



Department of Budget and Management  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**

**NPM No. 62-2012**

18 May 2012

**CAPT. NAPOLEON L. GARCIA**  
*Deputy Director General*  
*Chairman, Bids and Awards Committee*  
**CIVIL AVIATION AUTHORITY OF THE PHILIPPINES (CAAP)**  
CAAP Compound, MIA Road, Pasay City

**Re: Purchase and Use of Bidding Documents, Philippine Contractors Association Board (PCAB) License, and Joint Venture (JV) Agreement**

Dear Deputy Director General Garcia:

We write in reference to your letter dated 26 January 2012 requesting legal opinion on the following matters:

1. Can a prospective bidder buy Bidding Documents for a particular project even if it does not possess the required PCAB license?
2. Can a supposed JV partner, taking into consideration the contents of a Letter of Intent<sup>1</sup> (LOI) submitted by the other partner, use the Bidding Documents<sup>2</sup> purchased by the latter and participate in the bidding?
3. Is a JV Agreement necessary for the purpose of manifesting their intention to participate in the bidding of a particular project?

**Purchase of Bidding Documents without PCAB License**

Anent the first issue, it is worthy to note that Republic Act (RA) No. 9184 is governed by the principle of competitiveness which extends equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. In line with this principle, competitive bidding, being open to any interested party, does not prohibit prospective bidders from buying Bidding Documents for a particular project regardless of its qualifications.

The purchase of Bidding Documents is separate and distinct from the stage of eligibility screening of prospective bidders wherein the Bids and Awards Committee (BAC) shall determine the eligibility of bidders using the criteria stated in Section 23.5<sup>3</sup> of the revised Implementing Rules and Regulations (IRR) of RA 9184. At any rate, the purchase of the Bidding Documents by a prospective bidder cannot be an assurance that it will be participating in the public bidding.

<sup>1</sup> Clark North Axis filed with the BAC of the CAAP an LOI indicating its intention to participate in the project to be bid together with another company, Ferdstar Builders. See Annex A of the CAAP letter.

<sup>2</sup> Clark North Axis bought the required Bidding Documents but it was Ferdstar Builders alone who accomplished the Bidding Documents and submitted the eligibility requirements during the submission of bids.

<sup>3</sup> See Section 23.5.2.3, which states, "in accordance with RA 4566 entitled "An Act Creating the Philippine Licensing Board for Contractors, Prescribing its Powers, Duties and Functions, Providing Funds Therefor, and for Other Purposes", the persons/entities enumerated in Section 23.5.1.1 of this IRR may participate in public bidding if he has been issued a license by the PCAB to engage or act as a contractor.

In this regard, it is not necessary that prospective bidders possess the required qualifications at the time they bought the bidding documents, *e.g.*, PCAB license. It is, however, necessary that they prove their qualifications during the eligibility check through the submission of the required documents.

### **Use of Bidding Documents on the Basis of the LOI**

As regards the second issue, RA 9184 and its IRR are silent on the matter. It bears stressing, however, that the LOI is of no bearing in the determination whether one of the supposed JV partners or a different prospective bidder may use the Bidding Documents purchased by the other partner or another prospective bidder for that matter.

RA 9184 and its IRR do not expressly provide that the purchase of Bidding Documents shall vest solely on a particular buyer or prospective bidder the right to participate in the bidding process using the very set of Bidding Documents purchased.

Pursuant to Section 17.4 of the IRR, “[b]idders may be asked to pay for the Bidding Documents to recover the cost of its preparation and development. The BAC shall issue the Bidding Documents upon payment of the corresponding cost thereof to the collecting/disbursing officer of the procuring entity concerned.”

A perusal of the cited provision shows that it does not in any way restrict the use or the transfer of the right or privilege arising from the purchase of the Bidding Documents. What is necessary, however, is that the Bidding Documents used by the bidder in submitting its bid has been paid for in case the procuring entity charges for its Bidding Documents.

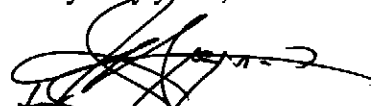
### **JV Agreement**

In reference to the last issue, a JV Agreement is not necessary for the purpose of manifesting the prospective bidders’ intention to participate in the bidding of a particular project. Section 23.1 (b) provides that a valid JV agreement, in cases the joint venture is already in existence, shall be required only for the purpose of determining the eligibility of bidders using the criteria stated in Section 23.5. In the absence of the JV Agreement, duly notarized statements from all the potential JV partners stating that they will enter into and abide by the provisions of the JV Agreement in the instance that the bid is successful shall be included in the bid.

From the foregoing, the submission of a JV Agreement is mandatory in the eligibility screening stage and not for the purpose of manifesting intention to participate in the bidding. In fact, when the JV is not yet in existence, the potential JV partners are merely required to submit the notarized statements, in lieu of the JV Agreement, as stated above.

We hope that our advice sufficiently addresses your concerns. Note that this opinion is being rendered on the basis of the facts and particular circumstances as presented. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*Executive Director III*