

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. 018-2005

March 08, 2005

MR. GERRY D. VILLALOBOS
Department Manager
General Services Department
Land Bank of the Philippines
Land Bank Plaza, 1598 M.H. del Pilar cor.
Dr.J. Quintos Streets, Malate, Manila

Re : Eligibility Documents of Joint Ventures

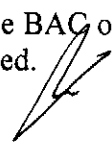
Dear Mr. Villalobos:

This refers to your letter dated 8 February 2005, requesting for clarification on the implementation of Section 23.6 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184), specifically on the following issues:

- 1) Whose Class "A" Documents (Legal, Technical and Financial) shall be submitted by the Joint Venture – that of the entities comprising the Joint Venture or the Joint Venture itself?
- 2) How will the deficiency of one participant affect the eligibility of the Joint Venture?
- 3) Whose financial statements shall be used as basis in computing the Net Financial Contracting Capacity?

Eligibility Requirements for Joint Ventures (JVs)

Section 23 of R.A. 9184 provides that the eligibility of prospective bidders shall be determined based on the bidder's compliance with the eligibility requirements enumerated under the IRR-A. IRR-A classifies these documentary requirements into Class "A" and Class "B" documents. The Class "A" documents consist of Legal, Technical and Financial requirements while Class "B" documents refer to the valid joint venture agreement, in case of a joint venture, and a letter authorizing the BAC or its duly authorized representative/s to verify any or all of the documents submitted.



This immediate query for our disposal raises concern as to which entity should submit the legal, technical and financial documents required – the entities comprising the joint venture or the joint venture itself.

We first consider the wisdom behind the requirement to submit legal, technical and financial documents. Legal documents are intended to establish not only the legal personality of the prospective bidder but also his legal qualification to conduct business. The technical and financial documents are meant to ensure that the government, for its convenience, deals only with business entities that are technically and financially capable of fulfilling the government's requirements.

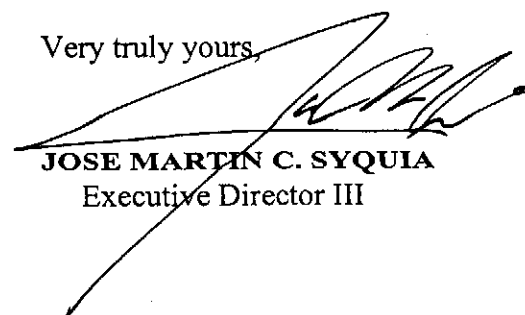
We consider next the reason underlying the creation of joint ventures. Business enterprises, big and small, without losing separate identities or personalities, cooperate and share resources as their solution to the increasing challenge of tighter competition. Business entities combine their efforts, property, money, skill and knowledge pursuant to an agreement that there shall be a community of interest among them as to the purpose of the undertaking. Thus, business entities which are unable, technically and financially, to carry out a business undertaking on its own virtually finds refuge and rescue in other better disposed business entities.

On account of the foregoing, the entities comprising the joint venture should be able to individually prove to the satisfaction of the government that it has the personality to engage in business undertakings. For this reason, the requirement for submission of legal documents should mean the individual submission of all the entities comprising the joint venture. On the other hand, because usually joint ventures have become a remedy to augment the capability of smaller enterprises to participate in competition and to eventually perform the contract, the submission of technical and financial documentary requirements by any of the entities constitute compliance.

Thus, the extent of the effect of the deficiency by one of the comprising entities to a joint venture depends on whether the deficiency refers to the legal, technical and financial requirements. In the same manner, the determination as to whose financial statement shall be used for purposes of the joint venture's Net Financial Contracting Capacity lies on the parties constituting the joint venture. This proceeds from the rule that submission by any of the parties to a joint venture shall be sufficient satisfaction of the requirements.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

REGISTRY RECEIPT

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February 9, 2005

MR. GERRY D. VILLALOBOS

Department Manager
General Services Department
Land Bank of the Philippines
Landbank Plaza, 1598 M.H. del Pilar cor.,
Dr. J. Quintos Streets, Malate, Manila

Dear Mr. Villalobos:

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 said request on 09 February 2005.

We wish to inform you that we shall communicate to your office any necessary clarification that may arise from the initial study and consideration of your queries. Should it be determined that the answers to the queries raised in your letter are either clearly expressed and established in applicable laws, rules, regulations, and other issuance or for which no further construction is necessary for their resolution, this office shall immediately advise you on the appropriate law, rule, regulation, or issuance that may be referred to.

However, in case the queries may not be categorically dealt with by any of the afore-mentioned issuances and for which administrative interpretation proves necessary for their resolution, this office shall either issue a written opinion therefor 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