



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

NPM No. 118-2013

26 December 2013

ENGR. EDMUND REALIN
Proprietor/Manager
EDRO CONSTRUCTION (EDRO)
Public Market, Sta. Teresita,
Province of Cagayan

Re : Exception to the Single Largest Completed Contract (SLCC) Requirement; Mayor's Permit from the Local Government Unit (LGU)-Procuring Entity; Review of Bids and Awards Committee (BAC) Resolution

Dear Engr. Realin:

This is in response to your electronic mail, which we received on 17 September 2013, seeking clarification on the correct interpretation of Section 23.5.2.5 of the revised IRR of RA 9184 on the SLCC requirement, the propriety of requiring a mayor's permit from the LGU conducting the procurement, and requesting that this office reviews the Bids and Awards Committee (BAC) resolution issued by the Municipality of Sta. Teresita, Cagayan.

Based on your representation, Edro is registered with the Philippine Contractors Accreditation Board (PCAB) under the Small B category. In some instances where it participates in public bidding activities, Edro has been disqualified by the Bids and Awards Committee (BAC) for failure to submit at least one (1) completed contract similar to the contract being bid out although the project to be bid out falls under the Small B category. In addition, Edro has experienced being required to submit a mayor's permit issued by the LGU that is conducting the procurement despite having a mayor's permit from its principal place of business. Lastly, Edro also requests that this office review the BAC resolution issued by the Municipality of Sta. Teresita, Cagayan regarding its declaration of Edro's ineligibility.

At the outset, we wish to remind you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) do not have the authority to decide for and on behalf, or overturn a decision, of a procuring entity. The GPPB is a quasi-legislative body mandated to formulate and amend the IRR.² It has no quasi-judicial powers and functions; hence, cannot investigate and ascertain the existence of facts, hold hearings, and exercise discretion of a judicial nature over actual controversies with regard to the conduct of bidding by procuring entities. Thus, we wish to clarify that the GPPB and the GPPB-TSO cannot

² Section 63 of RA 9184.

dictate to the procuring entity how to decide or resolve issues, nor pass upon the validity of such decisions, relative to its procurement activities.

SLCC Requirement for Infrastructure Projects

Section 23.5.2.5 of the IRR of RA 9184 provides that, as a general rule, “[t]he 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, adjusted to current prices using the NSO consumer price indices, must be at least fifty percent (50%) of the ABC to be bid.” By way of exception, the same section provides that “contractors under Small A and Small B categories without similar experiences on the contracts to be bid may be allowed to bid if the costs 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.”

Based on the foregoing, a bidder will be qualified even if it does not have at least fifty percent (50%) SLCC if such bidder is either a Small A or Small B contractor participating in a project the Approved Budget for the Contract for which is within fifty percent (50%) of its ARCC.

In connection with this, we wish to inform you that Section 23.5.2.5 of the IRR of RA 9184 was recently amended through Government Procurement Policy Board (GPPB) Resolution No. 11-2012 dated 1 June 2012 to remove the qualification that only single largest contracts similar to the contract to be bid that were completed within the last ten (10) years prior to the bid submission will be considered for compliance with the requirement. Thus, bidders may now identify and use similar contracts completed more than ten (10) years earlier than the date of the submission of bids for purposes of compliance with the SLCC requirement.

Valid Mayor’s Permit

We wish to reiterate that as provided in a previous opinion⁴, procuring entities are proscribed from requiring additional eligibility requirements. The list of minimum eligibility requirements under the IRR of RA 9184 has been streamlined/simplified, such that only those requirements enumerated in Sections 23.1, 24.1, and 25.1 of the IRR are necessary for purposes of determining a bidder's eligibility.

Section 23.1(a)(ii) of the revised IRR of RA 9184 provides that the bidder is required to submit, as part of its legal eligibility requirements, a “mayor’s permit issued by the city or municipality where the principal place of business of the prospective bidder is located.” Clearly, the requirement is for a mayor’s permit from the bidder’s principal place of business, and not from the LGU conducting the procurement.

In view of the foregoing, we wish to clarify that requiring a permit other than the mayor’s permit from the bidder’s principal place of business for purposes of eligibility would be a direct violation of the revised IRR of RA 9184.

In sum, we wish to reiterate that:

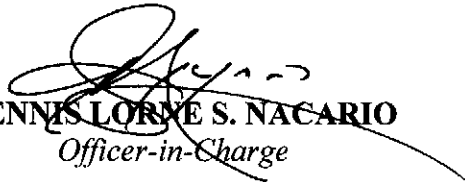


⁴ Non-Policy Matter Opinion 21-2012, dated 16 February 2012.

- (1) A bidder may participate in a public bidding even if it does not have a similar contract which is at least fifty percent (50%) of the value of the contract to be bid out, provided that the bidder is registered as a Small A or Small B contractor and the public bidding where it is to participate has an ABC which is at least fifty percent (50%) of the ARCC of the same bidder; and
- (2) Procuring entities cannot require the submission of a mayor's permit other than that issued by the LGU where the bidder holds its principal place of business. Any other mayor's permit would be an additional eligibility requirement that is proscribed by the revised IRR of RA 9184.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS LORNE S. NACARIO
Officer-in-Charge