

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. 039-2004

March 29, 2004

MR. JONAH Y. SUACILLO
Chairperson, BAC
Municipality of Compostela
Province of Cebu

Re : Clarification on the Eligibility Criterion for the Procurement of Infrastructure Projects Provided Under Section 23.11.2 (3) of the Implementing Rules and Regulations Part A of Republic Act 9184

Dear Mr. Suacillo:

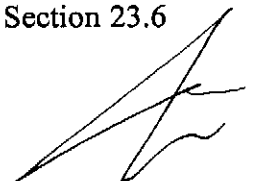
This refers to your letter dated February 6, 2004, which was referred to our office by Director Carmen S. Fernan of the Department of Budget and Management – Region VII through a letter dated March 2, 2004, requesting for clarification on the eligibility criterion for the procurement of infrastructure projects provided under Section 23.11.2 (3) of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act 9184 ("R.A. 9184").

This clarification is being requested in connection with the procurement of infrastructure project for the Completion of Compostela Gym Phase III – Construction of Bleachers at the facade of your municipality. The concern raised by San Narciso Builders, one of the prospective bidders in the said project, revolves around Section 23.11.2 (3) of the IRR-A of R.A. 9184 regarding the eligibility criterion on largest single completed contract. We have determined the following issue to be resolved:

Whether or not, for purposes of eligibility under Section 23.11.2 (3) of IRR-A of R.A. 9184, the requirements for a Philippine Contractors Accreditation Board ("PCAB") license and a similar experience on the contract to be bid should both be complied with.

Requirement for a PCAB License

The restrictions provided by PCAB on the maximum allowable amount of contract cost per contractor category should be observed. Although this is not expressly provided in the IRR-A, a contractor can bid only on government infrastructure projects which are within its PCAB registration's allowable range of contract cost as can be inferred from Section 23.6



(g) of the IRR-A which requires the submission of a PCAB license and registration for the type and cost of the contract to be bid, to wit:

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;

X X X X

In this regard, regardless of the experience of a contractor, it can only bid for projects in the amount allowed by his PCAB license. Without a valid PCAB license and registration for the type and cost of the contract to be bid, a prospective bidder cannot be declared as eligible even if it was able to show proof that it has a largest single completed contract at least equal to the amount of and similar to the contract to be bid.

Requirement for Similar Experience on the Contract to be Bid

For purposes of complying with the eligibility criterion provided under Section 23.11.2 (3) of the IRR-A of R.A. 9184, a bidder's largest single completed contract must satisfy these requirements: (a) It must be similar to the contract to be bid; and (b) It must be at least fifty percent (50%) of the approved budget for the contract to be bid.

However, in case a contractor has no similar experience on the contract to be bid, and is registered with the PCAB under Small A or Small B category, it may be allowed to bid on contracts costing not more than fifty percent (50%) of its registration's allowable range of contract cost. Moreover, in case such contractor enters into a joint venture or acts as a sub-contractor, its interest will be limited to a maximum of fifty percent (50%) of its allowable range of contract cost. This rule provides opportunity for small contractors to participate and gain experience in government procurements without running the risk of having inexperienced contractors doing projects for the Government; and ensures that only those with sufficient capability are awarded the contract.

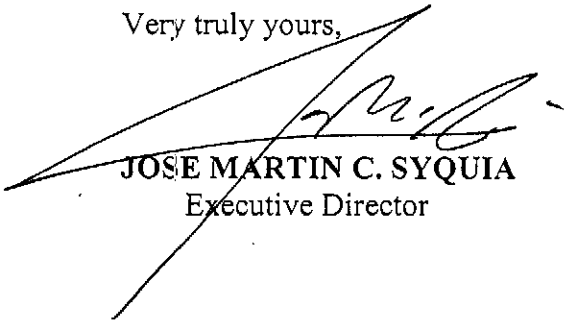
In sum, it can be readily construed from Section 23.11.2 (3) that contractors without similar experience to the project to be bid, if registered in the PCAB under Small A and Small B categories, are allowed to bid on contracts not costing more than fifty percent (50%) of their allowable range in their registration. This exemption does not apply to experienced contractors even if they are registered either under Small A or Small B category as long as the value of their largest single completed contract similar to the contract to be bid is at least fifty percent (50%) of the approved budget thereof.

In view of the foregoing, it is not enough for San Narciso Builders to show that it has the capacity to undertake the completion of Compostela Gym – Phase III costing Php3,294,950.00 by satisfying the eligibility criterion on largest single completed contract. The project must also be within the allowable range of the contract cost of its PCAB registration to be eligible to bid in such project. Hence, considering that its PCAB registration is only under the Small B category, it can bid only on government infrastructure projects costing up to Three Million Pesos (Php3,000,000.00).

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 a horizontal line. The signature is stylized and slanted upwards to the right.

JOSE MARTIN C. SYQUIA
Executive Director

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