

NPM No. 41-2009

06 August 2009

JOSEPH S. JESALVA
Coordinator
CBCP-LAIKO ADVOCACY ON GOOD GOVERNANCE
Laiko Bldg., 372 Cabildo Street
Intramuros, Manila

Re: BAC Membership; Single Largest Contract

Dear Sir:

This refers to your letter seeking clarification on certain questions raised by your office's designated observer to the Bids and Awards Committee (BAC) of the Pag-ibig Fund, to wit:

1. Whether or not provisional members of the BAC should be included in the determination of the latter's total number of membership;
2. Whether or not votes of provisional members should be included/considered in the existence of a quorum, and in the selection/determination of the winning bidder, and
3. Whether or not the required bidder's largest single completed contract may be complied with by the collective contracts of the members of the consortium.

The BAC and its Composition

At the outset, we wish to note that Republic Act No. 9184 (RA 9184) mandates that membership in the BAC must not be less than five (5) and not more than seven (7) members. This provision is mandatory, as quoted hereunder for your guidance:

SEC. 11. The BAC and its Composition. – Each procuring entity shall establish a single BAC for its procurement. The BAC shall have at least five (5) members, but not more than seven (7) members. xxx
(Emphasis ours.)

As to your first query, we refer you to Section 11.2 of the Implementing Rules and Regulations Part A of RA 9184, viz:

SEC. 11.2 BAC Composition

11.2.1 National Government agencies, departments, bureaus, offices, or instrumentalities of the Government, including the judiciary and legislative branches, constitutional commissions, SUCs, GOCCs, and GFIs.

Regular Members:

1. *Chairman, who is at least a third ranking permanent official of the procuring entity;*

2. An officer, who is at least a fifth ranking permanent official, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the legal or administrative area of the procuring entity, provided that in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel;

3. An officer, who is at least a fifth ranking permanent official, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the finance area of the procuring entity, provided that in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel;

Provisional Members:

1. An officer who has technical expertise relevant to the procurement at hand, and, to the extent possible, has knowledge, experience and/or expertise in procurement; and

2. A representative from the end user unit who has knowledge of procurement laws and procedures.

The members of the BAC, including the chairman and the Vice-Chairman, shall be designated by the head of the procuring entity. Moreover, the Vice-Chairman shall be a regular member of the BAC. For purposes of this IRR-A, the term "permanent" shall refer to a plantilla position within the procuring entity concerned.

It is clear from the aforecited provision that membership in the BAC consists of both regular and provisional members. And while the law provides that BAC membership can be increased to a maximum of seven (7) members, the minimum requirement of three (3) regular members and two (2) provisional members must still be observed.

As to your second query, we answer in the affirmative. Provisional members, which form part of the BAC's composition, are to be included in the determination of the existence of a quorum, and they likewise have the right to participate and vote on matters leading to the determination/selection of the winning bidder. Pertinent hereto are the following provisions of the IRR-A of RA 9184:

SEC. 12.3 Quorum

A majority of the total BAC composition as designated by the head of the procuring entity shall constitute a quorum for the transaction of business, provided that the presence of the Chairman or Vice-Chairman shall be required.

SEC. 12.4 Meetings

The Chairman, or, in his absence, the Vice-Chairman, shall preside at all meetings of the BAC. The decision of at least a majority of those present at a meeting at which there is quorum shall be valid and binding as an act of the BAC; Provided, however, That the Chairman or, in his absence, the Vice-Chairman, shall vote only in case of a tie. Observers and representatives of BAC members shall have no right to vote during BAC meetings, nor shall the representatives of BAC members be authorized to sign in behalf of the members represented. (Emphasis ours.)

In this regard, we would like to emphasize that provisional members of the BAC are true members of the BAC, in the same manner that the regular members are. For purposes of determining their functions, responsibilities, and accountabilities, as well as their entitlement to benefits as BAC members, no distinction is made.

Bidder's Largest Single Completed Contract

With respect to your third query, we answer in the negative. Pertinent is Section 23.11.2.(3) of the IRR-A of RA 9184, viz:

3. The value of the prospective bidder's largest single completed contract, adjusted to current prices using the National Statistics Office consumer price indices available at the G-EPS website, 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 xxx.

The above criterion is provided in order to ensure that the Government procuring entity is contracting with an entity that has accomplished at least one project with a value no less than fifty percent (50%) of the contract to be bid. This gives the procuring agency the assurance that it is not the first time that the prospective bidders will be required to accomplish such an undertaking, and, thus, provides said agency a level of security that such bidder, if awarded the contract, will be able to fulfill the contract requirements.

