

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. 17-2005

March 01, 2005

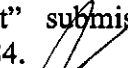
MS. LORNA O. FAJARDO, CESO III
OIC Chief Operating Officer/Chairperson,
BAC Infra
Philippine Health Insurance Corporation
City State Centre Building, 709 Shaw Boulevard,
Brgy. Oranbo, Pasig City

Re : Application of Republic Act 9184 (R.A. 9184)
and its Implementing Rules and Regulations
(IRR-A)

Dear Ms. Fajardo:

This refers to your letter dated February 8, 2005 requesting clarification on Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A). Apparently, in one of your bidding activities, a motion for reconsideration from one bidder has been received concerning your decision to declare him "ineligible" based on failure to have two eligibility documents notarized despite clear instructions to submit sworn statements. Hence, clarification is sought on the following issue:

Whether or not failure to have a document entitled "sworn statement" notarized is classified under "patently insufficient" submission, as provided for under Section 24.12 of IRR-A of R.A. 9184.



Submission of Eligibility Requirements; Eligibility Check Non-Discretionary

Section 24.7.1 of the IRR-A provides that the determination of eligibility of prospective bidders shall be based on the submission of the documents classified therein as Class "A"¹ and Class "B". Among the legal documents required to be submitted is a statement of the prospective bidder that it is not blacklisted or barred from bidding by the Government or any of its agencies, offices, corporations or LGUs, including non-inclusion in the Consolidated Blacklisting Report issued by the Government Procurement and Policy Board (GPPB). Also required as technical document is a statement that such bidder has the technical competence, experience and staff experience. On this regard, the procuring entity can require that such statements be under oath, i.e., the documents are notarized.

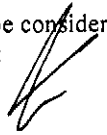
The IRR-A provides that the determination of eligibility shall be through an examination of the completeness of each consultant's eligibility requirements or statements against a checklist of requirements using a non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid and the Instruction to Bidders, and shall be determined as either "eligible" or ineligible." If a consultant submits the specific eligibility document required, he shall be rated "passed" for that particular requirement; or in the event of an incomplete or patently insufficient submission, shall be considered failed for the particular eligibility requirement concerned. If a consultant is rated "failed" in any of the eligibility requirements, he shall be considered ineligible to participate in a bidding, and the BAC shall mark the set of eligibility documents of the consultant concerned as "ineligible."²

Prescinding from the foregoing, failure of the prospective bidder to submit the two eligibility documents notarized despite clear instructions from the procuring entity for its submission is tantamount to an incomplete and/or insufficient submission and shall be considered failed for the particular eligibility requirement. Accordingly he shall be determined as ineligible.

The bidder's subsequent and belated submission of the required documents will not cure the defect in view of the pass/fail criteria used in determining the eligibility of bidders. Consideration of the documents practically allows an exercise of discretion among the BAC members and amounts to a modification of bid, contrary to the express prohibition under R.A. 9184. The submission of the required documents at the time of the motion for reconsideration does not in any way constitute compliance of the requirement.

¹ Legal, Technical and Financial Documents

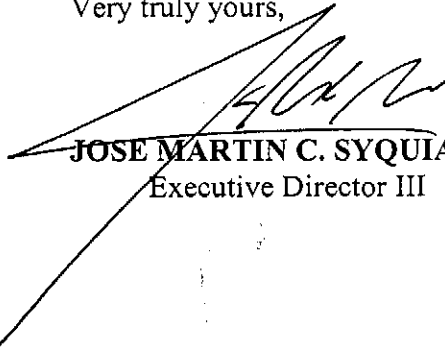
² Section 26.1 of IRR-A, Bid modifications received after the applicable deadline shall not be considered and shall be retrieved to the bidder unopened. The situation of the bidder in the procurement



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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REGISTRY RECEIPT

Post Office	INTL. SERVICE CENTER	021553
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Postage		20
Preserve this receipt for reference in case of inquiry		
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Telefax Nos. (02) 900-6741 to 44

for call

February 10, 2005

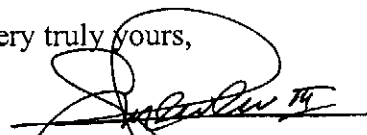
MS. LORNA O. FAJARDO, CESO III
OIC Chief Operating Officer
Chairperson, Bids and Awards Committee
Philippine Health Insurance Corporation
City State Centre Building, 709 Shaw Blvd.,
Bgy. Oranbo, Pasig City

Dear Ms. Fajardo:

With reference to your letter dated 08 February 2005, addressed to Executive Director Jose Martin C. Syquia, requesting clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, we are acknowledging receipt of the original copy of the said request on 10 February 2005.

We wish to inform you that after initial review and consideration of the query raised in your letter, we have determined that the answer thereto is clearly expressed and established in applicable laws, rules, regulations, and other issuances, and therefore do not necessitate further construction. In this regard, in order to extend immediate assistance, we shall communicate with your office at the earliest possible opportunity to advise you on the appropriate law, rule, regulation, or issuance that may be referred to for the resolution of your query.

Very truly yours,



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