



TECHNICAL SUPPORT OFFICE

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

NPM No. 69-2007

3 December 2007

MS. TERESITA A. TAGORDA
BAC Chairperson
ENVIRONMENT MANAGEMENT BUREAU
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
Doors 7 and 8, Felbet's Building
Lanang, Davao City

Re : Post-qualification and Eligibility Requirements

Dear Ms. Tagorda:

We refer to your letter dated 29 November 2006 seeking clarification on the following matters:

1. If the bidder subject for post-qualification has no installation yet in the Philippines and that its present installation is located outside of the country, is it mandatory to conduct the verification/inspection where the present installation is located?
2. Is a bidder eligible to join a bidding despite not having completed a contract similar to the contract to be bid but is offering a new brand of equipment under Section 23.11.1 (2) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R. A. 9184), as amended by GPPB Resolution No.07-2006?

Anent the first issue, the objective of post-qualification under Section 34 of R. A. 9184 is to determine whether the bidder complies with and is responsive to all the requirements and conditions for eligibility and the bidding of the contract, as specified in the bidding documents. During the post qualification, the procuring entity verifies, validates and ascertains all statements made and the documents submitted by the bidder with the lowest calculated bid or highest rated bid, as the case may be, using non-discretionary criteria, as stated in the bidding documents.

These criteria shall consider the legal, technical and financial requirements, such as, but not limited to, the bidder's stated competence and experience, the availability and commitment, and/or inspection and testing of the equipment units to be owned or leased by the bidder, the performance of the bidder in its ongoing government

and private contracts, the good/product, after-sales and/or maintenance capabilities for the procurement of goods.

Based on the foregoing, the procuring entity must conduct such verification/inspection where the present installation is located, which may be outside of the Philippines, if the same is a requirement and condition of eligibility and the bidding for the contract, as specified in the bidding documents.

As regards the second issue, Section 23.11.1 (2) of the IRR-A provides 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 single similar contract is impracticable, the business or company of the prospective bidder need only be in existence for at least three (3) consecutive years prior to the advertisement and /or posting of the Invitation to Apply for Eligibility and to Bid.

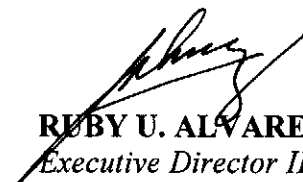
One of the factors that must be considered by the procuring entity under Section 23.11.1 (2) is the novelty of goods which make it impracticable to comply with the requirement on the largest single similar contract. The word "novel" means innovative, different, fresh, original, rare, uncommon, unconventional, or unusual.¹ Under the Intellectual Property Code,² the term "novelty" means that an "invention shall not be considered new if it forms part of a prior art."

If the brand of goods is new to the procuring entity, it does not necessarily make such goods novel. It could be the same type of goods required by the procuring entity but the same is being manufactured by another company, hence the difference in the brands.

Thus, a bidder is ineligible to join the bidding if he has not completed a contract similar to the contract to be bid and he is merely offering a new brand of equipment. The bidder must be able to show that the equipment is novel, unprecedented or unusual and compliance to the requirement on a largest similar contract is impracticable.

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

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

¹ Webster's Dictionary and Thesaurus (2002).

² Republic Act No. 8293 took effect on 01 January 1998.