



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

NPM No. 105-2012

22 August 2012

JOSEPH CHAN JUAN

General Manager

WELLNESS PRO INCORPORATED

1006 Richmond Plaza,

San Miguel Avenue corner Lourdes Street,

Ortigas, Pasig City 1605

Re: Statement of ongoing and completed contracts within the relevant period

Dear Mr. Juan:

We respond to your letter dated 15 May 2012 requesting clarification regarding the purpose of a statement of ongoing and completed contracts within a particular period as an eligibility requirement for prospective bidders. Your inquiry is mainly based on the manner by which the East Avenue Medical Center (EAMC) limited the said statement of prospective bidders in its recent procurement to a definite five-year period. Specifically, you would like to find out how it is to the advantage of the government to require contracts “for each of the 5 (sic) years specified”¹ by EAMC.

It is represented that the EAMC conducted competitive bidding for the supply, delivery, and installation of equipment and instruments. In the Bid Data Sheet attached to your letter, EAMC required the submission of a sworn statement of ongoing and similar completed government and private contracts from 2009 to 2011. In the Draft Supplemental Bid Bulletin No. 2, which is also attached to your letter, the requirement was amended to refer to government and/or private contracts, and to expand the relevant period from 2008 to 2012. The postscript of your letter indicated that the bidding was a failure, as bidders “failed to present [government and private] completed contracts completely for each of the year (sic) from 2008 to 2012”.

For your guidance, Republic Act (RA) No. 9184 provides that the **Bids and Awards Committee (BAC) shall determine the eligibility of prospective bidders based on the bidders’ compliance with the eligibility requirements** set forth in the Invitation to Bid² (emphasis supplied). These eligibility requirements are enumerated in the Implementing Rules and Regulations (IRR) of RA 9184, which provide the submission of, among others, a statement of the prospective bidder of all its ongoing and completed government and private contracts **within the relevant period provided** in the Bidding Documents³ (emphasis supplied).

Based on the foregoing provisions, the BAC is mandated to require from prospective bidders a statement of ongoing and completed contracts. In addition, the BAC is clearly given the authority and discretion to determine the relevant period during which the contracts were executed, implemented, or completed. The IRR merely prescribes a “relevant period”—instead

¹ Second paragraph, page 2 of your letter dated 15 May 2012.

² Section 23, RA 9184.

³ Section 23.1(a)(iii), IRR.

of specifying a definite period—in recognition of the BAC's unique position to best determine the procuring entity's needs and how best to meet these needs. With regard to your specific concern, we would like to point out that the requirement pertains to contracts **within** the specified relevant period, and **not for each of the years** from the said period. As long as the contract was executed, implemented, or completed during the specified period, it does not matter which year in that period it specifically falls.

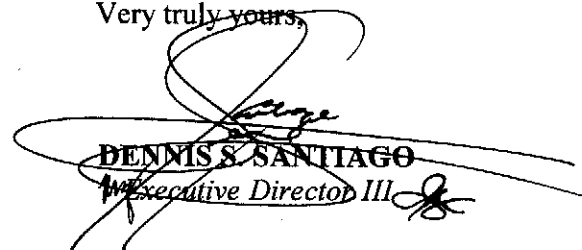
The statement of ongoing and completed contracts becomes relevant when the BAC applies the pertinent eligibility criteria. One such criterion is that the prospective bidder **must have completed a single contract that is similar to the contract to be bid.**⁴ Similarly, the prospective bidder's Net Financial Contracting Capacity (NFCC) must be at least equal to the budget for the contract to be bid. **The value of all outstanding or uncompleted portions of the projects under ongoing contracts, including awarded contracts yet to be started** coinciding with the contract to be bid, is a key element in the NFCC computation.⁵ (Emphasis supplied.)


Non-Policy Matter opinions regarding single largest contracts have stated that this criterion, and naturally the requirement that it measures, establishes a tangible gauge for a bidder's track record and capacity to perform contractual obligations⁶. More precisely, the government is assured of a certain level of security that the bidder, if awarded the contract, will be able to fulfill the same.⁷ The NFCC, on the other hand, determines at the earliest opportunity the financial capacity of the bidder, such that if the bidder has no financial capacity **or would have possessed such capacity were it not for the fact that it has spread its resources to cover numerous ongoing contracts**, it will not be allowed to participate further.⁸ (Emphasis supplied.)

For your future reference, the law and IRR provide a protest mechanism for parties adversely affected by BAC decisions. Article XVII of RA 9184 and Rule XVII of the IRR outline the procedures that an aggrieved bidder may avail of to assail decisions of the BAC and/or Head of the Procuring Entity.

We hope our advice provides sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented. Should you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

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⁴ Section 23.5.1.3, *supra*.

⁵ Section 23.5.1.4, *supra*.

⁶ NPM 40-2007, dated 06 August 2007; NPM 08-2008, dated 26 January 2008; NPM 20-2012, dated 06 February 2012.

⁷ NPM 20-2005, dated 17 March 2005.

⁸ NPM 56-2004, dated 30 April 2004.