

NPM No. 49-2008

16 December 2008

MR. MARTIN JORGE P. JUCO

Legal Assistant

**DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
METROSTAR EXPRESS**

MRT III Depot, North Avenue Corner EDSA,
North Triangle Area, Quezon City

**Re : Eligibility Criteria for the Procurement of Goods-
Single Largest Similar Contract
[Section 23.11.1(2) of the IRR-A of R.A. 9184]**

Dear Mr. Juco:

This pertains to your letter dated 25 November 2008 requesting for clarification on whether an authority from the Government Procurement Policy Board (GPPB) is necessary before a procuring entity can increase the minimum requirement on the Single Largest Completed Contract.

Section 23.11.1(2) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184) prescribes, as one of the eligibility criteria in the procurement of goods, that the value of the largest single completed contract of the bidder should be at least fifty percent (50%) of the approved budget for the contract to be bid, to wit:

It would appear, from your understanding of said Section 23.11.1(2), that the fifty percent (50%) requirement of the single largest similar contract is just a minimum requirement that may be adjusted upwards, at the discretion of the procuring entity. However, we would like to point out, that this provision must be taken in the context of the entire Section 23.11.1(2) which states as follows:

“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 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.”

However, (a) when failure of bidding has resulted because no single bidder has complied with the said requirement; or (b) imposing the same will likely result to a monopoly that will defeat the purpose of public

bidding, the procuring entity, in lieu of the above, may instead require the following:

- a) **The prospective bidder should have completed at least three similar contracts and the aggregate contract amounts should be equivalent to at least fifty percent (50%) of the ABC of the project to be bid;**
- b) **The largest of these similar contracts must be equivalent to at least twenty-five percent (25%) of the ABC of the project to be bid; and**
- c) **The business/company of the prospective bidder willing to participate in the bidding has been in existence for at least three (3) consecutive years prior to the advertisement and/or posting of the IAEB.**

For this purpose, the similar contracts mentioned under 2(a) and 2(b) above must have been completed within the period specified in the Invitation to Apply for Eligibility and to Bid. The procuring entity can clarify in the bidding documents the similar projects that can be considered in the bidding.


Provided, further, that when the item/good to be procured is novel or its procurement is otherwise unprecedented or is unusual, and compliance to the requirement on a largest similar contract is impracticable, the prospective bidder will only have to comply with requirement (c) above." (*emphasis ours*)

It is clear from the foregoing that the procuring entity is given an option to require, as a substitute to the fifty percent (50%) single largest similar contract, the bidder's compliance to the three (3) eligibility criteria cited above, in the event of either a failure of bidding or to prevent monopoly that would defeat public bidding.

It bears stressing that the aforesaid substitute eligibility criteria are intended to relax the strict requirement of fifty percent (50%) single largest similar contract, in order to open the bidding to the widest possible range of prospective and qualified bidders, thereby enhancing competition and transparency. Thus, to allow the procuring entity to make the requirement more severe/stringent by adjusting it upwards, would certainly run counter to the rationale behind the espoused principles of R.A. 9184 and its IRR-A.

We hope to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


for **RUBY U. ALVAREZ**
Executive Director III

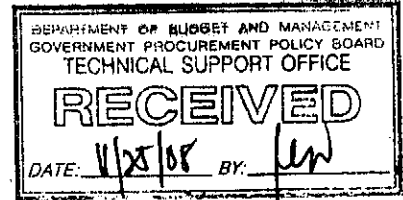


Republic of the Philippines
DEPARTMENT OF TRANSPORTATION & COMMUNICATIONS
METROSTAR EXPRESS

Ray,
Please check if *per NPM* has already
been issued re: this query.



November 25, 2008



Government Procurement and Policy Board
Legal and Policy Office
Unit 2506, Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City

Dear Sir,

I am writing to seek a non-policy opinion from your Office on whether or not your authorization is required before a procuring entity can increase the minimum requirement on the Single Largest Completed Contract”.

In relation thereto, **Section 23.11.1 (2) of the Implementing Rules and Regulations of Republic Act No. 9184** provides for a minimum requirement of a Single Largest Completed Contract equivalent to at least fifty percent (50%) of the approved budget for the contract.

Hoping for your immediate action on this matter.

Martin Jorge P. Juco
Legal Assistant
DOTC-MRT3

Enrico,
If there has been similar
NPMs issued in the past,
just send him a copy. Anyway,
pls. take care of this. Begin in
my behalf.
11/25/08