

NPM No. 094-2016

15 November 2016

WILFREDO C. GLORIA

Department Manager

NATIONAL IRRIGATION ADMINISTRATION

MAGAT RIVER INTEGRATED IRRIGATION SYSTEM

NIA Bldg., Diliman,

Quezon City

Re: Submission of Special Power of Attorney

Dear Ms. Gloria:

This refers to your electronic mail (e-mail) inquiring whether the NIA Administrator may validly issue a Memorandum Circular which prohibits the use of a Special Power of Attorney (SPA) in the biddings of NIA Projects.

Your letter disclosed that the Administrator of the National Irrigation Administration (NIA) issued the questioned Memorandum Circular No. 52 prohibiting the use of Special Power of Attorney (SPA) in the Procurement of NIA Projects. It was also mentioned that the implementation of the Memorandum Circular is premised on NIA's observation that the use of SPA in biddings has become rampant and is being abused to advance the interest of some individuals, which affects the integrity of the procurement process.

Section 25.2 (iv)¹ of the Implementing Rules and Regulations (IRR) of R.A. No. 9184 requires the submission of Sworn Statement by the prospective bidder or its duly authorized representative stating among others, that the signatory is the duly authorized representative of the bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, with the duly notarized Secretary's Certificate attesting to such fact, if the Bidder is a corporation, partnership, cooperative, or joint venture. This requirement was echoed in Instructions to Bidders (ITB) Clause 12.1 (b) (iii) of the Philippine Bidding Documents.

¹ Section 25.3, 2016 revised IRR

25.3 The Omnibus Sworn Statement executed by the bidder, or its duly authorized representative, shall contain the following:

- (a) The signatory is the duly authorized representative of the prospective bidder, and granted full power and authority to do, execute and perform any and all acts necessary to participate, submit the bid, and to sign and execute the ensuing contract accompanied by the duly notarized Special Power of Attorney, Board/Partnership Resolution, or Secretary's Certificate, whichever is applicable;
- (b) It is not "blacklisted" or barred from bidding by the GoP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;
- (c) Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
- (d) It is authorizing the HoPE or his duly authorized representative/s to verify all the documents submitted;
- (e) It complies with the disclosure provision under Section 47 of the Act and this IRR, in relation to other provisions of R.A. 3019;
- (f) It complies with existing labor laws and standards;
- (g) It complies with the responsibilities of a prospective or eligible bidder provided in the PBDs;
- (h) It did not give or pay, directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity

The abovementioned provision of the IRR dictates that during the submission and opening of bids, the one who will participate therein must be equipped with a Secretary's Certificate stating that he/she is the duly authorized representative of the corporation and was granted full authority to perform all acts necessary to represent the bidder. This provision nonetheless, did not provide nor prohibit the submission of an SPA in lieu of the Secretary's Certificate to authorize the bidder's representative to transact with the procuring entity on his behalf.

A special power of attorney is necessary to enter into any contract or transaction by which the authority of a person and the limits of his authority in doing a particular act are specified. It also allows the principal to appoint a person or organization to handle his affairs while he is unavailable or unable to do so. As such any, transaction or contract entered into without an authority in writing is void.

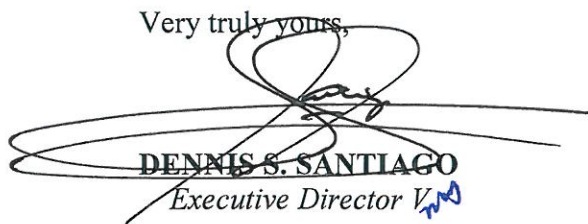
What the rules require is that there should be a document containing information on the authority of the signatory to the bid of a particular bidder in order to confirm the personality and authority of the person submitting the bid for a corporation, partnership or for himself. In this regard, the representatives of the bidder may submit an SPA to prove the delegated authority from his principal relative to the bidding or enter into transaction or contract with the procuring entity.

We held in an earlier opinion² that in the case of a sole proprietorship where the general manager or the sole proprietor himself submits the bid for the company, an affidavit stating that the fact of his representation in the company, and that he possesses the authority to represent and bind the same may be considered sufficient compliance to the subject requirement. On the other hand, if a person other than the general manager or sole proprietor submits a bid for or represents the company, a Special Power of Attorney delegating such authority to the person is sufficient. Failure to submit a document to this effect will merit a rating of "failed" for the subject requirement, and disqualifies the bidder.

As to the propriety of the issued Memorandum Circular No. 52, we note that this directive does not augur well with the provisions of RA 9184 specifically on the matter of competition and efficiency. In addition, such issuance limits the bidder's capacity to act, which could very well be addressed by the Law on Agency, particularly the use of the SPA. Nonetheless, Section 25.3 of the 2016 revised IRR of RA 9184 provides that the Omnibus Sworn Statement executed by the bidder, or its duly authorized representative, in case of sole proprietorship shall be accompanied by the duly notarized Special Power of Attorney.

We hope that 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 there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director *VMS*

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² NPM No. 095-2004 dated 8 July 2004.