

NPM No. 66-2009



MR. AMADOR M. MONTEIRO

Chairman

Bids and Awards Committee

SOCIAL SECURITY SYSTEM

East Avenue, Diliman

Quezon City

Re : Requirements of Joint Venture Partners

Dear Mr. Monterio:

This has reference to your letter dated 26 October 2009 requesting for policy guidance on the applicable provisions of Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations (IRR) to bidders participating through joint venture agreements (JVAs) in the procurement of goods under public bidding. Specifically, you are inquiring on the extent of participation, ownership, and interest of each of the Filipino partners in the joint venture.

Eligibility Requirements

For purposes of determining the eligibility of a valid joint venture for the procurement of goods, Section 23.1 (b) of the IRR of R.A. 9184 requires the submission of the following Class "B" Document/s:

Valid joint venture agreement (JVA), in case the joint venture is already in existence. In the absence of a JVA, duly notarized statements from all potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for forfeiture of the bid security. **Each partner of the joint venture shall submit the legal eligibility documents. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance.** (Emphasis supplied.)

Thus, in addition to the JVA or notarized statements as described above, each partner or prospective partner to the JV, local or otherwise, must submit its Class "A" legal documents, *i.e.*, registration certificate from the Securities and Exchange Commission, Department of Trade and Industry for sole proprietorship or

Cooperative Development Authority for cooperatives, or any proof of such registration as stated in the bidding documents, and, its mayor's permit issued by the city or municipality from its principal place of business.¹ In case the JV partner is a foreign bidder, the foregoing may be substituted by the appropriate equivalent documents, if any, issued by the country of the foreign bidder concerned. A translation of the documents in English certified by the appropriate embassy or consulate in the Philippines must accompany the eligibility requirements under Class "A" and "B" documents if they are in other foreign language.² Correspondingly, submission by any one of the partners or prospective partners of its Class "A" technical and financial documents shall be sufficient for the purpose.

Eligibility Criteria

As a general rule, the nationality requirement of a JV shall be governed by Section 23.5.1.1 (e), to wit:

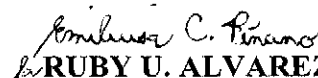
Persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided however, That **Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%)**. For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA. (Emphasis supplied)

Hence, for purposes of eligibility to participate in the bidding for the procurement of goods, Filipino ownership in the JV must at least be equivalent to sixty percent (60%). Corrollarily, therefore, it can be said that regardless of the extent of participation of each of the Filipino partners to a JV, the paramount consideration is for said JV to be at least 60% Filipino-owned, provided, that, each of the partners complies with the required eligibility documents

Finally, it bears stressing that the participating entities entering into a JVA, are to be treated as a single bidder and, will be held jointly and severally responsible or liable for the obligations of said JV.

We trust this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

¹ Section 23.1 (a) of the IRR of RA 9184.

² Section 23.2.



TECHNICAL SUPPORT OFFICE

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Pasig City, Philippines 1605

27 November 2009

AMADOR M. MONTERO

Chairman, SSS Bids and Awards Committee

SOCIAL SECURITY SERVICE (SSS) SYSTEM

East Avenue, Diliman

Quezon City, Philippines

Re: Provisions on Joint Venture

Dear Mr. Montero:

We respond to your letter dated and received on October 26, 2009 requesting our opinion on the applicable provisions on the participation of Joint Venture in procurement activities of the SSS involving goods under the revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (RA 9184).

Specifically, your office wants to know the ^{Number} specific requirements of a valid Joint Venture Agreement (JVA) and whether or not RA 9184 and its revised IRR requires the specification of the extent of participation, ownership and interest of each Filipino partner ~~(assuming there is more than one (1) Filipino partner)~~ in the JV.

The following are some of the provisions governing Joint Ventures under the IRR of RA 9184 that you requested.

In case prospective bidders form a Joint Venture, Filipino ownership or interest of the joint venture concerned, as a general rule, shall be at least sixty percent (60%), in case of procurement of goods. *(Section 23.5.1.1 e)*

Each member of the Joint Venture shall submit the Legal Documents under the eligibility requirements. This is to ensure that all the parties in the Joint Venture have the requisite legal personality to conduct business. *(Section 23.1)*

The Government also recognizes the need to encourage small and medium businesses which are unable, either technically or financially, to carry out a business undertaking on its own, to solicit the assistance of capable or bigger businesses through a Joint Venture, thus, it is sufficient that the Technical Documents and the Financial Documents under the eligibility requirements should be complied with by at least one of the members of the Joint Venture for purposes of determination of its eligibility.

The JV is also required to submit a valid Joint Venture Agreement (JVA), in case the joint venture is already in existence. In the absence of a JVA, duly notarized

statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security. Each partner of the joint venture shall submit the legal eligibility documents. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance.
(Section 23.1 b)

However within ten (10) calendar days from receipt by the bidder from the BAC that the bidder has the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be, notwithstanding the issuance of the Notice of Award, the JV shall submit the valid JVA. *(Section 37.1.4)*

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

*Atty. Hyacinth
Pls. draft reply*

924-7369

Republic of the Philippines
SOCIAL SECURITY

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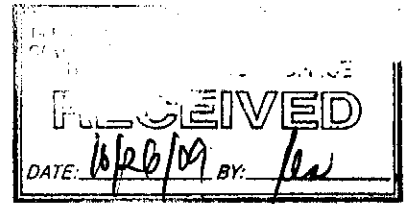
E-mail: sssemail@info.com.ph • Web site <http://www.sss.gov.ph>

*Tr. by Emmie,
10/28/09 Pls. handle. Sign
in my behalf.
10/26/09*



26 October 2009

The Government Procurement Policy Board
Unit 2506, Raffles Corporate Center, F. Ortigas Jr. Road
Ortigas Center, Pasig City
Telefax: (632) 900-6741 to 44



Dear **Secretary Rolando G. Andaya, Jr.:**

This is to respectfully request for an opinion on the applicable provisions of Republic Act (RA) No. 9184 and its implementing rules and regulation (IRR) on the participation of a Joint Venture in one of the procurement activities of the Social Security System involving goods.

We want to know the specific requirements of a valid Joint Venture Agreement (JVA) and whether or not RA No. 9184 and its IRR requires the specification of the extent of participation, ownership and interest of each Filipino partners (assuming there is more than one Filipino partner) in the JV.

Part of the information relayed by phone by Atty. Hyacinth Fontillas of GPPB's Legal unit concerns the minimum requirement of Filipino ownership or interest in the JV by at least sixty percent (60%).

We hope to receive your usual prompt attention on this request.

Very truly yours,

CMA
AMADOR M. MONTEIRO
Chairman, SSS Bids and Awards Committee