



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

NPM No. 42-2013

8 May 2013

BGEN. GENEROSO MALIGAT (Ret.)
Representative of Philcox (Philippines) Inc.

MS. CYNTHIA J. CASTRO
Representative of Tideland in the Philippines

PHILCOX (PHILIPPINES), INC.
Philcox Building, 172 Salcedo Street,
Legaspi Village, Makati City

Re: Equivalent Document of a Mayor's Permit and Nature of Similar Contracts

Dear BGen. Maligat and Ms. Castro:

We respond to your letter dated 6 December raising concerns in relation to the procurement of Aids to Navigation (ATON) Equipment by the Department of Transportation and Communications (DOTC) for the Philippine Coast Guard (PCG).

As represented, the Joint Venture of Philcox, Inc. (Philcox) and Tideland Signal Pte. Ltd. (Tideland), hereinafter referred to as "Philcox-Tideland", participated in the public bidding of DOTC on 13 September 2012. During bid opening, the DOTC-Bids and Awards Committee (BAC) disqualified Philcox-Tideland for its failure to include the Mayor's Permit of Tideland in its bid documents, and its failure to satisfy the Single Largest Completed Contract (SLCC) requirement. In its request for reconsideration, Philcox-Tideland argued that a Mayor's Permit is not one of the documents which can be issued by the Singaporean government and that the Certificate of Incorporation of a Private Company in Singapore is the appropriate equivalent document in lieu of a Mayor's Permit, which Philcox-Tideland submitted pursuant to the DOTC-BAC's General Bid Bulletin No. 05-2012 as part of its original bid.

It is further alleged that since the ATON Equipment is for the use of the PCG, and not by any other agency of the DOTC, the equipment necessarily pertains to sea navigation. Therefore, Evercon Builders, which was declared to be the lowest bidder for the procurement activity, should not have been qualified since its submitted contract covers the supply and delivery of air navigation equipment, and not sea navigation.

At the outset, we wish to emphasize that this office only renders non-policy opinions on issues purely relating to the interpretation and application of our procurement laws, rules, and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of bidding since it has no quasi-judicial functions under the law. Thus, it cannot impose or recommend to the BAC which bidders should be declared eligible, which bid should be accepted, and to whom the contract should be awarded.

Accordingly, we will limit our discussion on the following issues relative to the facts and circumstances you have provided, thus:

1. Whether the Government issued Certificate of Incorporation of Private Companies in Singapore can be considered an equivalent document in lieu of a Mayor's Permit required under Section 23.1(a)(ii) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184; and,
2. Whether contracts for delivery of air navigation equipment may be considered similar contracts for delivery of sea navigation equipment.

Mayor's Permit

As part of the Class "A" eligibility documents, Section 23.1(a)(ii) of the revised IRR of RA 9184 requires the submission of Mayor's Permit issued by the city or municipality where the principal place of business of the prospective bidder is located. However, in the case of a foreign bidder, the Class "A" eligibility documents may be substituted with the appropriate equivalent documents, if any, issued by the country of the foreign bidder concerned.¹

It is during post-qualification that the BAC shall verify, validate and ascertain all statements made and documents submitted by the bidder with the Lowest Calculated Bid/Highest Rated Bid, using non-discretionary pass/fail criterion, as stated in the Bidding Documents.² As part of its functions to undertake post-qualification proceedings, the BAC must look into the legal validity of each document by conducting the proper verification and validation.

In this case, the DOTC-BAC has the responsibility to verify, validate, and ascertain if the Government of Singapore does not issue a Mayor's Permit, and that, in lieu of this document, a Certificate of Incorporation of Private Companies in Singapore may be considered as the appropriate equivalent document. Only upon actual determination and confirmation of this equivalence may it be categorically resolved that the foreign documents submitted are acceptable substitutes of the required eligibility documents.

Nature of Similar Contracts

It is the responsibility of the Procuring Entity (PE) to clarify in the Bidding Documents what projects can be considered similar to the contract being bid out, for purposes of determining compliance with the SLCC requirement. Thus, it is entirely within the

¹ NPM No. 066-2009 dated 29 December 2009.

² Section 34.3 of the IRR of RA 9184.

discretion of the PE whether to consider a project as being similar or not similar in nature and complexity to the project being bid out.³

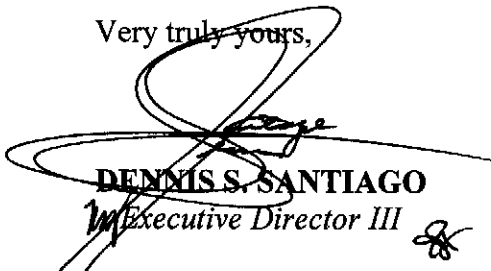
For your guidance, a contract shall be considered "similar" to the contract to be bid if it involves goods or services of the same nature and complexity as the subject matter of the project being procured. This requirement should not be interpreted strictly as to unreasonably limit competition and inequitably bar participation of capable suppliers, manufacturers, distributors, and service providers; much more, to constrain PEs in the performance of their constituent and ministrant functions. Hence, similarity of 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.⁴

Summary

Based on the foregoing, we are of the view that the DOTC-BAC is duty bound to verify, validate, and ascertain during the post-qualification stage that the Certificate of Incorporation of a Private Company submitted by Philcox-Tideland is indeed an equivalent document in lieu of a Mayor's Permit, to determine whether Philcox-Tideland complied with the requirements under Section 23.1(a) (ii) of the IRR of RA 9184. Moreover, the BAC is in the best position to determine whether the contracts of a bidder may be considered similar to the contract to be bid based on the nature and complexity of the project being bid out.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

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³ NPM No. 123-2012 dated 8 October 2012 citing NPM No. 01-2009 dated 5 January 2009.

⁴ NPM No. 123-2012 dated 8 October 2012 and NPM No. 20-2012 dated 6 February 2012.