

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

*Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
Telefax Nos. (02) 900-6741 to 44*

NPM No. 012-2005

February 15, 2005

MR. ROMEO N. DYOCO, JR.
Chairman
Bids and Awards Committee
Clark Development Corporation
Office of the President

**Re : Disclosure of Relations in light of Section 47 of
the Implementing Rules and Regulations Part-A
(IRR-A) of Republic Act 9184 (R.A. 9184)**

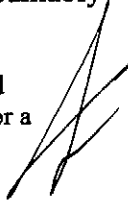
Dear Chairman Dyoco, Jr.:

This refers to your letter dated January 19, 2005 which we received on January 24, 2005 requesting for clarification on the provisions of the implementing Rules and Regulations Part-A (IRR-A) of Republic Act (R.A. 9184) with the following substantive issues for resolution:

- a) Whether or not the prohibition referred to in Section 47 of the IRR-A of R.A. 9184 with regard to disclosure of relations is applicable in the case at hand; and
- b) Whether or not the inhibition of the officer of the procuring entity from any part of the bidding process cures the prohibition abovementioned.

The Clark Development Corporation (CDC) is the parent corporation and owner of the Mimosa Leisure Resort and is on the process of bidding out a service contract for the operation and maintenance of golf carts. Incidentally, the President of the current service provider for the operation and maintenance of golf carts, and now presumably¹

¹ CDC letter merely indicates that the current service provider has been consistently servicing and maintaining the golf units of Mimosa Leisure Resort since October 2001 and is now requesting for a



bidding for a new contract, is the brother of one of the officers of the Mimosa Resort, more specifically, the manager for Golf Operations. Hence, this query is in relation to the prohibition specified in Section 47 of R.A. 9184 and its IRR-A.

Disclosure of Relations

Section 47 of the IRR-A of R.A. 9184 explicitly provides that:

xxx all bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the head of the procuring entity by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR-A. For this reason, relation to the head of the procuring entity within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity. On the part of the procuring entity, this provision **shall also apply to any of its officers or employees having direct access to information that may substantially affect the result of the bidding, such as, but not limited to, the members of the BAC, the members of the TWG, the BAC Secretariat, the members of the PMO, and the designers of the project.**²

The mandate of the law is to disqualify prospective bidders from participating in any public bidding where any relation, by affinity or consanguinity, will most likely affect the result of the bidding process. The prohibition in Section 47 of the IRR-A refers to any or both of the following situations:

- a) Bidder³ is related to the Head of the Procuring Entity by consanguinity or affinity, up to the third civil degree, and
- b) Bidder⁴ is related to any of the procuring entity's officer or employees having direct access to information that may substantially affect the result of the bidding.

The first situation implies that when the bidder is related to the head of the procuring entity, by consanguinity or affinity, up to third civil degree, the prohibition is

contract renewal. While contract renewal is not sanctioned by the present provisions of R.A. 9184, this office takes the statement to mean interest of the current service provider to participate in the bidding in the context of the issues being raised.

² Emphasis supplied

³ Refers to the bidder himself if he/she is an individual or a sole proprietorship; to all officers and members, in case of a partnership; to all officers, directors, and controlling stockholders in case of corporation; and all of the foregoing, as may be appropriate, in case of joint venture.

⁴ Ibid



absolute, i.e., the prohibition applies without need of proof of direct access by the head of the procuring entity of any substantial information relative to the bidding process.

On the contrary, the prohibition on the second situation is more extensive than the first. It applies to any officer or employee of the procuring entity, except that it is qualified by fact of direct access by these officers or employees to information that may substantially affect the result of the bidding.

At any rate, the prohibition in any of the cases mentioned is mandatory. The law requires that a prospective bidder submit as part of his documentary compliance an affidavit that he is not related to any of the persons referred to; otherwise, he falls in pain of disqualification pursuant to Section 30 of IRR-A.

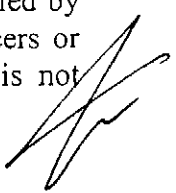
The implication of the requirement is to bar any bidder related to the head of the procuring entity or any of the procuring entity's officers or employees having direct access to any substantial information relative to the bidding from participating in the bidding process. The fact of relationship puts the bidder in a situation of a constricted choice of either misrepresenting such fact in pain of perjury or false representation or absolutely abandoning intentions of participating in the procurement activity. This condition of a related bidder practically renders him ineligible to bid.

Officer's inhibition does not address the bidder's dilemma

The predicament of a bidder under the circumstance mentioned above is not salvaged by the inhibition of his relative from participating in the procurement proceedings. We stress, the wisdom behind the provision is to avoid the imminent evil of the project being tailored to favor the interest of a pre-determined bidder or the danger of allowing room for collusion or influence peddling to advance the bid of a particular bidder. This evil or danger is not averted by the mere act by the officers or employees of inhibiting themselves from the procurement process.

Significantly, the inhibition of an officer or employee from the bidding process in view of paving way for the bid of a relative usually takes place after the opening of bids. By then, the participation of the officer or employee in the bidding process has commenced or his direct access to any information relative to the bidding process had already taken place. In this case, the presence of the evil or danger being avoided has preceded the remedy of inhibition; and the latter comes, virtually, as a futile measure.

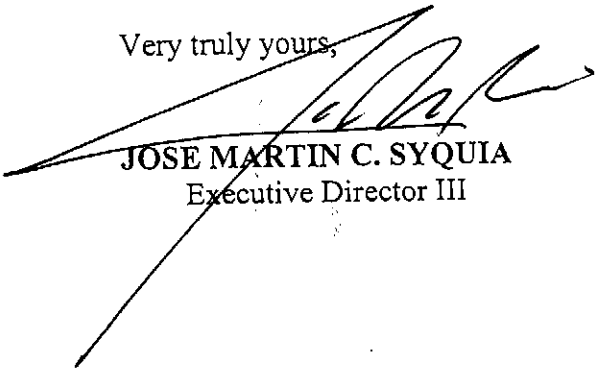
Moreover, the context of Section 47 of IRR-A is clear as to the legal import of relationship in the cases and conditions therein mentioned. The bidder is disqualified by mere fact of relationship. Thus, notwithstanding the inhibition made by the officers or employees, the cause-and-effect link between relationship and disqualification is not severed by the supposed corrective measure.



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

We trust that this clarifies matters.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jose Martin C. Syquia', is written over the typed name and title.

JOSE MARTIN C. SYQUIA
Executive Director III

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January 25, 2005

MR. ROMEO N. DYOCO JR.
Chairman
Bids and Awards Committee
Clark Development Corporation
Bldg. 2122 Elpidio Quirino St.,
Clark Special Economic Zone

Dear Mr. Dyoco:

This refers to your letter dated 19 January 2005, addressed to Executive Director Jose Martin C. Syquia, which we received on 24 January 2005, requesting clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, particularly on the provision on the disclosure of relations.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


ATTY. SALVADOR C. MALANA III
Head, Legal and Policy Group