

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 08-2005

January 26, 2005

COL. CARLOS M. PATTUGALAN (RET.)
President/General Manager
Bessang Pass Security Agency, Inc.
140 Kalayaan Avenue Cor. Mayaman St.
Diliman, Quezon City

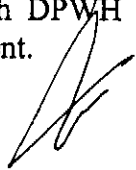
**Re: Eligibility Criterion under Section 23.11.1 (2) of the
Implementing Rules and Regulations Part-A (IRR-A) of
Republic Act 9184 (R.A. 9184)**

Dear Col. Pattugalan (ret.):

This refers to your letter dated January 10, 2005 requesting clarification on the provisions of the Implementing Rules and Regulations Part-A (IRR-A) of Republic Act 9184 (R.A. 9184), with the sole substantive issue for resolution, to wit:

Whether or not the renewal of Bessang Pass Security Agency, Incorporated's (BPSAI's) security services contract with the Department of Public Works and Highways (DPWH) every two (2) years pursuant to Section 10 of their existing contract should be deemed as compliance with the Eligibility Requirement under Section 23 of the aforementioned law.

At the outset, it should be noted that BPSAI cannot comply with the requirement for eligibility as provided in the Invitation to Apply for Eligibility and to Bid as advertised by the National Food Authority (NFA) Region IV in view of its contemplated procurement of security services for the year 2005. In lieu of this requirement, BPSAI proposes that its track record with DPWH be considered as sufficient compliance with the abovementioned requirement.



Largest Single Completed Contract as Eligibility Criterion in the Procurement of Goods

Section 23.11.1(2) of the IRR-A of R.A. 9184 prescribes as one of the eligibility criteria in the procurement of goods that the value of the largest single completed contract of the bidder should be at least 50% of the approved budget of the contract to be bid, to wit:

The value of the prospective bidder's largest single contract, adjusted to current prices using the wholesale consumer price index, completed within the period specified in the invitation to Apply for Eligibility and to Bid, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid.

It must be stressed that compliance with the above-cited eligibility criterion is a condition *sine qua non*, an imperative, for a prospective bidder to be declared eligible to participate in the bidding proper, such that failure to conform thereto leaves the procuring entity with no other recourse but to declare the prospective bidder ineligible. This acceptance is very clear in Section 23.6 of the IRR-A of R.A. 9184, which provides:

The determination of the eligibility shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and using the criteria stated in Section 23.11 of this IRR-A:¹

As Section 23.6 of the IRR-A of R.A. 9184 is very clear and emphatic on the bases of the eligibility of a prospective bidder, it is mandatory for a prospective bidder to show that the value of its largest single completed contract similar to contract to be bid is at least 50% of the approved budget for the contract to qualify it to bid in such project. Thus, this eligibility criterion cannot be dispensed with or waived by the procuring entity as this is one of the minimum requirements that a prospective bidder has to satisfy to establish its track record and capacity to perform contractual obligations.

Guidelines in the Ascertainment of the Largest Single Completed Contract

For the ascertainment of whether or not the largest single completed contract submitted by the bidder who submitted the Lowest Calculated Bid satisfies the eligibility criterion prescribed by the IRR-A of R.A. 9184, the following parameters are given to the BAC for consideration:

¹ Emphasis supplied

First, the largest single contract submitted must be completed within the period stated in the Invitation to Apply for Eligibility and to Bid;

Second, the largest single completed contract must be at least fifty percent (50%) of the approved budget for the contract to be bid;

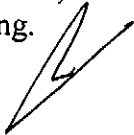
Third, the largest single completed contract must be similar to the contract to be bid. For the procurement of goods, a contract shall be considered "similar" to the contract to be bid if it involves goods or services of the same nature and complexity as those which are the subject of the public bidding concerned.

Lastly, in determining whether a largest single completed contract submitted by a bidder satisfies Section 23.11.1(2) of the IRR-A, the BAC should be guided by the spirit behind the provision, which is to establish a tangible gauge for the bidder's track record and capacity to perform contractual obligations. Hence, in validating and verifying during post-qualification whether the largest single completed contract presented by the bidder who submitted the Lowest Calculated Bid satisfies the eligibility criteria prescribed by the IRR-A, the primordial question that the BAC should ask is: Does such largest single completed contract sufficiently establish that the bidder has the experience and resources to perform the contract to be awarded strictly in accordance with terms thereof?

Although the largest single completed contract is similar to the contract to be bid, its track record with DPWH alone would not prove as sufficient compliance with the mandatory provisions of R.A. 9184 and its IRR-A. The determination of the tangible gauge for the bidder's track record and capacity to perform contractual obligations cannot however be established with the sole contract entered into by BPSAI with DPWH. Not having been able to comply with the requirement that the largest single completed contract be at least fifty percent (50%) of the approved budget for the contract to be bid, would only mean ineligibility on the part of the bidder to participate in the bidding procedure.

Conclusion

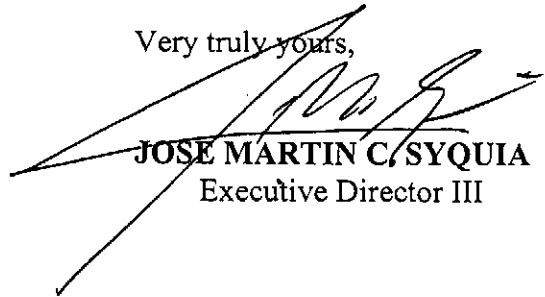
In light of the above discussion, said prospective bidder cannot be declared eligible for failing to satisfy the eligibility criterion for track record and capacity to perform. The fact that the bidder failed to meet the largest single contract criterion makes it ineligible to participate in the said project. The requisites constituting the eligibility criteria for the procurement of goods under Section 23.11.1 of the IRR-A should not be taken in the alternative but should altogether be complied with. Hence, should the prospective proponent fail to satisfy any of the requirements prescribed under the said provision, it will have to be declared ineligible to participate in the ensuing public bidding.



Please note that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts and circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

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