i3 Technologies Corporation	P.O No.:	07-12-168
Address :	Suite 807 Herrera Tower, Rufino cor Valero St. Makati City	Date:	Dec. 28, 2007
TIN :	210-402-325-001	Mode of Procurement:	

Gentlemen:

Please furnish this office the following articles subject to the terms and conditions contained herein:

Place of Delivery:	National Telecom. Commission, Central Office, Q.C	Delivery Term:	Within 120 days
Date of Delivery:		Payment Term:	

Item No.	Unit	Description	Quantity	Unit Cost	Amount
	set	Nine (9) sets of Anritsu Compact Modular Monitoring System (MS2721B-MX) spectrum analyzer complete with rugged weather proof casing, antenna, GSM connectivity and AC/DC power source for **REGIONAL Offices**	9	P 2,908,800.00	P 26,179,200.00
	set	Nine (9) units of Mitsubishi Adventure Model GX 2.5 Diesel Manual Transmission complete with registration and comprehensive insurance for **REGIONAL Offices**	9	P 750,000.00	P 6,750,000.00
		Note: Warranty shall be for a period of at least one (1) year for the equipment and ancillary equipment as well as accessories, technical support for software and functions, their respective components as well as workmanship in the installation of said equipment. Such warranty shall commence at the time that the unit have been delivered, installed, tested and accepted by the Commission.			

Amount in words: **Thirty two million nine hundred twenty nine thousand and two hundred pesos** 32,929,200.00

In case of failure to make the full delivery within the time specified above, a penalty of **one-tenth (1/10) of one percent** for every day of delay shall be imposed.

Very truly yours,

RUEL VILLA CANOBAS
Authorized Official

Conforme:

Michael Rogue
Signature over Printed Name of Supplier

02/29/08
Date

₱32,929,20

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
NATIONAL TELECOMMUNICATIONS COMMISSION

October 8, 2008

i3 TECHNOLOGIES, CORP.
Suite 807 Herrera Tower, V.A. Rufino cor. Valero Street
Makati City
Telephone Number: 753-3682/84
Fax No.: 753-3680

Authorized Representative: Mr. Michael L. Roque

Sir:

This is to inform you that based on the results of the final evaluation of the offers in the public bidding conducted by this Commission's Bids and Awards Committee (BAC) last September 5, 2008 for the supply of CMTS & Broadband Services Benchmark/Drive Test Equipment, although your company have complied with the minimum technical requirements, the BAC deems to declare a failure of bidding considering that both companies failed to qualify under Sec. 23.11.1.2 of the Implemeting Rules and Regulations of R.A.9184 which provides that "The value of the prospective bidder's largest single contract, adjusted to current prices using the wholesale consumer price index, completed within the period specified in the Invitation to apply for Eligibility and to Bid, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid".

That based on the evaluation of the TWG, your company has a single largest completed contract in the amount of P32,929,200.00, however, after review of the submitted contracts we found that it is not considered "similar" to the contract to be bid which involves goods or related services of the same nature and complexity as those which are the subject of the public bidding.

Thank you for participating and we look forward for your active participation in the future biddings to be conducted by the Commission.

Very truly yours,

JAIME M. FORTES. JR.
Deputy Commissioner
Chairman, BAC

i3 Technologies Corporation

Suite 807 Herrera Tower,
V.A Rufino corner Valero Sts.
Salcedo Village, Makati City
Philippines 1227

Tel. Nos. (632) 753.1000
Fax No. (632) 753.3680
www.i3tech.com.ph

03 November 2008

National Telecommunications Commission
BIR Road, East Triangle,
Quezon City

Attention: **Hon. Jaime M. Fortes, Jr.**
Deputy Commissioner
Chairman, BAC

Cc: Office of the Commissioner
Commission on Audit (COA) Central Office

Subject: **Supporting Document for the Letter of appeal regarding the results of the bidding for CMTS and Broadband Test and Measurement Equipment**

