



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

NPM No. 87-2012

16 July 2012

MR. RONALD MARCUS C. RENDON
MIGO CONSTRUCTION
Barangay Benitez,
Banga, South Cotabato

Re: Small B Category under the Allowable Range of Contract Cost (ARCC)

Dear Mr. Rendon:

We respond to your letter dated 25 May 2012 seeking our opinion on the validity of the ground cited by the Bids and Awards Committee (BAC) of a procuring entity in disqualifying Migo Construction (Migo) in its public bidding.

As represented, Migo was a licensed contractor from the years 1994 to 2003, but stopped doing business in the year 2002, and no longer renewed its license with the Philippine Contractors Accreditation Board (PCAB). On 10 January 2012, it was issued a new PCAB license which, as can be inferred from your letter, is for Small B category. Migo then participated in public bidding for the construction, rehabilitation, and repair of Water Sanitation Facilities in Sultan Kudarat Province. However, it was declared ineligible for failure to comply with the Single Largest Completed Contract (SLCC) requirement as it does not have an experience of having completed within a period of ten (10) years from the date of submission and receipt of the bids, at least one (1) contract that is similar to the contract to be bid as provided in Section 23.5.2.5 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. It is in this context that you are seeking our opinion on whether Migo was improperly declared ineligible in the bidding despite the fact that it falls under the Small B category which, as provided under Section 23.5.2.5 of the IRR of RA 9184, may be allowed to bid if the cost of the contract is not more than fifty percent (50%) of the Allowable Range of Contract Cost (ARCC) of its registration based on the guidelines prescribed by the PCAB.

At the outset, please note that the GPPB and its Technical Support Office (TSO) only render policy and non-policy opinions, respectively, on issues purely relating to the interpretation and application of our procurement laws, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions under the law. Hence, the determination of a bidder's

qualification, eligibility and compliance with the requirements for a procurement opportunity lies within the responsibility and discretion of the BAC of the procuring entity concerned.¹

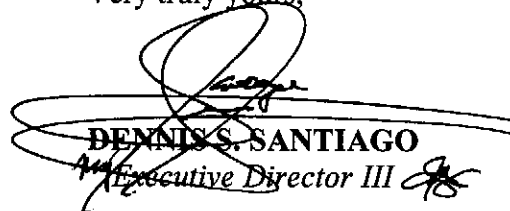
For your guidance, Section 23.5.2.5 of the IRR lays down the rule on SLCC wherein two requirements must be met - (i) It must be similar to the contract to be bid; and (ii) It must be at least fifty percent (50%) of the approved budget for the contract to be bid. However, in case a contractor has no similar experience on the contract to be bid, and is registered with the PCAB under Small A or Small B category, it may be allowed to bid on contracts costing not more than fifty percent (50%) of its registration's ARCC. This rule provides opportunity for small contractors to participate and gain experience in government procurements without running the risk of having inexperienced contractors doing projects for the Government; and ensures that only those with sufficient capability are awarded the contract.²

With respect to the applicable ARCC, Section 23.5.2.5 of the IRR clearly provides that it should be based on the guidelines prescribed by the PCAB. The controlling guideline on the matter is PCAB Circular No. 001³ on the Implementation of the Second Stage of Adjustments on ARCC and Single Largest Completed/Track Record Requirements. Hence, the said circular should be used as basis in determining the amount of approved budget for the contract (ABC) for a project which a Small A or Small B contractor would be allowed to participate in even without having the required SLCC.

Based on the foregoing, we are of the opinion that PCAB Circular No. 001, being the most recent issuance of PCAB on the matter, should be used in determining a bidder's ARCC. Considering that PCAB Circular No. 001 provides that the ARCC for Small B contractors is Php15,000,000.00, Small B contractors without the required SLCC may be allowed to bid on government infrastructure projects with an ABC that does not exceed Php7,500,000.00 (50% of Php15,000,000.00).

We hope that our advice provided sufficient guidance on the matter. Please 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

//LSD3 *Wry*

¹ NPM No. 044-2009 sated 18 August 2009.

² NPM No. 039-2004 dated 29 March 2004.

³ Issued on 18 February 2009 and took effect on 1 July 2009.