



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

**NPM No. 136-2014**

3 December 2014

**MR. SAMUEL ANTHONY P. CUYOS**  
*Sales Consultant*  
**TKC HEAVY INDUSTRIES CORPORATION**  
17 Bulacan Pardo, Cebu City 6000

**Re: Similar Contracts and Splitting of Contracts**

Dear Mr. Cuyos:

This refers to your letter seeking our opinion on the proper interpretation of similar contracts and splitting of contracts provision in the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, otherwise known as the Government Procurement Reform Act.

It is represented that TKC Heavy Industries Corporation (TKC) participated in public bidding conducted by the Province of Davao Oriental for the procurement of brand new light and heavy equipment with an Approved Budget for the Contract (ABC) of One Hundred Thirty Million Pesos (PhP 130,000,000.00), which is divided into two (2) packages: (1) Package I - 12 units of dump trucks, 4 units of motor grader and 4 units of wheel loader with an ABC of PhP 79,000,000.00; and (2) Package II - 4 units of crawler backhoe and 4 units of vibrator road roller with an ABC of PhP 51,000,000.00. TKC received a Notice of Bid Evaluation Results on 28 April 2014, stating that its bid was considered as non-responsive for failure to comply with the requirements. This prompted TKC to file a motion for reconsideration, which was later on denied by the Procuring Entity (PE) holding that TKC does not possess a similar experience to qualify to bid. It is in this context that you seek our opinion relative to similar contracts and splitting of contracts provisions in the IRR of RA 9184.

**Similar Contracts**

On the first issue, we refer you to our previous opinion<sup>1</sup> relative to what can be considered as similar contract, to wit:

It is the responsibility of the Procuring Entity (PE) to clarify in the Bidding Documents what projects can be considered similar to the contract being bid out, for purposes of determining compliance with the SLCC requirement. Thus, it is entirely within the discretion of the PE whether to consider a

<sup>1</sup> NPM No. 042-2013 8 May 2013 citing NPM Nos. 123-2012 dated 8 October 2012, 001-2009 dated 9 October 2009 and 020-2012 dated 6 February 2012.

project as being similar or not similar in nature and complexity to the project being bid out.

For your guidance, a contract shall be considered "similar" to the contract to be bid if it involves goods or services of the same nature and complexity as the subject matter of the project being procured. This requirement should not be interpreted strictly as to unreasonably limit competition and inequitably bar participation of capable suppliers, manufacturers, distributors and service providers; much more, to constrain PEs in the performance of their constituent and ministrant functions. Hence, similarity of contract should be interpreted liberally in the sense that it should not refer to an exact parallel, but only to an analogous one of similar category.

Thus, while PEs are given the discretion to determine what contracts are similar to the contract being procured, the similarity should not refer to an exact parallel, but only to analogous ones of similar category in order to widen the competition among capable bidders.

### **Splitting of Contracts**

Under Section 54.1 of the IRR of RA 9184, splitting of government contracts means the division or breaking up of contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of RA 9184 and its IRR, especially the necessity of public bidding and the requirements for the alternative methods of procurement.

Based on the definition, it does not follow that once a contract is divided into smaller quantities or phases, there is splitting of contract. In order to determine whether the division of the procurement project into two (2) packages amounts to splitting of contract, it must be clearly shown that the act must have been done for the purpose of circumventing or evading legal and procedural requirements,<sup>2</sup> *i.e.*, there should be a determination that, despite resorting to public bidding for both packages, the division into two (2) packages was done to circumvent or evade the legal and procedural requirements under RA 9184 and its IRR.

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*

---

<sup>2</sup> NPM No. 033-2005 dated 26 July 2005.