



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

NPM No. 68-2012

31 May 2012

MR. OSCAR C. MERCADO
President/General Manager
OCM STEEL CORPORATION
34 Marlboro corner Winston Streets,
East Fairview Park Subd, Quezon City

**Re: Requirement on Similar Contract under Section 23.5.2.5 of the
Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184**

Dear Mr. Mercado:

We respond to your letter requesting for our opinion on the following concerns:

1. Whether the Bids and Awards Committee (BAC) is allowed to limit eligible bidders to those who have completed at least one (1) healthcare facility of similar nature and magnitude; and
2. Whether it is sufficient for a bidder to show that it has completed a similar project worth at least 50% of the ABC but not a healthcare facility.

Based on your representations, in the bidding for the Proposed Expansion and Upgrade of NKT I Annex I Building, NKT I required that bidders should have constructed at least one (1) healthcare facility of similar nature and magnitude the amount of which shall not be lower than 50% of the ABC. However, it is your humble opinion that the BAC has no authority to narrow the requirement on similar contract to healthcare facilities, hence, this request for opinion.

Single Largest Completed Contract and Similar Contract

Section 23.5.2.5 of the IRR of RA 9184 provides that a prospective bidder must have an experience of having completed at least one (1) contract that is similar to the contract to be bid and whose value must be at least 50% of the ABC. As you have noted, for infrastructure projects, a contract is considered "similar" to the contract to be bid if it has the same major categories of work.

In a previous opinion¹, we stated that the procuring entity is fully responsible in clarifying in their bidding documents what are the similar projects that can be considered in

¹ Non Policy Matter No. 001-2009, dated 5 January 2009.

the bidding, and/or the parameters for determining the same. Thus, the determination to consider a civil works project as being similar or not similar in nature and complexity to the project (healthcare facility) being bid out lies entirely within the sound discretion of the procuring entity taking into consideration major categories of work. As such, procuring entities are given wide discretion in identifying the specifications and requirements of the project, including the determination of what is regarded as similar, provided these are clearly indicated in the bidding documents.

Emphasis must be made, however, that in identifying the actual project or work to be constructed, to such an extent of specifically limiting similar contracts to "healthcare facility contracts", the works to be performed on the structure to be constructed must be so different, special, particular and/or exclusive that its components do not ordinarily fall within the usual, ordinary or standard engineering practice, construction methodology and/or architectural design such that the ultimate construction output seeks to address a special or particular need, demand and/or concern. Elsewise put, we are of the view that the project desired and the intended construction output can be attained without necessarily qualifying the term "contract" as "healthcare facility contract" since this can be well-addressed by the phrase "similar to the contract to be bid."

Mandatory Compliance with Requirement

Anent your second concern, we wish to stress that prospective bidders have the responsibility to strictly comply with the requirements prescribed by the procuring entity pursuant to RA 9184 and its IRR. Specifically, in complying with the requirement on single largest similar contract under Section 23.5.2.5 of the IRR of RA 9184. However, it is enough that bidders must establish in the statement of all ongoing and completed contracts that it has at least one (1) contract that is similar to the contract to be bid and whose value must be at least fifty percent (50%) of the ABC to be bid.

Based on the foregoing, we are of the considered view that procuring entities are given wide latitude or discretion on what constitutes similar to the contract to be bid, taking into account the specifications and requirements of its project without necessarily qualifying the term "contract" to make it too limiting to be anti-competitors. Consequently, prospective bidders must comply with all the requirements prescribed in the bidding documents for their bids to be considered responsive, including compliance with having one (1) similar contract whose value is 50% if the contract to be bid.

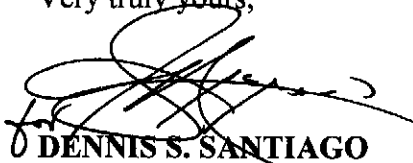
For guidance, please be informed that any questions or concerns a prospective bidder has regarding the requirements of the project can be raised during the pre-bid conference, which is held at least twelve (12) calendar days before the deadline for the submission and receipt of bids.

Furthermore, bidders who have purchased the Bidding Documents may request for clarifications or interpretations on any part of the Bidding Documents, provided it is in writing and submitted at least ten (10) calendar days before the deadline for the submission and receipt of bids. On the other hand, procuring entities may issue Supplemental/Bid Bulletin, on its own initiative, for the purpose of providing clarification or introducing modifications in any provisions of its Bidding Documents.



We hope our advice sufficiently addresses your concerns. Note that this opinion is being rendered on the basis of the facts and particular circumstances as presented. 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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