



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 020-2016

21 March 2016

MR. NEIL ALDRINE I. PEÑAFLOR, MD
Head, Bids and Awards Committee - Technical Working Group
BICOL MEDICAL CENTER (BMC)
Concepcion Pequeña, Naga City, 4400

Re: Consignment Projects

Dear Dr. Peñaflor:

This refers to your letter requesting our opinion on whether consignment projects can be considered as supporting documents for the on-going and completed contracts required in the eligibility documents, in connection with the post-qualification process for the procurement of pharmaceuticals.

We presumed that the request for opinion pertains to the clarification on whether consignment projects can be considered as similar to the contract to be bid for purposes of complying with the requirements for Single Largest Complete Contract (SLCC).

Consignment Agreement

Consignment in its common meaning is an arrangement whereby the goods are sent by one to another to be sold and disposed by the latter for and on account of the former.¹ This type of contractual arrangement is mentioned in Section 7.3.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 that provides for the following requisites of consignment:

1. delivery of goods by their owner (consignor), without sale, to a government agency (consignee);
2. consignee must try to sell the goods and remit the price of the sold goods to the consignor;
3. consignee accepts without any liability except for failure to reasonably protect them from damage;
4. no disbursement of government funds is involved; and
5. at terms not disadvantageous to the Government of the Philippines (GOP).

¹ *Ongkiko v. Court of Appeals*, G.R. No. L-48777, 24 September 1987 citing (Bouvier's Law Dictionary, 3rd Ed., Vol. 1).

In our previous opinion², we stated that since there is no acquisition of goods and fund expenditure on the part of government relative to a consignment agreement, such consignment arrangement is not procurement as defined in RA 9184 and its IRR.


Single Largest Completed Contract

Section 23.5.1.3 of the IRR of RA 9184 provides 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, adjusted to current prices using the National Statistics Office (NSO)³ consumer price indices, must be at least 50% of the ABC, or 25% in case of expendable supplies. To determine compliance with the technical criteria stated in the cited provision, bidders are required to submit, as part of the eligibility requirements, a statement identifying its SLCC similar to the contract to be bid and within the relevant period as provided in the Bidding Documents.⁴ To be sufficient, the SLCC requires the following:

1. a previous contract;
2. similar to the contract to be bid, based on the definition in the Bidding Documents;
3. completed within the period indicated in the Bidding Documents; and
4. the value, as adjusted to current prices using the NSO consumer price indices, must be at least 50% of the ABC, or 25% in case of expendable supplies.

For the second requisite, procuring entities are given the discretion to clarify in the Bidding Documents the definition of what it considers to be a similar project.⁵ This notwithstanding, we stated that 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 subject matter of the project being procured.⁶ Apart from the similarity of the goods and services, the similarity must necessarily refer also to the nature of the contract, that is, the contract is a procurement contract involving the acquisition of goods and services by the procuring entity; or the supply and delivery of goods and services by the winning bidder. The submission of a contract that do not possess the same features of a procurement contract will defeat the purpose of gauging the technical capacity of bidders to undertake the procurement project subject matter of the procurement opportunity.

Consignment Project as SLCC

The question of whether consignment projects can be considered as the SLCC required by the provisions of the IRR of RA 9184 necessitates the comparison of a Consignment Project and a Procurement Contract. As mentioned above, we previously opined that consignment arrangement or project cannot be considered as procurement because of the difference in the essential features of the two contracts. The former does not involve acquisition of goods and disbursement of public funds, which are vital features of a procurement contract. 

² NPM No. 29-2015 dated 8 October 2015.

³ Now referred to as the Philippine Statistical Authority (PSA).

⁴ Section 23.1(a)(iv) par.2. of the IRR of RA 9184.

⁵ Section 23.5.1.3 par.3 of the IRR of RA 9184.

⁶ NPM No. 123-2013 dated 8 October 2012.

In this regard, while we recognize the authority and discretion of procuring entities to clarify in the Bidding Documents the definition of what it considers to be a similar project by virtue of Section 23.5.1.3 par.3 of the IRR of RA 9184, it is our considered view that a consignment project cannot be considered as similar to the contract to be bid for purposes of complying with the requirements for SLCC because it lacks the elements of acquisition of goods and disbursement of public funds that essentially characterize a procurement contract.

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 VMS

