



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

NPM No. 60-2014

15 October 2014

MS. LILIA C. GUILLERMO
Deputy Commissioner of Internal Revenue
INFORMATION SYSTEMS GROUP
BUREAU OF INTERNAL REVENUE (BIR)
BIR National Building,
BIR Road, Diliman, Quezon City

Re: Net Financial Contracting Capacity

Dear Deputy Commissioner Guillermo:

This refers to your letter dated 05 September 2014, which we received on 11 September 2014, seeking our opinion on the possible replacement for Net Financial Contracting Capacity (NFCC) as an eligibility requirement in Direct Contracting.

As represented, the Oracle Product Support Project of the BIR undergoes yearly procurement through direct contracting with Oracle (Philippines), Corporation. For CY 2014, the direct contracting ended with a failure due to the net loss/negative NFCC of Oracle. However, procuring the project anew would be a futile exercise since Oracle will still be unable to comply with the NFCC requirement. It is asserted that replacement of Oracle is not an option because the BIR Integrated Tax System is on an Oracle database platform and several *eServices* of BIR are also driven by Oracle. Of important consideration mentioned by BIR is GPPB Resolution No. 20-2013 which provides that a Credit Line Commitment (CLC) is no longer acceptable as an alternative to the prospective bidder's computation of NFCC. It is in this light that the Honorable Deputy Commissioner raised the above-mentioned query.

We wish to clarify that the NFCC is one of the financial documents that form part of the eligibility requirements for competitive bidding. It must be noted that the mode of procurement used by the BIR for the subject procurement is Direct Contracting. Under Section 48(b) of Republic Act No. (RA) 9184, Direct Contracting is a method of procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations. In his concurring opinion in one of the cases decided by the Supreme Court, Associate Justice Presbitero J. Velasco, Jr. pointed out that "Direct Contracting" mode defined in Sec. 48(b), Art. XVI of RA 9184 is exempt from the more protracted process of competitive bidding¹.

¹ *Archbishop Fernando R. Capalla, et al. v. The Hon. Commission on Elections/Solidarity for Sovereignty (S4S) etc., et al. v. Commission on Elections etc./Teofisto T. Guingona, et al. v. Commission on Elections, et al./Tanggulang Demokrasya (Tan Dem), Inc., et al. v. Commission on Elections*, G.R. No. 201112/G.R. No. 201121/G.R. No. 201127/G.R. No. 201413, October 23, 2012.

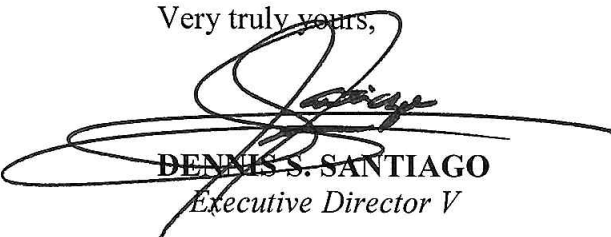
In a previous opinion, we had the occasion to discuss the matter relative to the applicability of NFCC in alternative methods of procurement:

[T]he revised Implementing Rules and Regulations (IRR) of RA 9184 is silent whether or not eligibility documents mentioned under Section 23.1 must be submitted when resorting to any of the alternative methods of procurement, except those where competitive bidding or a semblance thereof is still present, such as in Limited Source Bidding and Negotiated Procurement under Two Failed Biddings. This being the case, the Procuring Entity (PE) has the discretion to require the submission of the legal, technical and financial eligibility documents or not. It must be emphasized, however, that the use of alternative methods of procurement is couched upon the principles of efficiency and economy, such that requiring too many eligibility documents may in the process defeat the very purpose for which the relevant alternative procurement modalities were introduced and institutionalized. Hence, if so requested, it is our considered view that *only a few, but the most relevant, eligibility documents may be required for submission at the start of the procurement activity.*² (Emphasis supplied)

Based on the foregoing, the PE, in resorting to Direct Contracting, has the discretion to require the prospective contractors to submit the eligibility documents mentioned under Section 23.1 of the IRR of RA 9184 or other documents that will establish the contractors' legal, technical or financial capacity. Consequently, in lieu of the NFCC, other documents that will clearly indicate the financial position of a contractor may be required by the PE. In addition, it is worthy to note that performance and warranty securities, as prescribed in Sections 39 and 62 of the IRR of RA 9184 shall be submitted for contracts acquired through Direct Contracting.³ These securities shall guarantee the faithful performance by the contractor of its obligations under the contract.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

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² NPM No. 142-2012 dated 05 November 2012.

³ Section 54.5 of the IRR of RA 9184.

12/25/2014

FROM : OFF. OF THE ACIR-ISPMS

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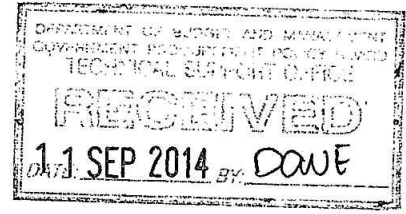
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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

September 5, 2014

Dennis S. Santiago
Executive Director IV
Government Procurement Policy Board (GPPB)
Technical Support Office



Re - Net Financial Contracting Capacity (NFCC) of Oracle Philippines, Inc. (Oracle)

Dear Director Santiago:

The Oracle Product Support Project under (Philippines), Corporation. Early this year, it NFCC of Oracle. Procuring the project anew with the NFCC requirement.

The BIR Integrated Tax System is on an Oracle. Therefore, replacement of Oracle is

In this regard, may we be advised as to what by Oracle *instead of the NFCC* to satisfy No. 20-2013, a Credit Line Certificate (CLC) favor of the prospective contractor) is no computation of NFCC.

In Direct Contracting, NFCC is not an

We would appreciate your response to the n

explicit requirement.

Thank you.

Very truly yours,

Lilla C. Guillermo

Lilla C. Guillermo
Deputy Commissioner of Internal Revenue
Information Systems Group

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BIR Harry Bantog

BIR Road, Alonzo Q C

cc: CIR Kim S. Jacinto-Henares
DCIR Celia C. King
ACIR James H. Roldan
ACIR Ma. Rosario E. Curiba

*PIH:KSP.
NFCC is called/prepared for competitive bidding. Performance*