



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

NPM No. 20-2014

17 June 2014

HON. NATALIO C. ECARMA III CESE

Undersecretary

Chairman, DND Bids and Awards Committee (BAC)

DEPARTMENT OF NATIONAL DEFENSE (DND)

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

Re: GPPB Resolution No. 29-2012

Dear Undersecretary Ecarma:

This refers to the Honorable Undersecretary's letter dated 30 May 2014¹, seeking clarification as to whether the Statement of all On-going Government and Private Contracts is still required if a bidder submits a Credit Line Commitment (CLC) in lieu of the computation of the Net Financial Contracting Capacity (NFCC).

It is represented that the bidding for the Supply and Delivery of Twelve (12) Units 155mm Howitzer was conducted when the use of the CLC was still permitted². During the post-qualification of Elbit Systems Land and C41 Ltd (Elbit), Elbit declared in its Statement of all On-going Government and Private Contracts as "Not Applicable (N/A)". When DND BAC sought clarification on the matter, the latter explained that they relied on Government Procurement Policy Board (GPPB) Resolution No. 29-2012 which they interpreted as to render the requirement of statement of on-going contracts as no longer necessary when the bidder submits a CLC. Elbit asserted that the WHEREAS clauses in the said Resolution clearly provide for the policy. On the other hand, DND BAC maintained that the dispositive portion of GPPB Resolution No. 29-2012 was silent as to the alleged policy. It is in this context that the foregoing clarification is requested.

We respectfully refer to the the dispositive portion of GPPB Resolution 29-2012, to wit:

NOW, THEREFORE, for and in view of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **Us** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the following:

1. Amendment of Section 23.1(a)(iii) as follows: **B**

¹ Received on 3 June 2014.

² Per GPPB Resolution No. 20-2013 issued on 31 July 2013, CLC was removed as an alternative to NFCC.

“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; and

Statement identifying the bidder’s single largest completed contract similar to the contract to be bid, except under conditions provided for in Section 23.5.1.3 of this IRR, within the relevant period as provided in the Bidding Documents in the case of goods.

All of the above statements shall include all information required in the PBDs prescribed by the GPPB.”

2. To interpret that failure to include an immaterial ongoing contract or failure to disclose complete information in the statement of contracts shall result in the following:
 - a. Disqualification of the bidder for non-compliance with the eligibility requirement under Sections 23.1 or 24.1 of the revised IRR.
 - b. Blacklisting under Section 65.3 (a) or (b) of the revised IRR.

The Statement of all On-going Contracts is significant not only for purposes of NFCC computation; as it can also be an indicator or measure of a bidder’s performance to determine any reported negative slippage; or substandard quality of work; or unsatisfactory performance or delivery. Hence, nowhere in the above-quoted resolution did the GPPB resolved to interpret that the requirement of Statement of On-going Contracts is no longer necessary when the bidder opted to submit a CLC in lieu of its NFCC computation.

In the case of statutes, and analogously in Resolutions, while a preamble manifests the reasons for the passage of the statute and aids in the interpretation of any ambiguities within the statute to which it is prefixed, it nonetheless is not an essential part of an act, and it neither enlarges nor confers powers³. Besides, a preamble is really not an integral part of a law. It is merely an introduction to show its intent or purposes. It cannot be the origin of rights and obligations. Where the meaning of a statute is clear and unambiguous, the preamble can neither expand nor restrict its operation, much less prevail over its text⁴. It is the dispositive part of the judgment or resolution that actually settles and declares the rights and obligations of the parties, finally, definitively, authoritatively notwithstanding the existence of inconsistent statements in the body that may tend to confuse⁵. It is the dispositive part that controls for purposes of execution⁶.

In view of the foregoing, it is the opinion of this office that GPPB Resolution No. 29-2012 did not amend Section 23(a)(iii) to limit the submission of Statement of On-going Government and Private Contracts to those bidders who submitted their NFCC computation.

³ West's Encyclopedia of American Law (2nd ed., 2008).

⁴ Echegaray v. Secretary of Justice, G.R. No. 132601, Resolution dated 19 January 1999; citing Agpalo, Statutory Construction, Second Edition 1990 & Martin, Statutory Construction, Sixth Edition, 1984.

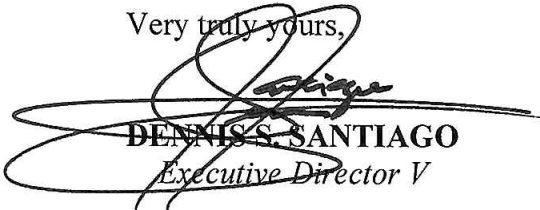
⁵ Manalang v. Richards, 104 Phil. 254-258.

⁶ Budget Investment & Financing, Inc. vs. Mangoma G.R. No. L-28603, Sept. 4, 1987.

Bidders that filed CLC shall likewise submit their Statement of all On-going Government and Private Contracts in order to verify a bidder's performance and determine any reported negative slippage; or substandard quality of work; or unsatisfactory performance or delivery.

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

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