

NPM No. 31-2009

10 June 2009

REYNALDO M. SAN JUAN

Partner

SAN JUAN, SAN JUAN AND SAN JUAN
2518-20 Oroquieta, Sta. Cruz,
Manila

Re : Single Largest Completed Contract

Dear Mr. San Juan:

This refers to your letter dated 3 April 2009 requesting our office for an opinion as to whether or not Sec 23.11.1(2) may be liberally interpreted so as to allow, during post-qualification, ongoing contracts despite the wording in the said provision which requires largest single completed contract.

In this regard, it must be stressed that compliance with the subject eligibility criterion is a condition *sine qua non*, an imperative, for a prospective bidder to be declared eligible to participate in the bidding proper, such that failure to conform thereto leaves the procuring entity with no other recourse but to declare the prospective bidder ineligible. This acceptance is clear and stated in Section 23.6 of the IRR-A of R.A. 9184, viz:

The **determination of the eligibility** shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and **using the criteria stated in Section 23.11 of this IRR-A: (Emphasis supplied)**

As Section 23.6 of the IRR-A of R.A. 9184 is clear and emphatic on the bases of the eligibility of a prospective bidder, it is mandatory for a prospective bidder to show that the value of its largest single completed contract similar to the contract to be bid is at least 50% of the approved budget for the contract to qualify it to bid in such project. 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.

For your proper guidance, we are giving you these parameters to consider in verifying, validating and ascertaining whether the largest single completed contract

submitted by the bidder satisfies the eligibility criterion prescribed by the IRR-A of R.A. 9184, to wit:

First, the largest single contract submitted must be "completed" within the period stated in the Invitation to Apply for Eligibility and to Bid. We are of the opinion that this requirement, guided by the spirit behind the provision, should be interpreted strictly for the purpose of establishing a tangible gauge for the bidder's track record and capacity to perform contractual obligations;

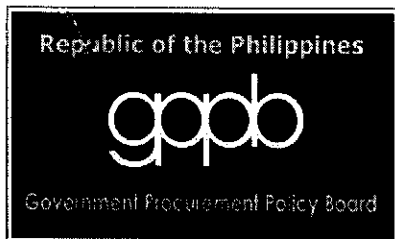
Second, the largest single completed contract must be at least fifty percent (50%) of the approved budget for the contract to be bid;

Third, the largest single completed contract must be similar to 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 services of the same nature and complexity as those which are the subject of the public bidding concerned.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

Ruby U. Alvarez
RUBY U. ALVAREZ
Executive Director III



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

Atty. Alyce,
Pls. finalize NPM pls.

PK
1/6/09

14 April 2009

Mem:

REYNALDO M. SAN JUAN

Partner

SAN JUAN, SAN JUAN & SAN JUAN

2518-20 Oroquieta, Sta. Cruz,

Manila

Single largest completed contract

Re: Interpretation of Sec. 23.11.1(2) of IRR-A of R.A. 9184

Dear Mr. San Juan:

This refers to your letter dated 3 April 2009 requesting our office for an opinion as to whether or not Sec 23.11.1(2) may be liberally interpreted so as to allow, during post-qualification, ongoing contracts despite the wording in the said provision which requires largest single completed contract.

In this regard, it must be stressed that compliance with the subject eligibility criterion is a condition *sine qua non*, an imperative, for a prospective bidder to be declared eligible to participate in the bidding proper, such that failure to conform thereto leaves the procuring entity with no other recourse but to declare the prospective bidder ineligible. This acceptance is clear and stated in Section 23.6 of the IRR-A of R.A. 9184, viz:

The **determination of the eligibility** shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and **using the criteria stated in Section 23.11** of this IRR-A: (*Emphasis supplied*)

As Section 23.6 of the IRR-A of R.A. 9184 is clear and emphatic on the bases of the eligibility of a prospective bidder, it is mandatory for a prospective bidder to show that the value of its largest single completed contract similar to contract to be bid is at least 50% of the approved budget for the contract to qualify it to bid in such project. 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.

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Third, the largest single completed contract must be similar to 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 services of the same nature and complexity as those which are the subject of the public bidding concerned.

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Very truly yours,

RUBY U. ALVAREZ
Executive Director III

Atty. Cagay,

The draft reply. The

requirement of a completed single contract (at least 50%) is clear. The proposed liberal interpretation is inconsistent therewith. In any event, the disposition lies with the procuring entity.

