

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 57-2004

April 30, 2004

Mr. ANTONIO J. ADORABLE
RBAC Chairman
National Food Authority-Region VII
Gov. M. Cuenco Ave., Banilad
Cebu City

Re: **Eligibility Criterion on Largest Single Completed Contract under Section 23.11.1 (2) of the Implementing Rules and Regulations Part A of Republic Act No. 9184**

Dear Mr. Adorable:

This refers to your letters dated April 19, 2004 and April 24, 2004 requesting our office to determine whether a particular contract of AVEGA Bros. Integrated Shipping Corporation satisfies the eligibility criterion on largest single completed contract under Section 23.11.1(2) of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184"), raising the following queries:

1. What is the intent and purpose of requiring the Largest Single Contract of prospective bidders which should be equivalent to 50% of the approved budget for the contract ("ABC");
2. Can such requisite be dispensed with?

Largest Single Completed Contract as Eligibility Criterion in the Procurement of Goods

Section 23.11.1(2) of the IRR-A of R.A. 9184 prescribes as one of the eligibility criteria in the procurement of goods that the value of largest single completed contract of the bidder should be at least 50% of the approved budget of the contract to be bid, 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.

It must be stressed that compliance with the above-cited 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 very clear 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 very 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 waived by the procuring entity 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.

Eligibility Check and Post-Qualification Subject to Sound Judgment of the Bids and Awards Committee

It must be noted that the determination of eligibility of prospective bidders and the conduct of post qualification proceedings are strictly exclusive functions of the Bids and Awards Committee ("BAC") as explicitly stated in Section 12 of R.A. 9184 and its IRR-A, to wit:

SEC. 12. Functions of the BAC. - The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, **determine the eligibility of prospective bidders**, receive bids, conduct the evaluation of bids, **undertake post-qualification proceedings**, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative xxxx (Emphasis supplied)

In other words, since eligibility check and post-qualification are stages of the procurement process, the determinations that should be made during such stages are purely within the sound judgment of the members of the BAC. As such, our office is devoid of authority to ascertain whether or not a particular bidder is eligible or should be post-qualified, as we cannot substitute our findings to that of the BAC, which is the competent and appropriate body to make such judgments.

The Government Procurement Policy Board ("GPPB") and its Technical Support Office ("TSO") render policy and non-policy opinions respectively, on issues purely relating to the correct interpretation and application of our procurement laws, rules and regulations

and it cannot make recommendations or dictate to the BAC who of the bidders should be declared as eligible to bid, what bid should be accepted as the lowest calculated responsive bid and to whom should the contract be awarded. We adhere to the view that the functions of the BAC cannot be interfered with by any government agency since these solely fall within their authority as sanctioned by law, but with the concomitant responsibility that they perform such functions with judiciousness, adhering to the principles of transparency, accountability, equity, efficiency, and economy in the procurement process that it carries out for the procuring entity.

Based on the foregoing, it is beyond our competence and authority to determine whether or not the contract submitted by the AVEGA Bros. Integrated Shipping Corporation satisfies the eligibility criterion on largest single completed contract under Section 23.11.1(2) of the IRR-A, as we would be in effect substituting our judgment to that of the BAC during post-qualification.

However, to properly guide the BAC members of National Food Authority-Region VII in verifying, validating and ascertaining whether the largest single completed contract submitted by the bidder who submitted the Lowest Calculated Bid satisfies the eligibility criterion prescribed by the IRR-A of R.A. 9184, we are giving you these parameters to consider:

First, the largest single contract submitted must be completed within the period stated in the Invitation to Apply for Eligibility and to Bid;

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

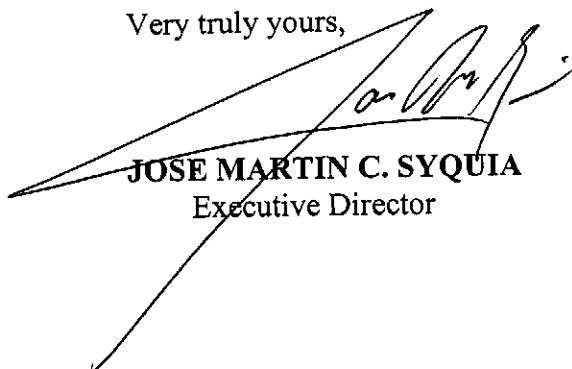
Third, the largest single completed contract must be similar to the contract to be bid. For the procurement of goods, a contract shall be considered "similar" to the contract to be bid if it involves goods or services of the same nature and complexity as those which are the subject of the public bidding concerned. We are of the opinion that this requirement should not be interpreted strictly as to unreasonably limit competition and inequitably bar participation of capable suppliers, manufacturers, distributors and service providers, or much more, to constrain procuring entities 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 exact parallel but only to an analogous one of similar category.

Lastly, in determining whether a largest single completed contract submitted by a bidder satisfies Section 23.11.1(2) of the IRR-A, the BAC should be guided by the spirit behind the provision, which is to establish a tangible gauge for the bidder's track record and capacity to perform contractual obligations. Hence, in validating and verifying during post-qualification whether the largest single completed contract presented by the bidder who submitted the Lowest Calculated Bid satisfies the eligibility criteria prescribed by the IRR-A, the primordial question that the BAC should ask is: Does such largest single completed contract sufficiently establish that the bidder has the experience and resources to perform the contract to be awarded strictly in accordance with terms thereof?

With the foregoing elucidations, we trust that our opinion has provided the NFA-Region VII the needed information relative to the eligibility criterion on largest single completed contract prescribed by the IRR-A of R.A. 9184.

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,

A handwritten signature in black ink, appearing to read 'Jose Martin C. Syquia', is written over the typed name and title. The signature is stylized and somewhat cursive.

JOSE MARTIN C. SYQUIA
Executive Director