

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 30-2004

March 22, 2004

MAJ. NILO ROSARIO S. VILLARTA

Secretary and Legal Officer
Office of the Naval Judge Advocate
Bonifacio Naval Station
Fort Bonifacio, Taguig, Metro Manila

Re : Compliance with Sections 23.11.1 paragraphs 2 and 3 of the Implementing Rules and Regulations, Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184")

Dear Maj. Villarta:

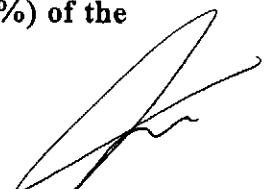
This refers to your letter, dated December 4, 2003, which we received on December 12, 2003, addressed to Secretary Emilia T. Boncodin of the Department of Budget and Management as Chairperson of the Government Procurement Policy Board ("GPPB"), seeking assistance on the procurement of the BO-105C Helicopter Upgrade Project, which has an approved budget of Fifty Million Six Thousand Four Hundred Pesos (Php 50,006,400.00). In bidding out this project, you are confronted with this issue:

Whether or not a particular bidder, whose largest single contract, valued at Sixteen Million One Hundred Ten Thousand Pesos (Php 16,110,000.00) and whose Net Financial Contracting Capacity ("NFCC") amounts to Four Hundred Thirty Four Million Fifty One Thousand Three Hundred Seventy Pesos (Php 434,051,370.00), may be declared eligible to participate in the said project.

Eligibility Criterion Under Section 23.11.1 (2) of the IRR-A of R.A. 9184

Section 23.11.1 (2) of the IRR-A of R.A. 9184 prescribes an eligibility criterion in the procurement of goods, which relates to the prospective bidder's track record and capacity to perform contractual obligations, to wit:

The value of the prospective bidder's largest single contract, adjusted to current prices using the wholesale consumer price index, completed within the period specified in the Invitation to Apply for Eligibility and to Bid, 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.**



For the procurement of goods, a contract shall be considered "similar" to the contract to be bid if it involves goods or related services of the same nature and complexity as those which are subject of the public bidding concerned.
(Emphasis Supplied)

Accordingly, if the value of a prospective bidder's largest single contract is lower than fifty percent (50%) of the approved budget for the contract ("ABC") to be bid, said prospective bidder cannot be declared eligible for failing to satisfy the eligibility criterion for track record and capacity to perform, although such largest single contract is similar in nature and complexity as to the subject of the public bidding concerned. Hence, in the procurement of the BO-105C Helicopter Upgrade Project, which has an approved budget of Php 50,006,400.00, only prospective bidders with largest single contracts amounting to at least Twenty Five Million Three Thousand Two Hundred Pesos (Php 25,003,200.00), representing 50% of the ABC are eligible to participate in the public bidding thereof. Obviously, a prospective bidder, which has a largest single contract of Php 16,110,000.00, does not meet the 50% requirement and fails to satisfy the eligibility criterion under Section 23.11.1 (2) of the IRR-A.

Eligibility Criterion under Section 23.11.1 (3) of the IRR-A of R.A. 9184

As part of the eligibility criteria for the procurement of goods under the IRR-A of R.A. 9184, specifically Section 23.11.1 (3), prospective bidders are required to comply with the NFCC requirement, which establishes their liquidity and capacity to absorb the additional obligations, in connection with the contract to be bid, and finance its completion, such that it is imperative that their NFCC, based on their net working capital, must be at least equal to the approved budget for the contract to be bid. The said provision is quoted hereunder, to wit:

The prospective bidder must present a commitment from a licensed bank to extend to it a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the approved budget for the contract to be bid; **or must have a NFCC at least equal to the approved budget for the contract to be bid, calculated as follows:**

NFCC = [(Current assets minus current liabilities) multiplied by (K)] minus the value of all outstanding works or projects under ongoing contracts, including awarded contracts yet to be started.

Where:

K = 10 for a contract duration of one year or less, 15 for a contract duration of more than one year up to two years, and 20 for a contract duration of more than two years. (Emphasis Supplied)

As such, if a prospective bidder's NFCC level, after having been computed based on the afore-stated provision, is equal to or above the ABC, then said prospective bidder complies with the eligibility criterion under Section 23.11.1 (3) of the IRR-A. Thus, a

prospective bidder in the BO-105C Helicopter Upgrade Project, which has an NFCC of Php 434,051,370.00 is eligible to participate therein under this criterion.

However, although the bidder may have satisfied the NFCC requirement, the fact that the bidder failed to meet the largest single contract criterion makes it ineligible to participate in the said project. The requisites constituting the eligibility criteria for the procurement of goods under Section 23.11.1 of the IRR-A should not be taken in the alternative, but should altogether be complied with. Hence, should the prospective proponent fail to satisfy any of the requirements prescribed under the said provision, it will be declared ineligible to participate in the ensuing public bidding.

With the foregoing elucidations, we trust that our opinion provides the Armed Forces of the Philippines-Bids and Awards Committee the needed information in its procurement of a BO-105C Helicopter Upgrade Project for the Philippine Navy Aircraft Modernization Projects.

Please note that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts and circumstances.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director