NPM No. 84-2014

24 October 2014

ATTY. ARNALDO M. ESPINAS
BAC Member
LOCAL WATER UTILITIES ADMINISTRATION
P.O. Box 34, U.P. Post Office, Katipunan Avenue,
Balara, Quezon City.

Re: Exemption from the similar contract requirement under Small A and Small B categories

Dear Mr. Espinas:

This refers to your letter seeking clarifications on whether the exception from the submission of similar contract requirement granted to civil works contractors under Small A and Small B categories also applies to suppliers in the procurement of goods.

As represented, the Honorable Mayor of Sagada raised the issue on whether a bidder for a supply contract, i.e. GI Pipes, is within the coverage of the exception under *Section 23.5.2.5* of the IRR of RA 9184, which reads:

> The contractors under Small A and Small B categories without similar experience on the contract to be bid may be allowed to bid if the cost of such contract is not more than fifty percent (50%) of the Allowable Range of Contract Cost (ARCC) of their registration based on the guidelines as prescribed by the PCAB.

It is in this context that our opinion is being requested.

Section 23.5.2.5 is an exception from the technical eligibility criteria that prospective contractors must have an experience of having completed at least one (1) contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the National Statistics Office consumer price indices, must be at least fifty percent (50%) of the Approved Budget for the Contract (ABC) to be bid.

It is worthy to note that the exception refers to prospective bidders registered with the Philippine Contractors Accreditation Board (PCAB) under Small A and Small B categories participating in a competitive bidding for **infrastructure projects** where the ABC is not more than fifty percent (50%) of the ARCC.

Accordingly, it is clear from the said provision that the exception does not apply in the procurement of goods, but applicable only in the procurement of infrastructure projects. Hence, when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation; there is room only for application.[1] As such, pursuant to Section 23.5.2 of the IRR of RA 9184, the eligibility criteria exception applies only in the procurement of infrastructure projects.

We hope that 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 there be other concerns, please do not hesitate to contact us.

Very truly yours,

DENNIS S. SANTIAGO
Executive Director V

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[1] *Amores v. House of Representatives Electoral Tribunal*, G.R. No. 189600, June 29, 2010, citing *Ace Holdings Corp. v. Rufina and Company*, G.R. No. 160191, June 8, 2006, 490 SCRA 368, 375

Revised IRR 19-2003

01/12/15

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16 September 2014

Atty. Dennis S. Santiago
Executive Director
GOVERNMENT PROCUREMENT POLICY BOARD
Unit 2506, Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City 1605

DEPARTMENT OF BUDGET AND MANAGEMENT
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE
RECEIVED
DATE 9-29-14

Jan/[redacted]
Please prepare OPINION.
For. oss

Dear Dir. Santiago:

Greetings!

We refer to PCAB-prescribed guideline for contractors of infrastructure projects, which states that, thus: *"Contractors under Small A and Small B categories without similar experience on the contract to be bid MAY BE allowed to bid if the cost of such contract is not more than 50% of the Allowable Range of Contract Cost (ARCC) of their registration..."*

In a recent bidding of the supply of said GI Pipes, an issue was raised by the Mayor of Sagada, as to whether a bidder for a supply contract could be likewise covered by the aforementioned eligibility requirement, specifically intended for new contractors of infrastructure projects without similar experience on the contract to be bid.

The issue was raised because the second bidder was not able to comply with the following eligibility requirements:

- *Statement of all its on-going government and private contracts, including contracts awarded but not yet started, if any, whether similar in nature and complexity to the contract to be bid within the relevant period; and*
- *Statement identifying the bidders single largest completed contract similar to the contract to be bid, within the relevant period (five years).*

Kindly clarify the matter for our guidance.

Thank you.

Very truly yours,

Atty. Annalito M. Espinas
BAC Member