SAN JUAN, SAN JUAN & SAN JUAN

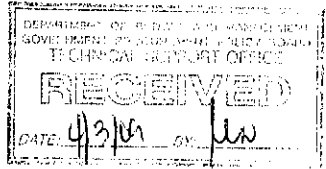
Legal Counselors/Practitioners
2518-20 Oroquieta, Sta. Cruz, Manila
Telephone Nos. 3875284; 711-3183; 711-3159 (Telefax)
E Mail Address: attysanjuan@sanjuan.com.ph

7/4/09

Atty. MIGUEL A. SAN JUAN (+) * Atty. REYNALDO M. SAN JUAN * Atty. MILA TERESITA SAN JUAN-RACELIS

April 3, 2009

Atty. RUBY U. ALVAREZ
Executive Director III
G.P.P.B. - T.S.O.,
Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Pasig City



Dear Atty. ALVAREZ:

For and in behalf of my client, the **C & S MANAGEMENT SOLUTIONS CO.**, of Unit 702 7/F Prince Jun Cond., 42 Timog Avenue, Quezon City, I have the honor to post a QUERY from your good office for an opinion/interpretation of Resolution 007-2006 of the E.R.C. referring to the qualification that "**the prospective bidder must have an experience of having completed a single contract that is similar to the contract to be bid and who value must be at least 50% of the approved budget for the contract to be bid.**"

We are constrained to seek your opinion on this matter due to the fact that my client was disqualified in the post qualification stage of the procurement process for METER COVER SEALS by way of a letter dated March 5, 2009 emanating from HON. MARIA CORAZON C. GINES, Chairperson, ERC Bidding and Awards Committee, a copy of which is herewith attached and made an integral part hereof as **Annex "A"**, and the disqualification was solely based on the fact that my client's contract that is similar to the contract to be bid is still on-going and not yet completed. The interpretation is being sought if the said provision may be liberally construed to include on-going contracts which are religiously being complied with.

Please be informed that we are filing today our Formal Protest contained in our verified position paper with the Hon. ZENAIDA

DUCUT, Chairperson of the E.R.C. for her consideration and resolution and in order to complete the same in all aspects of the issue, we honestly feel that an opinion/interpretation of the aforesaid provision emanating from your good office will further bolster the position of my client, who was declared to have submitted the Lowest Calculated Bid.

Hoping for your most esteemed attention and favorable action regarding this matter, I remain

Very truly yours,



REYNALDO M. SAN JUAN

Of the Firm



March 5, 2009

LIN TAN ERH
C&S MANAGEMENT SOLUTIONS CO.
Unit 702 7/F Prince Jun Condominium
No. 42 Timog Ave., Quezon City

Dear Sir/Madam:

This refers to the post qualification conducted on C&S Management Solutions, Co. relative to the procurement of Meter Cover Seals. As a background, the Opening of Bids for the above procurement was held last February 27, 2009 with your company submitting the Lowest Calculated Bid

We regret to inform you that you failed to pass the post-qualification stage due to non-compliance of the eligibility criteria under Section 23.11.2 of the IRR of R.A. No. 9184. The section states that: *"The prospective bidder must have an experience or having completed within the period specified in the AEB concerned a single contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the wholesale consumer price index, must be at least fifty percent (50%) of the approved budget for the contract to be bid." (emphasis provided by us)*

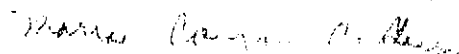
From the submitted List of All Ongoing and Completed Contracts by the C&S Management Solutions Co., it was found that the single contract which is similar to our agency's contract for bidding is the supply of water meters which has a value of PhP5,750,000.00 which is at least 50% of the approved budget for the procurement of Meter Cover Seals. However, it is still an on-going project and not a completed one as required in the above provision.

Based on these findings, C&S Management Solutions Co. is hereby disqualified, and the Bids and Awards Committee shall proceed to the post-qualification of the next lowest bidder.

Nevertheless, you may file a Motion for Reconsideration within three (3) days from receipt hereof.

Thank you very much.

Very truly yours,


MARIA CORAZON C. GINES
Chairperson
ERC Bidding and Awards Committee



C&S

Management Solutions Co.

REFERENCE : For date rcvd 11 March 2009, letter dated 5 March 2009
Lot 2009-06 1,200,000 PCS METER COVER SEALS

MOTION FOR RECONSIDERATION

Unit 702 7/F
Prince Jun
Condominium
42 Timog Avenue
Quezon City
Philippines

Date : 11 March 2009
TO : ENERGY REGULATORY COMMISSION
c/o Atty. MA. CORAZON C. GINES
Chairperson, Bids and Awards Committee
12th Flr., Pacific Center Building
San Miguel Ave., Pasig City

Please call:
Tel.: +63 2 407 3338
Fax: +63 2 373 1260
Cel: +63 919 663 3684

e-mail inquiries:
vsl_1975@yahoo.com

Authorized & Certified
Professional Dealer of:

PHILIPS

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(Philips Electrical
& Lighting Inc.)

PARKER

Filtration and
Motion Control
(Dayton Commercial Inc.)

