

NPM No. 02-2007

12 January 2007

MR. ISRAEL G. ESTRELLA

Chairman, Bids and Awards Committee

PHILIPPINE CHARITY SWEEPSTAKES OFFICE

PCSO Complex, E. Rodriguez Sr. Avenue

Quezon City

Re: Eligibility Requirements for Joint Ventures

Dear Mr. Estrella:

This pertains to the above-captioned matter referred to the Technical Support Office (TSO) of the Government Procurement Policy Board (GPPB) through a letter dated 4 August 2006.

Based on the facts and circumstances stated, we deem it proper to rephrase the issues raised by your office to the following:

1. Whether every party to a joint venture must submit all the eligibility requirements enumerated under the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184).
2. How does one assess compliance with the 60% Filipino ownership requirement if the joint venture is unincorporated.
3. Whether the non-inclusion of the financial eligibility documents in the eligibility envelope but was otherwise included in the technical proposal envelope constitutes compliance with the eligibility requirement.

Required Eligibility Documents

A joint venture is defined as a partnership between two (2) or more persons, whether natural or juridical, to carry out a specific or single business enterprise for their mutual benefit, for which purpose they combine their funds, resources and services.

Under Section 23.6 (2) of the IRR-A, as amended by Memorandum Order No. 176 dated 27 June 2005, each member of the joint venture must submit the required eligibility documents.

Based on the deliberations of the Government Procurement Policy Board (GPPB), the required eligibility documents that must be submitted by each member of the joint venture refer to the legal documents under Class A. The government agency before entering into a

contract with a joint venture must be assured that all its members have the needed legal personality to do business in the Philippines. Hence, each member of the joint venture must submit all the legal documents under Section 23.6 (1) of the IRR-A.

On the other hand, the GPPB also recognizes that one of the primary reasons why bidders enter into joint ventures is that they can pool their resources in order that it may be considered technically and financially capable of undertaking a specific government project. Consequently, if only one member of the joint venture submits a technical or financial document (for instance, a computation showing its net financial contracting capacity) in behalf of the joint venture, then said submission shall be considered sufficient compliance.

In sum, the required eligibility documents to be submitted by each member of the joint venture under Section 23.6 (2) of the IRR-A refer to the legal documents under Section 23.6 (1). With respect to the technical and financial eligibility documents, submission of these documents by any member of the joint venture constitutes substantial compliance.

Percentage of Filipino Participation in Joint Venture

The 60% Filipino participation refers to capital ownership or the Filipino contribution in the pool of financial resources required to undertake a government project. In an unincorporated joint venture, determination of the required Filipino participation may be made by examining the terms and conditions of the joint venture agreement and other supporting financial documents submitted by the joint venture.

Non-Inclusion of Financial Eligibility Documents in the Eligibility Envelope

Under Section 23.2 of IRR-A, the Bids and Awards Committee (BAC) shall determine each of the prospective bidder's eligibility by examining the completeness of its eligibility requirements against a checklist using a "pass/fail" criteria. Consequently, if a bidder submits an eligibility document, it shall be rated as "passed". Otherwise, it shall be rated "failed". No discretion is allowed.

If a bidder erroneously includes a financial document in the envelope containing the technical proposal, when it should have been submitted as part of the eligibility requirements, the BAC has no choice but to consider the bidder as ineligible under the procedure outlined in Section 23.2 of the IRR-A.

This opinion is being rendered on the basis of the facts and particular circumstances as represented.

We hope to have clarified the matter.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III