

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 063-2004

May 6, 2004

MR. CESAR M. SERENILLA
Chairman, Technical Working Group
Provincial Awards Committee
Province of Nueva Vizcaya

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Re : Provision of the IRR-A of R.A. 9184 on Disclosure of Relations

Dear Mr. Serenilla:

This refers to your letter dated April 30, 2004, which we received on even date, requesting for clarification on the implementation of Section 47 of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act 9184 ("R.A. 9184") which prohibits the participation of any bidder in bidding projects where such bidder is related by consanguinity or affinity up to the third civil degree to the head of the procuring entity or any of its officers or employees having direct access to information that may substantially affect the result of the bidding.

This clarification is being sought in light of the contention of FHM Enterprises, a prospective bidder in one of your procurement projects, that it cannot be disqualified under Section 47 of the IRR-A of R.A. 9184 on the ground that its business has been in operation even before the Governor assumed his position. Moreover, as mentioned in your letter, a prior case involving similar facts has been decided by the Office of the Ombudsman to the effect that FHM Enterprises is allowed to participate in procurement projects despite the fact that its owner is related to the Governor within the third civil degree of consanguinity. It is on the strength of such decision by the Office of the Ombudsman that FHM Enterprises bases its contention that it cannot be disqualified from participating in the procurement projects of your. The issue now is as follows:

Whether or not Section 47 of the IRR-A of R.A. 9184 does not apply in case the prospective bidder has been in operation prior to the assumption of office in the procuring entity of a relative by consanguinity or affinity within the third civil degree.

Disqualification Under Section 47 of the IRR-A of R.A. 9184 Absolute

Section 47 of the IRR-A of R.A. 9184 provides that in accordance with Section 21 of the said IRR-A, all bids shall be accompanied by a sworn affidavit of the bidder stating the fact of any civil relation up to the third degree either by consanguinity or affinity. Moreover, it provides that should the bidder, or any of its officers, members, directors, or controlling stockholders, is related to the head of the procuring entity within the third civil degree of consanguinity or affinity, such bidder shall be automatically disqualified from participating in the procurement projects of the procuring entity. Section 47 of the IRR-A of R.A. 9184 particularly provides, as follows:

In addition to the proposed contents of the Invitation to Apply for Eligibility and to Bid as mentioned under Section 21 of this IRR-A, all bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the head of the procuring entity by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR-A. For this reason, **relation to the head of the procuring entity within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity.** On the part of the procuring entity, this provision shall also apply to any of its officers or employees having direct access to information that may substantially affect the result of the bidding, such as, but not limited to, the members of the BAC, the members of the TWG, the BAC Secretariat, the members of the PMO, and the designers of the project. On the part of the bidder, this provision shall apply to the following persons:

- a) If the bidder is an individual or a sole proprietorship, to the bidder himself;
- b) If the bidder is a partnership, to all its officers and members;
- c) If the bidder is a corporation, to all its officers, directors, and controlling stockholders; and
- d) If the bidder is a joint venture, the provisions of items (a), (b), or (c) of this Section shall correspondingly apply to each of the members of the said joint venture, as may be appropriate. (Emphasis supplied)

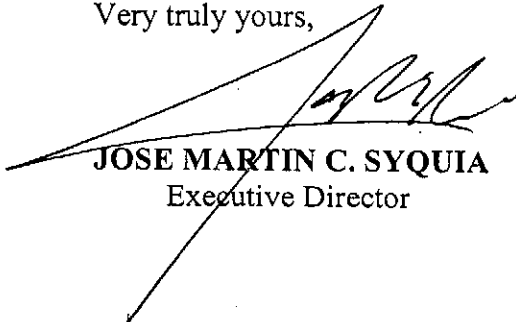
As can be gleaned from the above-quoted provision, the disqualification of a bidder who is related to the head of the procuring entity or any officer or employee of the procuring entity who has direct access to any information that may substantially affect the result of the bidding is without any exception or condition. It has been a long standing rule in statutory construction that when the law is clear and categorical, the first and fundamental duty is to apply the law according to its express terms; interpretation being called for only when such literal application is impossible. In this light, a bidder should be automatically disqualified in the event such relation as provided in Section 47 of the IRR-A of R.A. 9184 is determined to be existing.

In view of the foregoing, since the owner of FHM Enterprises is the sister of the Governor who is the head of the procuring entity, a relationship by consanguinity undeniably

within the third civil degree, such bidder is disqualified from participating in any bidding project of the province, notwithstanding the fact that FHM Enterprises has been in operation prior to the time the said Governor assumed his office.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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