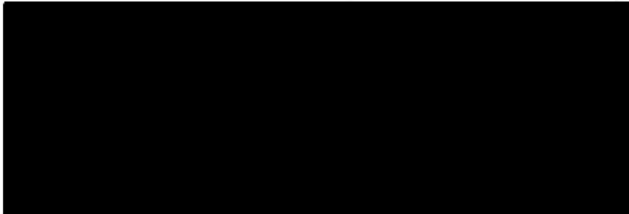


NPM No. 110-2015

23 November 2015



Re: Definition of “Similar” in Single Largest Completed Contract Similar to the Contract to be Bid (SLCC) and Prospective Bidder’s Attendance in the Pre-Bid Conference

Dear

This is in response to your letter seeking clarification on the following issues:

1. Whether the procuring entity can apply the definition of the word “similar” in SLCC requirement not on the goods to be procured but as to whom the goods were supplied to (*i.e. the procuring entity do not consider supply of computers to a private high school similar to a supply of computers to a college*); and
2. Whether the Procuring Entity (PE) can bar a prospective bidder who has not yet purchased the bidding documents from attending the pre-bid conference.

Single Largest Completed Contract (SLCC)

The SLCC is an eligibility requirement under Sections 23.1(a)(iv) par. 2 and 23.5.1.3¹ of the revised Implementing Rules and Regulation (IRR) of Republic Act No 9184 to prove that the bidder is technically capable to deliver the goods to be procured. This assures the Government that the bidder has sufficient experience and reliable track record or it is not the first time that the prospective bidder will be required to accomplish such an undertaking, and therefore, provides the Government a level of security that such bidder, if awarded the contract, will be able to satisfactorily fulfill the contract requirements.²

Section 23.5.1.3 of the IRR also states that the procuring entity may clarify in the bidding documents the definition or description of what it considers to be a project similar to the contract to be bid. As we have previously opined in several Non-Policy Matter (NPM) opinions³, 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 to be bid, but the same has to be clearly stated in the Bidding Documents. The

¹ The prospective bidder must have completed, within the period specified in the Invitation to Bid, a single contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the National Statistics Office (NSO) consumer price indices, must be at least fifty percent (50%) of the ABC. However, in the case of Expendable Supplies, said single contract must be at least twenty five percent (25%) of the ABC.

² NPM No. 020-2005 dated 17 March 2005

³ NPM 136-2014 dated 6 December 2014, NPM No. 042-2013 8 May 2013 citing NPM Nos. 123-2012 dated 8 October 2012, 001-2009 dated 9 October.

PE is given the discretion to further define the word "similar" in SLCC requirement because it is in the best position to do so as it knows the technical components needed in the contract to be bid. However, such discretion is not without limit.

The definition or description should not unreasonably limit competition and inequitably bar participation of capable suppliers. Hence, 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.⁴ The definition of the word "similar" does not mean that the SLCC must be exactly the same as the contract to be bid out. The word "similar" only refers to the contract to be bid or the object of the contract and does not include the parties to the contract. If the word "similar" will extend to the parties of the contract, the requirement will unreasonably limit competition and restrict participation of capable suppliers, which is not the intention of the law.

Pre-bid Conference

A pre-bid conference is only mandatory for contracts to be bid with an approved budget of One Million Pesos (P1,000,000.00) or more.⁵ Otherwise, the Bids and Awards Committee (BAC) has the discretion to conduct a pre-bid conference or not based on the needs and requirements of the PE and the nature of the project to be procured. On the other hand, the BAC cannot bar a prospective bidder who has not yet purchased the bidding documents from attending a mandatory pre-bid conference. Since the pre-bid conference shall discuss, among other things, the eligibility requirements and the technical and financial components of the contract to be bid, it is a good practice to allow prospective bidders who have not secured or purchased bidding documents to attend the conference. It will be noted, however, that Section 22.3 of the IRR states that the PE, at its option, may allow only those who have purchased the Bidding Documents to participate in the pre-bid conference and raise or submit written queries or clarifications, but the rules do not include the barring of attendance of prospective bidders who have not yet purchased the bidding documents in the pre-bid conference.

Summary

In sum, the PE has the discretion to define what constitutes "similar" for purposes of the SLCC. Notwithstanding this discretion, the definition or description should not unreasonably limit competition and inequitably bar participation of capable suppliers. In addition, the PE has the option to allow only those who have purchased the Bidding Documents to raise or submit written queries or clarifications during the pre-bid conference, but this does not include proscribing attendance of prospective bidders who have not yet purchased the Bidding Documents during the pre-bid conference.

We hope this opinion issued by 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 there be other concerns, please do not hesitate to contact us.

(sgd.)

DENNIS S. SANTIAGO
Executive Director V *may*

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⁴ NPM 54-2013 dated 26 June 2013.

⁵ Section 22.1 of the IRR.