

NPM No. 133-2014

19 November 2014

MR. JESUS E. SALMO, MPA

Chief Executive Officer/Corporate Secretary

LS GUARD FORCE SECURITY AND INVESTIGATION AGENCY, INC. (LS GUARD)

Dasmariñas City, Cavite

**Re: Request for Amendment to Instruction to Bidders (ITB)
Clause 12.1(a)(iii)**

Dear Mr. Salmo:

This refers to your letter requesting for the amendment of ITB Clause 12.1(a)(iii) in relation to Sections 23.1(a)(iv) and 23.5.1.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 where it is required that a prospective bidder must have completed, within the period specified in the Invitation to Bid, a single contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the National Statistics Office (NSO) consumer price indices, must be at least fifty percent (50%) of the ABC.

As represented, there is a project in DPWH Region IV-A for the Procurement of Security Service Requirement involving ten (10) Security Personnel for Deployment in DPWH Regional Office No. IV-A, EDSA, Quezon City, in the total amount of Eight Million Seven Hundred Ninety One Thousand Eight Hundred Fifty Five Pesos and Fifty Six Centavos (Php 8,791,855.56). It was also represented that as a new government retiree, you recently put up LS Guard with the License to Operate granted only on 10 December 2013. Thus, LS Guard cannot enter into any government contract without complying with the requirements embodied in ITB Clause 12.1(a)(iii)¹ in relation to Sections 23.1(a)(iv) and 23.5.1.3 of the revised IRR of RA 9184.

¹ ITB Clause 12.1(a)(iii), as amended by GPPB Resolution No. 29-2012, dated 23 November 2012, and GPPB Resolution No. 16-2014, dated 20 June 2014, for publication, provides that:

12.1 Unless otherwise indicated in the BDS, the first envelope shall contain the following eligibility and technical documents:

(a) Eligibility Documents –

Class “A” Documents

...

iii) Statement of all ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid; and

For guidance, the Single Largest Completed Contract (SLCC) criterion is required in order to ensure that the Government is contracting with an entity that has already accomplished at least one project with a value no less than fifty percent (50%) of the contract to be bid. This assures the Government that the bidder has sufficient experience and reliable track record, or it is not the first time that the prospective bidder will be required to accomplish such an undertaking, and therefore, provides the Government a level of security that such bidder, if awarded the contract, will be able to satisfactorily fulfill the contract requirements.²

The rationale is to establish a tangible gauge for the bidder's track record and capacity to perform contractual obligations. It seeks to safeguard the interest of the procuring entity by ensuring that the bidder has the experience and resources to perform the contract to be awarded strictly in accordance with the terms thereof and to complete the project to be bid.³ Thus, this eligibility criterion cannot be dispensed with or compromised 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.

Nonetheless, prospective bidders are not left without recourse under the rules. For one, if the procuring entity determines that applying the SLCC requirement would lead to failure of bidding or monopoly that will defeat the purpose of public bidding, Section 23.5.1.3 of the IRR allows the submission of the following requirements in lieu of the SLCC, *to wit*:

- a) The prospective bidder should have completed at least two (2) similar contracts and the aggregate contract amounts should be equivalent to at least the percentage of the ABC as required above; and
- b) The largest of these similar contracts must be equivalent to at least half of the percentage of the ABC as required above.

It bears stressing that the aforesaid substitute eligibility criteria are intended to relax the SLCC requirement in order to open the bidding to the widest possible range of prospective and qualified bidders, thereby enhancing competition and transparency.

In addition, interested bidders may also execute a joint venture agreement (JVA) under Section 23.1(b) of the IRR of RA 9184, where the eligibility criterion relative to the SLCC can be complied with by one of the parties to the joint venture for purposes of determining eligibility of the joint venture association.⁴

All told, the SLCC criterion was instituted for government to be assured that the prospective bidder has the technical capability to undertake the contract to be bid. The

Statement identifying the bidder's single largest completed contract similar to the contract to be bid, except under conditions provided for in Section 23.5.1 of the IRR, within the relevant period stated in the BDS.

The statement shall include, for each contract, the following...

² NPM No. 020-2005 dated 17 March 2005.

³ NPM No. 040-2007, dated 6 August 2007.

⁴ NPM No. 021-2005, dated 17 March 2005.

obvious intent of the aforesaid requirement is to spare the government from the venture of inexperienced suppliers that may put government transactions and operations in jeopardy to the detriment of the expecting public.

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

//lsd5 *ms*