YUSHIN

General Fabrication Co.

SAFARI

Kilowatt Hour
& Water Meter
(Crystalla Enterprises)

COLUMBIA

Wire and Cable
Corporation.

ORION

Wire and Cable Inc.

On the matter of our "non-compliance" to Section 23.11.2 of the IRR RA 9184, we submitted a bid which is also the lowest calculated bid on which the ERC will be able to (a) **SAVE** more than FOUR HUNDRED THOUSAND PESOS of valuable public funds, in comparison to the nearest competitor's bid, that is, more cost effective and more advantageous to the government at this present worldwide financial calamity; and (b) our product offered/sample submitted is **VERY SIMILAR** or 100% analogous to ERC's requirement, in all its technical specifications and references.

The aforementioned and the various technical and financial attachments of our bid more than established our capability to supply said requirement, to which the purpose of your subject Section 23.11.2 addresses itself.


Further, Section 23.11.1 of the same IRR particularly specified the "need to prevent situations that defeat competition or restrain trade". Your "non-compliance" ruling against C&S is nothing but "restrains trade".

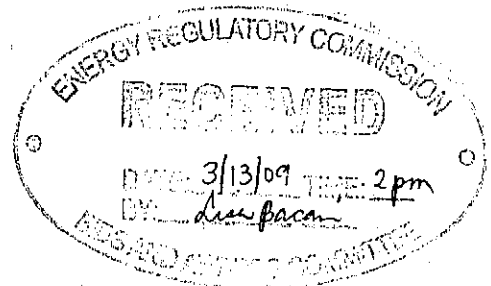
Furthermore, the GPPB ruled in its Resolution 007-2006 dated 20 January 2006, that the Procuring Entity may instead require in the alternative, that is to submit three (3) similar contracts, if the required "single contract that is at least fifty percent (50%) of the ABC will likely result to a monopoly that will defeat the purpose of public bidding". Again, your "non-compliance" ruling defeats the purpose of the public bidding.

In view of the foregoing, we OFFERED ERC the most advantageous terms in the industry. Prayerfully, this motion be considered in its merit and motive, that is, fair trade, cost effectivity, and strict technical compliances.

Thank you so much. I remain

Very truly yours,


LIN TAN ERH
Corporate Investment Manager



Membership:
PHILGEPS (since 2008)

Attn: Nilo Villanueva



24 March 2009

Mr. LIN TAN ERH
Corporate Investment Manager
C&S Management Solutions Co.
Unit 702, 7F Prince Jun Condominium
42 Timog Avenue
Quezon City

Dear Mr. Lin:

This refers to your letter dated March 11, 2009 requesting for reconsideration of the ERC Bidding and Awards Committee (ERC-BAC) findings that C&S Management Solutions Co. failed to pass the post-qualification stage in the procurement process of meter seals.

To support this motion, you cited Section 23.11.1 of the IRR of RA 9184 where it specified the "need to prevent situations that defeat competition or restrain trade"; and GPPB Resolution 007-2006 dated 20 January 2006 stating that the Procuring Entity may instead require in the alternative, that is to submit three (3) similar contracts, if the required "single contract that is at least fifty percent (50%) of the ABC will likely result to a monopoly that will defeat the purpose of public bidding." Thus, you claim that the ERC-BAC's actions restrain trade and defeated the purpose of the public bidding, respectively.

We reviewed your letter but we regret to inform you that we cannot grant your request. On the issue of restraint of trade, nothing in your letter supports the allegation that the ERC-BAC committed the same, thus, your contention is untenable.

Secondly, our ruling in finding that you failed to pass the post-qualification stage of the bidding process is likewise based on the IRR of RA 9184 as amended by GPPB Resolution 007-2006. The justification you proposed is the exception to the general rule that *the prospective bidder must have an experience of having completed x x x a single contract that is similar to the contract to be bid, and whose value x x x must be at least 50% of the approved budget for the contract to be bid.* The documents you submitted showed that the contract to supply water meters is still on-going rather than completed, thus, it failed to comply with the aforementioned rule.

Please note that the exceptions to the aforementioned general rule may only be utilized if there is a failure of bidding or it will result to a monopoly, of which neither one exists in the meantime.

Premises considered, the ERC-BAC is constrained to deny your motion for reconsideration. Should you feel the need to question this ruling, you may file, within seven (7) calendar days from receipt hereof, a formal protest with the ERC through the submission of a position paper accompanied by the payment of a non-refundable protest fee equivalent to no less than one percent (1%) of the approved budget of the contract (ABC) in accordance with the provisions of Rule XVII of the IRR of RA 9184.

For your guidance.

Very truly yours,

Maria Corazon C. Gines
MARIA CORAZON C. GINES
Chairman
ERC Bidding & Awards Committee 1