



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

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Re : Eligibility Requirements and Single Largest Completed Contract

Dear Atty. Collado:

We respond to your letter requesting our opinion on several issues relating to eligibility requirements and the single largest completed contract (SLCC) requirement under Section 23 of Republic Act No. (RA) 9184 and its revised Implementing Rules and Regulations (IRR).

As represented, your client, Berlyn Enterprises (Berlyn), participated in the public bidding conducted by the Philippine Coast Guard (PCG) for the procurement of forty (40) rubber boats with 40HP outboard motor with an Approved Budget for the Contract of PhP 32 Million. The PCG Bids and Awards Committee (BAC) required interested bidders to undergo pre-qualification involving their Class "A" Documents so that they will no longer have to spend for the bidding documents if they are found ineligible to join the bidding. Berlyn participated in the pre-qualification proceedings and was eventually issued a Pre-Qualification Certificate. However, on the day of the bidding, the PCG BAC declared Berlyn ineligible to join on the ground that the statement of all ongoing and completed contracts does not contain a single largest completed similar contract amounting to at least fifty percent (50%) of the contract to be bid. This declaration was made by the PCG BAC despite the fact that the same document, which identifies an SLCC amounting to PhP319 Million, was submitted and found sufficient during the pre-qualification. In declaring Berlyn ineligible during the opening of bids, the PCG BAC looked into the contents of the statement of all ongoing and completed contracts, made some calculations, valued the rubber boats incorporated in the PhP 319 Million similar contract submitted, verified, ascertained, and then determined that the fifty percent (50%) SLCC requirement was not satisfied. It is in this context that Caveat Law seeks clarification on the following concerns:

1. Whether a prospective bidder which has been pre-qualified and found eligible to bid may be subsequently declared ineligible on bid opening; ✍

2. Whether the BAC can set aside the non-discretionary “pass/fail” criterion on bid opening and examine the documents during such stage rather than pronouncing that the bidder “passed” for submitting the required documents; and
3. What does the term “similar contract” contemplate.

Pre-qualification No Longer Required

Please be informed that pre-qualification, *i.e.*, the process of evaluating prospective bidders’ qualifications against the identified requirements for a bidding activity for purposes of determining their eligibility to submit bids, has been abandoned in RA 9184 and its IRR. As provided in Sections 23, 24, and 30 of RA 9184 and its IRR, the eligibility of prospective bidders is determined by the BAC through an examination of the presence or absence of documents against a checklist of requirements during the opening of bids. In a previous opinion¹, we stressed that instead of using pre-qualification, the procuring entity should adopt a simple eligibility check using non-discretionary “pass/fail” criterion as a means of determining the capacity or eligibility of a bidder to participate in a procurement activity.

Clearly, the practice of pre-qualification has been abandoned in RA 9184 and its IRR, and the current government procurement policy adopts the more efficient process of simple eligibility checking whereby prospective bidders’ eligibility to participate in the bidding is determined through a preliminary examination of bids against a checklist of documentary requirements using non-discretionary “pass/fail” criterion during the opening of bids.

In this regard, we wish to clarify that pre-qualification proceedings do not find basis in RA 9184 and its IRR. Consequently, the results of a pre-qualification have no legal force and effect, bearing or weight, and cannot preempt the findings of the BAC during the preliminary examination of bids conducted during the opening of bids. Hence, a bidder may still be declared ineligible during the opening of bids despite a finding of qualification during the purported pre-qualification exercise.

Preliminary Examination of Bids

Section 30.1 of the IRR of RA 9184 lays down the process in applying the non-discretionary “pass/fail” criterion in the preliminary examination of bids. As stated therein, the BAC shall check the submitted documents of each bidder against a checklist of required documents using a non-discretionary “pass/fail” criterion to ascertain if they are all present, such that a bidder is rated “passed” for every complying documentary requirement submitted, and “failed” if it does not include any requirement or otherwise submits an incomplete or patently insufficient document.

Section 23.7 of the IRR of RA 9184, on the other hand, provides that, notwithstanding the eligibility of a prospective bidder, the procuring entity reserves the right to review the qualifications of the bidder at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made or that there has been a change in the bidder’s capability to undertake the project from the time it submitted its eligibility requirement. If such review uncovers any misrepresentation or determines changes in the

¹ Non Policy Matter No. 20-2003 dated 28 August 2003.

bidder's situation that affects its capability to undertake the project so that it fails the eligibility criteria, the procuring entity shall consider the prospective bidder as ineligible.

Based on the foregoing, although Section 30 requires that the preliminary examination of bids be conducted by merely checking for the presence or absence of documentary requirements using a non-discretionary "pass/fail" criterion, the BAC has the right to review the qualifications of a bidder during the same stage if it has reasonable grounds to believe that a misrepresentation has been made or there has been changes in the bidder's capability to undertake the project.


Similar Contracts

Sections 23.5.1.3 and 23.5.2.5 of the IRR of RA 9184 establish the rules on identifying similar contracts for purposes of ascertaining compliance with the SLCC requirement. In the case of procurement of goods, Section 23.5.1.3 of the IRR states that the procuring entity may clarify in the bidding documents the definition or description of what it considers to be a project similar to the contract to be bid. In the case of procurement of infrastructure projects, Section 23.5.2.5 of the IRR states that a contract shall be considered "similar" to the contract to be bid if it has the same major categories of work.

As such, in the case of procurement of goods, the procuring entity has the authority and discretion to identify what contracts will be considered "similar" to the contract to be bid by providing the definition or description of such similar contracts in the bidding documents. Nonetheless, we have previously opined that this requirement should not be interpreted strictly so to unreasonably limit competition and inequitably bar participation of capable suppliers, manufacturers, distributors, and service providers; much more, to constrain procuring entities 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.²

Summary

In sum, we wish to clarify the following matters:

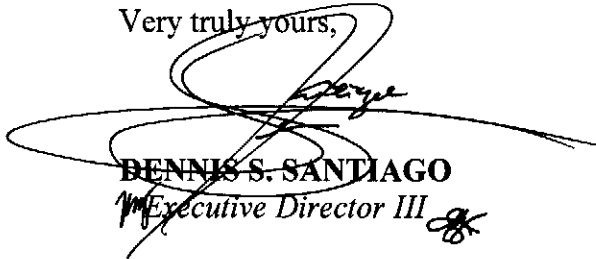
1. Pre-qualification is no longer recognized under RA 9184 and its IRR. Results of any pre-qualification exercise have no legal force and effect, and do not preempt the findings of the BAC during the preliminary examination of bids.
2. Although Section 30 requires that the preliminary examination of bids be conducted by merely checking for the presence or absence of documentary requirements using a non-discretionary "pass/fail" criterion, the BAC has the right to review the qualifications of a bidder during the same stage if it has reasonable grounds to believe that a misrepresentation has been made or there has been changes in the bidder's capability to undertake the project. 

² Non Policy Matter No. 20-2012 dated 6 February 2012 citing Non Policy Matter No. 57-2004 dated 30 April 2004.

3. Similar contracts, in the case of procurement of goods, are defined or described by the procuring entity in the bidding documents. However, such definition or description should not unreasonably limit competition and inequitably bar participation of capable suppliers. 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.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,



BENNIS S. SANTIAGO
Executive Director III

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