

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. 159-2004

December 20, 2004

HON. WALDO Q. FLORES
Senior Deputy Executive Secretary
Chairman, Bids and Awards Committee
Office of the President
Malacanang

**Re : Waiver by BAC of the eligibility requirement prescribed
in Sec. 23.11.1.2 of IRR-A**

Dear Secretary Flores:

This refers to your letter dated 1 December 2004¹ requesting for opinion on whether the Bids and Awards (BAC) may waive the eligibility requirement as prescribed in Section 23.11.1.2 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184). The issue springs from the inability of the lone bidder to comply with the requirement on the value of its largest single contract and apparently unsettles the public bidding being conducted by the Office of the President-Bids and Awards Committee (OP-BAC).

The law requires that the value of the prospective bidder's largest contract, adjusted to current prices using the wholesale consumer price index, completed within the period specified in the Invitation to Apply for Eligibility and to Bid, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract (ABC) to be bid.² Interestingly, the lone bidder's largest single contract is below fifty percent (50%) of the ABC. In this context, the OP-BAC is seeking clarification on whether the aforementioned eligibility requirement may be waived taking into account the urgency of the procurement and the limited availability of the goods³ from the local market.

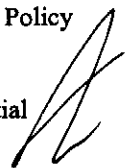
Eligibility requirements under RA 9184 are not subject to waiver

The eligibility requirements marked out in R.A. 9184 and its IRR-A are minimum standards imposed to limit public procurement only to those who are fit and capable to transact with the government. These are statutory prescriptions which purport to ensure that the government deals

¹ Addressed to the Hon. Secretary Emilia T. Boncodin (DBM) as Chairperson of the Government Procurement Policy Board and received by this office on December 9, 2004.

² See Section 23.11.1.2 of IRR-A

³ The procurement project involves the purchase of maintenance spare parts requirement for the F-28 Presidential Aircraft.



only with those who have the capability to execute and deliver according to the former's requirements and to keep safe its interests against undue prejudice by less-than-promising desirous contractors.

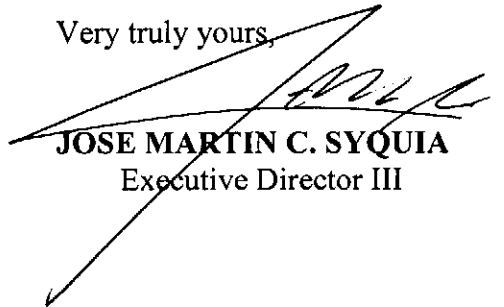
Such requirements are neither rights nor claims solely under the dominion and holding of any governmental entity which may be relinquished or dispensed with. They are ultimately tools for the protection and advancement of the interest of the public in general and, as such, are under public charge. As a matter of fact, having been embodied as a law, it becomes a command of sort and imposes a positive duty to all governmental entities which in the prosecution of their mandate may come around the ambit of the procurement law. Otherwise, waiver of the statutory criteria may only prove to negate the policy behind the legislation of our procurement law.

Waiver of the eligibility requirements can not stand against the clear provisions of law and the dictates of public policy. The provisions of R.A. 9184 are meant to be implemented according to its letters and consonant to its intentions. Not even considerations of convenience and urgency prove sufficient to supplant or defeat the requirements it sets.

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,



JOSE MARTIN C. SYQUIA
Executive Director III

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Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
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December 13, 2004

HON. WALDO Q. FLORES
Senior Deputy Executive Secretary
Chairman, Bids and Awards Committee
Office of the President

Dear Secretary Flores:

This refers to your letter dated 01 December 2004, addressed to the Honorable Secretary Emilia T. Boncodin in her capacity as Chairperson of the Government Procurement Policy Board (GPPB), which was forwarded to our office on 09 December 2004, seeking clarification on Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A), specifically whether or not the eligibility criteria provided under Section 23.11.1.2 of the IRR-A may be waived by the Bids and Awards Committee.

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 GPPB for appropriate resolution should referral thereto becomes necessary.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

Reg 13 (OP)
Office of the President
of the Philippines
Malacañang

December 1, 2004

Hon. EMILIA T. BONCODIN

Secretary, Department of Budget and Management/
Chairperson, Government Procurement Policy Board

Dear Secretary Boncodin:

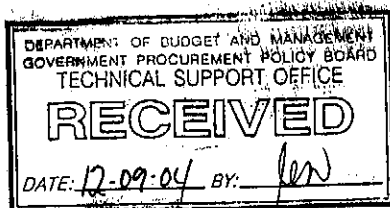
This is a request for an opinion or clarification relative to the extent of the authority of the Bids and Awards Committee (BAC) whether it can waive the eligibility criteria as prescribed in Section 23.11.1.2 of IRR-A of RA 9184 which reads:

"2. The value of the prospective bidder's largest single contract, adjusted to current prices using the wholesale consumer price index, completed within the period specified in the Invitation to Apply for Eligibility and to Bid, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid."

OP BAC conducted a public bidding for the procurement of the maintenance spare parts requirement for the F-28 Presidential aircraft. Only one prospective bidder, OPHIR Defense System Corp, submitted a bid. Upon evaluation of the eligibility criteria, it was found out that the value of OPHIR Defense System Corp.'s largest single contract is below fifty (50%) percent of the approved budget for the contract to be bid.

It is in this context that we are requesting for your opinion or clarification whether or not OP BAC can waive the eligibility criteria as prescribed in Section 23.11.1.2 of IRR-A of RA 9184 taking into account the urgency of the procurement and the goods sought to be procured are not easily available from the local market.

We will highly appreciate it if we can be clarified on this matter.



Very truly yours,

WALDO Q. FLORES

Sr. Deputy Executive Secretary/
OP BAC Chairman

Department of Budget and Management
In following-up, pls. cite # 2004-002332R



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