Dear Sir,

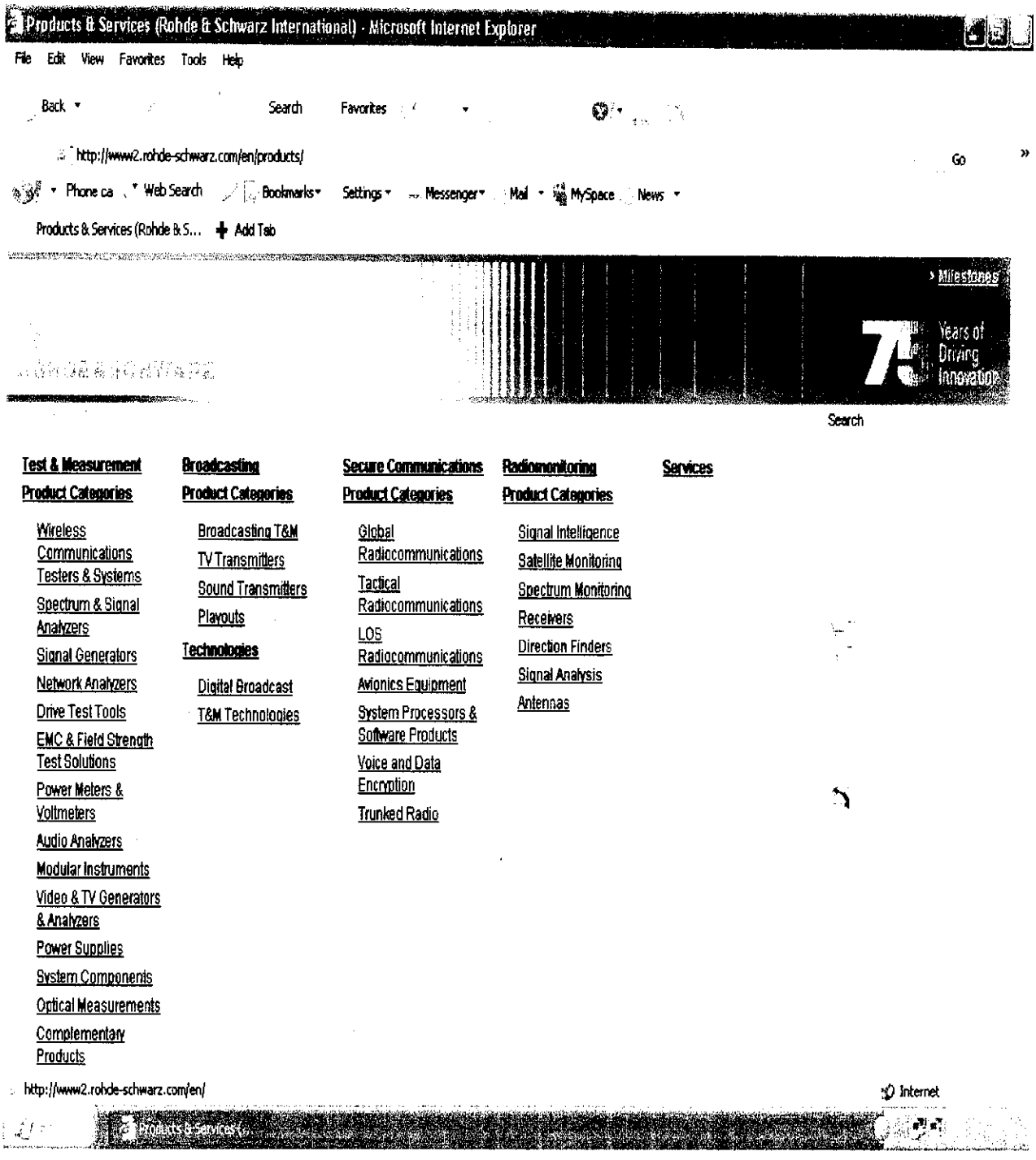
In line with our letter of appeal dated October 15, 2008 we are submitting herewith a supporting document to further show proof that indeed our submission for the 50% single largest similar contract is under the same category of communication test and measurement equipment and therefore must be considered similar in nature.

Attached is the webpage coming from the site Rohde & Schwarz, the competitor itself, showing that test equipment like spectrum analyzers, modular monitoring systems and drive test tools among others fall under the category of communication test and measurement equipment. You may log on to the website of Rohde & Schwarz http://www2.rohde-schwarz.com/en/products/ and you will find on this page a general category of Test and Measurement which is the source of this attachment. Needless to say that our submission which is for the P 32.0 M modular monitoring system is similar in nature since they fall under the same category as drive test equipment. There was also no prior mention in the bid document nor during the pre-bid and in the bid bulletins that a specific category of drive test tools or CMTS and broadband test and measurement equipment must be submitted for the 50% single largest similar contract requirement. The competitor's information on their website proves that our submitted project is indeed similar in nature to the CMTS and broadband test and measurement equipment being bided.

With this additional information, we hope we can shed more light to the matter and help the BAC to come up with a most objective decision.

Very truly yours;

MICHAEL L. ROQUE
Executive Vice President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Video & TV Generators & Analyzers
Power Supplies
System Components
Optical Measurements
Complementary Products
Broadcasting
Product Categories
Broadcasting T&M
TV Transmitters
Sound Transmitters
Playouts
Technologies
Digital Broadcast
T&M Technologies
Secure Communications
Product Categories
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