

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos. (02) 735-4962; (02) 736-5758

NPM No. 102-2004

July 28, 2004

MS. MARILOU C. BAJADO

Municipal Engineer
Chairman, Bids and Awards Committee (BAC)
Municipality of Balangiga
Province of Eastern Samar

**Re : Special Philippine Contractors' Accreditation Board (PCAB)
License requirement for Joint Ventures (JVs) in the procurement
of Infrastructure Projects**

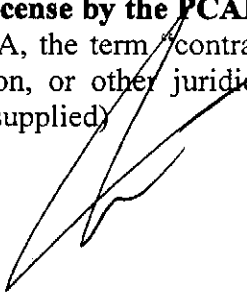
Dear Ms. Bajado:

This refers to your letter dated July 12, 2004, which we received on even date and to which we have already responded through telephone on July 27, 2004, seeking for guidance on whether or not a Special PCAB License is one of the eligibility requirements to be submitted by JV prospective bidders in the conduct of bidding for infrastructure projects.

Eligibility Requirements for Joint Venture

Entities forming themselves into a joint venture or consortium are also required to submit as part of their eligibility documents, a valid PCAB license for such joint venture or consortium. This can be deduced from Section 23.11.2 (2), which prescribes the eligibility criteria for the procurement of infrastructure projects, to wit:

In accordance with the principles of the Act on the conduct of an open competitive bidding, the persons/entities enumerated in item (1) of this Subsection may participate in a public bidding: *Provided, however, That he may only engage in the constructing business or individually act in the capacity of a contractor for the project involved if he has been issued a license by the PCAB to so engage or act.* For purposes of this IRR-A, the term "contractor" refers to any person, partnership, corporation, or other juridical entity duly licensed by the PCAB. (Emphasis supplied)



Consequently, the determination of eligibility of prospective bidders is based on the submission of Class "A" (legal, technical and financial documents) and Class "B" Documents as specified in Section 23.6 of the IRR-A of R.A. 9184, thus:

Eligibility Check for the Procurement of Goods and Infrastructure Projects

The determination of eligibility shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and using the criteria stated in Section 23.11 of this IRR-A:

1. Class "A" Documents -

Technical Documents

g) In the case of procurement of infrastructure projects, a valid Philippine Contractors Accreditation Board (PCAB) license and registration for the type and cost of the contract to be bid;

2. Class "B" Documents –

a) Valid joint venture agreement, in case of a joint venture;

Based on the aforementioned provision, it can be observed that although entities under a JV participating in a particular procurement as prospective bidders are required to submit a valid Joint Venture Agreement as part of its Class "B" eligibility documents, they are still required to submit as part of their Class "A" eligibility documents a valid PCAB license and registration for the type and cost of the contract to be bid. Thus, aside from their separate individual license and registration with the PCAB, contractors forming themselves into a JV must have obtained a license and registered with the PCAB as early as the time when they submit their eligibility documents, considering that such contractors shall be treated a single entity for such project under the name of the JV. This is also in consonance with Section 38 of Republic Act No. 4566, otherwise known as the "Contractors' License Law," which explicitly provides:

Joint Licenses. – It is unlawful for any two or more licensees, each of whom has been issued a license to engage separately in the capacity of a contractor, to jointly submit a bid or otherwise act in the capacity of a contractor without first having secured an additional license for acting in the capacity of such a joint venture or combination in accordance with the provisions of this Act as provided for an individual, partnership or corporation.

In view of the foregoing, entities forming themselves into a JV are required to submit a PCAB license to act in such capacity as part of their eligibility requirements, and failing to

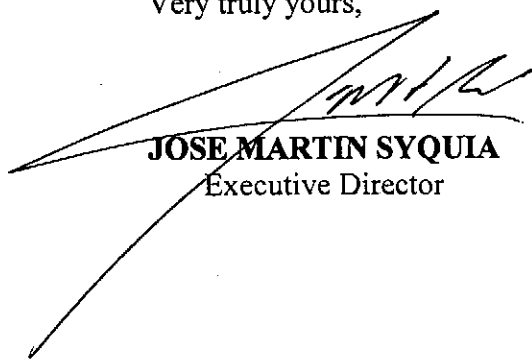
submit such license shall render the joint venture ineligible to participate in the bidding, and shall be rated as "failed" under the non-discretionary "pass/fail" criteria prescribed by the IRR-A of R.A. 9184.

On our inquiry, however, from the PCAB's office of the Construction Industry Authority of the Philippines (CIAP), we were informed that one of the legal documents required by PCAB for the application of a Special License for JVs is a copy of the "Invitation to Bid" or "Instruction to Bidders" or "Notice to Bidders" published or disseminated by the procuring agency. Moreover, the entire process for approving the said license applied for normally takes five (5) to seven (7) working days. As such, procuring agencies are advised to provide ample and considerable time for prospective bidders who wish to form a JV to secure the appropriate PCAB license and accomplish all their eligibility requirements before the deadline for the submission of the same.

In this connection further, we have conferred with and advised your office on the issues raised by B.M. Marketing & Construction in your conduct of bidding for the Balangiga Municipal Water Supply System Project during the aforesaid July 27 phone response. With the said advise and foregoing elucidations, we trust that our opinion has provided the Municipality of Balangiga BAC the needed information in arriving at a legal and sound decision for its conduct of bidding for the said project.

Please note that that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily applicable upon a different set of facts or circumstances

Very truly yours,



JOSE MARTIN SYQUIA
Executive Director

REGISTERED RECEIPT
MALACANANG POST OFFICE 316
Post Office MANILA
Letter/Package No. 11 23 3
Posted on 11 28 19
Preserve this receipt for reference in case of inquiry
Postmaster/Teller

Copy furnished:

MR. EDGAR A. TIU
Owner, B.M. Marketing & Construction