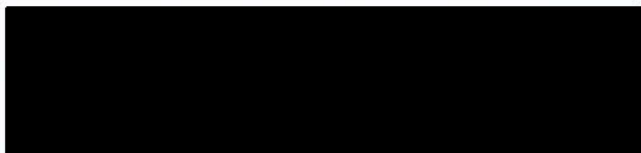


NPM No. 14-2015

25 May 2015



Re: Additional Technical Requirement

Dear [REDACTED]

This refers to your letter seeking clarification whether an additional experience requirement to form part of a prospective bidder's technical eligibility, violates Section 23 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, or any other provision thereof.

It is represented that ZCWD is in the process of procuring an infrastructure project for the Bulk Water Transmission Pipe Line Project, with an Approved Budget for the Contract (ABC) of Php 575,118,893.96. In the Terms of Reference of the same project, the end-user unit introduced an additional qualification for the bidder's technical eligibility, in order to ensure that ZCWD shall enter into contract with the best qualified and capable contractor, thus:

ZCWD Office requires the Contractor to have contracted a minimum of 50% of the total project. It is a requisite that the contractor must have experience laying at least 5km. of Ductile Iron Pipe size 500mm 0 and above. Certificate of acceptance complying the above statement must be submitted.

Scope of Work (for Services and Infrastructure Projects)

Please note that the Technical Specifications (for Procurement of Goods), Scope of Work (for Services and Infrastructure Projects) or Terms of Reference (for Consulting Services) is the document that provides the detailed description of the deliverables of the Supplier, Contractor or Consultant.¹

The Terms of Reference (TOR), as defined in the World Bank Consulting Services Manual, is a document which explains the objectives of the assignment, scope of work, activities, tasks to be performed, respective responsibilities of the Borrower and the consultant, expected results, and deliverables of the assignment. In the Asian Development Project Administration Instruction No. 2-01, the TOR is defined as a document describing the objectives, scope of work, detailed tasks, and reporting requirements for a specific consulting service assignment. Under our rules, TOR is required as part of the Philippine Bidding Documents for Consulting Services, specifically, Section VI thereof.

¹ Generic Procurement Manual (GPM), Volume 1.

It is clear from the foregoing that the TOR is required when the nature of procurement is consulting services. Considering that the procurement of Bulk Water Transmission Pipe Line Project falls under Infrastructure project, a TOR is not necessary for its procurement. What the rules require, however, is for the Bidding Documents to include the Scope of Work (SOW), which should provide a clear statement of the standards of workmanship, materials and performance of the goods and general services to be procured.²

Nonetheless, assuming the additional requirements are to be included in the SOW, it should not exclude other bidders who may desire to participate in the bidding, thereby defeating the concept of competition. One of the governing principles of RA 9184 is ensuring competitiveness among all contracting parties. Thus, requiring a particular standard pertinent only to a certain company or number of companies as yardstick, either for a product or a set of standards, will cater to the disadvantage of bidders whose experience, although not of the same degree, can actually comply with the procuring entity's desired output. In this regard, although the additional requirement as basis for developing the technical specifications for your agency's procurement of Bulk Water Transmission Pipe Line Project may be allowed, the SOW must be reasonable in defining the technical requirements and in determining compliance with the technical specifications.³

Additional Technical Eligibility

As a general rule, Procuring Entities (PEs) are proscribed from requiring additional eligibility requirements. This is because the list of minimum eligibility requirements under the IRR of RA 9184 have been streamlined such that only those eligibility requirements enumerated under the IRR of RA 9184 are necessary for the purpose of determining the bidders' eligibility.

The imposition of additional eligibility or technical documents is not sanctioned or recognized because it increases transaction cost and reduces competition. In this case, the additional requirement that the Contractor must have contracted a minimum of fifty percent (50%) of the total project and that it must have experienced laying at least 5km. of Ductile Iron Pipe size 500mm, is already covered by the Single Largest Completed Contract (SLCC) requirement.

For your guidance, Section 23.5.2.5 of the IRR lays down the rule on SLCC wherein two requirements must be met - (i) It must be similar to the contract to be bid; and (ii) It must be at least 50% of the approved budget for the contract to be bid. However, in case a contractor has no similar experience on the contract to be bid, and is registered with the PCAB under Small A or Small B category, it may be allowed to bid on contracts costing not more than 50% of its registration's Allowable Range of Contract Cost (ARCC). This rule provides opportunity for small contractors to participate and gain experience in government procurement without running the risk of having inexperienced contractors doing projects for the Government; and ensures that only those with sufficient capability are awarded the contract.⁴

On the other hand, it is entirely within the discretion of the PE whether to consider a project as being similar or not similar in nature and complexity to the project being bid out. 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 the subject matter of the project being procured. This requirement should not be interpreted strictly as to unreasonably limit competition and inequitably bar participation of capable suppliers, manufacturers, distributors, and service

² NPM No. 53-2012 dated 2 May 2012.

³ NPM No. 26-2004 dated 8 March 2004.

⁴ NPM No. 87-2012 dated 16 July 2012.

providers... similarity of contract should be interpreted liberally in the sense that it should not refer to an exact parallel but only to an analogous one of similar category.⁵

However, it should be stressed that the rationale for the SLCC requirement is to ensure that the procuring entity will deal with bidders that have adequate experience to fulfill its contractual obligations through a showing of at least one (1) contract that has been fulfilled, not just completely, but satisfactorily. It is in this wise that Section 23.5.2.4 of the IRR requires that the Constructors Performance Evaluation System (CPES) rating and/or certificate of completion and owner's acceptance of the contract must be satisfactory.


As such, while a certificate of completion may establish the completion of a contract for the purpose of considering it for the SLCC requirement, such contract must also be supported by a satisfactory CPES rating and/or owner's certificate of acceptance in order that the bidder may be considered fully compliant with the eligibility criteria under the IRR.⁶

Summary

All told, the procuring entity may stipulate its actual requirements in its TS/SOW/TOR, which must be reasonable and competitive. The SLCC criterion is required in order to ensure that the Government is contracting with an entity that has accomplished at least one project with a value equivalent to no less than 50%, and which is also similar to the contract to be bid. It must be noted that no additional technical eligibility requirement is necessary to ensure that ZCWD, and the government as a whole, is entering into contract with the best qualified and capable contractor, as this may already be covered by the bidders' SLCC.

We hope this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,
(sgd.)

 **DENNIS S. SANTIAGO**
Executive Director V

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⁵ NPM No. 123-2012 dated 8 October 2012.

⁶ NPM No. 14-2011 dated 20 September 2011.