Thus, interpreting the above-quoted eligibility criterion to mean that parties to a consortium, just like in a joint venture, may add each of their largest single contract for purposes of complying with the requirement under Section 23.11.1.2 will undeniably defeat the purpose for which such provision has been included in the rules. It is in the same vein that the years of experience of each party to a joint venture cannot be added to comply with the minimum required experience of a firm set by the procuring entity.

In view of the foregoing, we hold that, in case of a consortium, just like in a joint venture, it is mandatory that at least one member company in the said consortium must be able to comply with the minimum value requirement with respect to its largest single completed contract for purposes of determining its eligibility. Hence, it is not enough compliance to simply consider the total or aggregate amount of the completed contract of all the members therein.

We trust that this sufficiently addresses your concern. Should you have any additional questions, please do not hesitate to contact us.

Very truly yours,

Ruby U. Alvarez
RUBY U. ALVAREZ
Executive Director III

From: sangguniang laiko ng pilipinas (laiko_phils@yahoo.com.ph)
To: ruac5288@yahoo.com
Date: Wednesday, July 22, 2009 2:08:56 PM
Subject: follow up

Ruby U. Alvarez
Technical Support Office
Government Procurement Policy Board
Unit 2506, Raffles Corp. Center
Ortigas Center, Pasig City
Philippines
Dear Director Alvarez,

Ruby,
NPM No. 91-2009
was issued today in response
to the attached query of
Mr. Jesalva: FYI.
You assigned this to Cezar before.
Eunice,
Let's prioritize pls.
Update me once issued
RJ 7/31/09
RJ
7/31/09

We would like to follow up our letter dated February 15, 2009 address to you asking for clarification to the questions of our volunteer observer to the Bids and Awards Committee of the Pag Ibig Fund.

We hope that your good office can find time answering those queries.

Thank you.

Joseph S. Jesalva
Coordinator
CBCP- Laiko Advocacy on Good Governance

How can I tell if my jewelry is real silver?
Find Out on Yahoo! Answers

*Can you file... response to this for my...
cc: Ennis*



Bishops' Conference of the Philippines
Ecological Commission on the Laity (ECLA)

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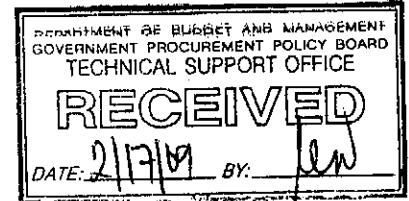


"To Restore All Things in Christ"

February 15, 2009

5273124

Ms. RUBY ALVAREZ
Executive Director
Govt. Procurement Policy board



Dear Director Alvarez:

Greetings!

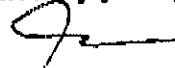
We would like to relay to you for clarification the questions of our volunteer observer, Mr. Gabriel Braganza, to the Bids and Awards Committee of the PAG-IBIG- Fund, namely:

- 1) The membership of their BAC has seven (7) regular members and one (1) provisional member. This makes total membership of BAC to be eight (8) and in Sec. 11.2.3 of RA 9184 it was mentioned that only plantilla positions can be members of BAC and the members should be at least five (5) but not more than seven(7). Question is do we include or exclude the provisional member when we count the members of the BAC? In determining the quorum, do we include the provisional members also his/her vote in the selection of the winning bidder?
- 2) Under Sec.23.11.2 Eligibility Criteria "the value of the prospective bidders' largest single contract adjusted to the current prices using wholesale consumer price index, completed within the period specified in the invitation to Apply for Eligibility and to Bid, and similar to be bid, must be at least fifty percent (50 %) of the approved budget for the contract to be bid.

Since the IISP of Pag-Ibig Fund has an ABC of P450 million, the two bidders who were found to be eligible up to the point of opening their technical documents were consortiums of several companies which addressed several areas of IISP requirement. On a per company basis they could not meet the bidders' largest single contract requirement but of the consortium members' largest single contracts are added together then they can meet the requirement of Sec.22.11.2. Should this be acceptable and if do who should issue the approval of such a deviation - the GPPB? By formal communication?

Thank you for your kind attention and prompt reply.

Sincerely yours,


JOSEPH S. JESALVA
Coordinator
CBCP - LAIKO Advocacy on Good Governance

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National Director, LAIKO
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