

NPM No. 16-2008

2 September 2008

MR. RAFAEL GAVIOLA BESAS

Chief Executive Officer

RPB COMMERCIALS

Casa Besas, Lower Talay, Cadawinowan Rd.

Talay, Dumaguete City, Negros Oriental

Re : Completed Similar Project

Dear Mr. Besas:

We respond to your letter dated 20 August 2008 requesting for an opinion on whether the requirement that the value of the completed project similar to the contract to be bid must be at least fifty percent (50%) of the approved budget for the latter applies only to contracts involving infrastructure projects and not to contracts involving the supply and delivery of goods and equipment.

Section 23 of the Implementing Rules and Regulations Part A of Republic Act No. 9184 (IRR-A of R.A. 9184) provides for the Eligibility Requirements for the Procurement of Goods and Infrastructure Projects. Specifically, item 23.11.1.2 thereof states, viz:

“ 23.11.1. For the procurement of goods:

xxx

2. The prospective bidder must have an experience of having **completed** within the period specified in the IAEB concerned a **single contract that is similar to the contract to be bid, and whose value**, adjusted to the current price using the wholesale consumer price index, **must be at least fifty percent (50%) of the approved budget for the contract to be bid.**” (emphasis supplied)

Moreover, Section 23.11.2 thereof provides as follows:

23.11.2 For the procurement of infrastructure projects:

xxx

3. The **value** of the prospective bidder's **largest single completed contract**, adjusted to current prices using the National Statistics Office consumer price indices available at the G-EPS website, and **similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid:...**"

It is clear from the foregoing that the requirement setting the value of the prospective bidder's single completed contract which is similar to the contract to be bid to be at least fifty percent (50%) of the approved budget for the contract to be bid applies to both goods and infrastructure projects.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III



RPB Commercial

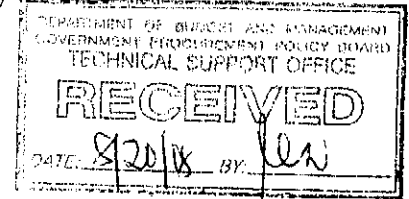
Casa Besas, Lower Talay
Cadawinonan Rd.,
Talay, Dumaguete City
Negros Oriental

Tel. Nos. (035) 225-5637
Teletax: (035) 420-0720

Chy,
No need to send Al.

Mr. [unclear]
8/21/08

Byon,
Kindly Finalize the
Reply & prepared. It's in my
shared docs under the NPM
2008 Folder. Filename is RBC
Single Largest Contract.



Mr. [unclear]
8/21/08
20 August 2008

ATTY. RUBY U. ALVAREZ
Executive Director
Legal and Policy Group
Technical Support Office
Government Procurement Policy Board
Unit 2506, Raffles Corporate Center
F. Ortega's Jr. Road, Ortega's Jr. Road
Ortega's Center, Pasig City Philippines, 1605

Ernie,
Pls. handle. Sign
in my behalf.
8/21/08

Dear Atty. Alvarez:

- see *WA-8* sec. 23, U. 1.2

This is in connection with the policy being adopted by the Bids and Awards Committee of Negros Oriental State University in Dumaguete City, Negros Oriental.

Our company, RPB Commercial has been participating in several biddings conducted by Negros Oriental State University (NORSU) for the supply and delivery of various goods and equipment for the use of the said school. Recently, NORSU conducted a bidding for the supply and delivery of laboratory equipment for the University's College of Marine Engineering. This particular contract or project involves the delivery of machine machineries and equipment for the above-mentioned college, RPB Commercial was disqualified by BAC on the ground. "Completed Similar Project is less than 50% of the approved budget" for the contract. While we are not questioning the validity or legality of the said policy, we have serious reservations as to the applicability of the same on the contract or project under consideration. This is because the subject contract we participated in was for the delivery and/or for the supply of marine machineries and equipment. The contract is not about infrastructure projects such as construction of buildings or roads. We honestly believe that such policy only applies to infrastructure projects to be undertaken by the government and not to the delivery or supply of goods and equipment.

In this regard, may we respectfully seek the legal opinion or interpretation of your government office on the issue: "whether or not the above-quoted policy being adopted by several government Bids and Awards Committee applies only to contracts involving infrastructure projects and not to contracts involving the supply and delivery of goods and equipment".

We sincerely hope that your office will enlighten us on the matter so that we will also be guided accordingly.

Finally, we are seeking this assistance from your office in the spirit of fair play and with the end view of maintaining transparency in the bidding process in government.

Thank you and best regards.

Very truly yours,

[Signature]
RAFAEL GAVIOLA BESAS
CEO