

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
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NPM No. 074-2004

May 24, 2004

HON. DOMINGO A. REYES JR.
Assistant Secretary for Finance & Comptrollership
Chairman, Bids and Awards Committee
Department of Transportation and Communications
5/F The Columbia Tower, Brgy. Wack-Wack,
Ortigas Avenue, Mandaluyong

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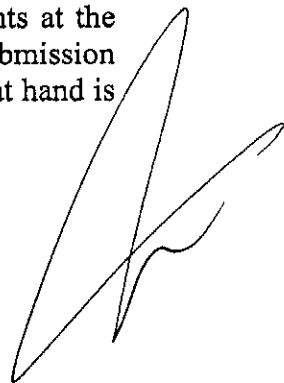
Re : Submission of Proof of Renewal of Mayor's Permit In Lieu of Mayor's Permit

Dear Asec. Reyes:

This refers to your letter dated April 19, 2004, which we received on May 12, 2004, requesting for clarification on the implementation of the provisions of Republic Act 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A), specifically, on the requirement for the submission of a mayor's permit. This concern is being raised in connection with the bidding for security services of the Department of Transportation and Communications ("DOTC").

During the eligibility check for said bidding, one of the bidders, particularly, Prime Security and Protective Agency ("Prime"), failed to submit its mayor's permit. Instead, it submitted proofs of renewal of its mayor's permit, such as the following: (a) an official receipt issued by the Treasurer of Quezon City; (b) a certification from the Office of the City Planning and Development; and (c) a recommendation for renewal of mayor's permit addressed to the Chief, Business Permits and Licensing Office. In this regard, the DOTC Bids and Awards Committee ("BAC") declared said bidder ineligible for its failure to comply with the eligibility requirements.

In its motion for reconsideration dated March 26, 2004, Prime explained that it was able to acquire its new mayor's permit only after it submitted its bidding documents at the DOTC on March 22, 2004. It should be noted, however, that the last day for the submission of bidding documents was on March 23, 2004 at 9:30 a.m. In this regard, the issue at hand is as follows:



Whether or not submission of documents proving the renewal of a bidder's mayor's permit may be considered sufficient to satisfy compliance with the eligibility requirements.

Submission of Mayor's Permit Mandatory; Eligibility Check Non-Discretionary

Section 23.6 of the IRR-A of R.A. 9184 provides that the determination of eligibility of prospective bidders shall be based on the submission of the documents enumerated therein, among which, is a valid and current mayor's permit/municipal license. Moreover, Section 23.2 of the said IRR-A provides that the determination of eligibility shall be through an examination of the completeness of each prospective bidder's eligibility requirements or statements against a checklist of requirements using a non-discretionary "pass/fail" criteria. In using the non-discretionary "pass/fail" criteria, the BAC merely checks for the presence or absence of the required documents. A prospective bidder is declared to be "eligible" for a particular requirement if such document is present, complete, and patently sufficient; otherwise, the absence, incompleteness, or patent insufficiency of a requirement will result to a prospective bidder's ineligibility to bid.

In this regard, the submission of documents other than the mayor's permit itself cannot be considered as sufficient compliance with the requirement, regardless of the fact that such documents tend to prove that a mayor's permit has been applied for. Consideration of the documents submitted in lieu of the mayor's permit will lead to an exercise of discretion among the BAC members – an action which the IRR-A of R.A. 9184 expressly prohibits during eligibility check. The subsequent receipt by Prime of its mayor's permit on the same day it has submitted its bidding documents should not be considered as a reason for considering its submission as sufficient compliance with the eligibility requirements.

Modification and Withdrawal of Bids Allowed

Section 26.1 of the IRR-A of R.A. 9184 provides bidders to modify its bid prior to the deadline for the submission and receipt of bids. Section 26.1 specifically provides, to wit:

A bidder may modify its bid, provided that this is done before the deadline for the submission and receipt of bids. Where a bidder modifies its bid, it shall not be allowed to retrieve its original bid, but shall only be allowed to send another bid equally sealed, properly identified, linked to its original bid and marked as a "modification," thereof, and stamped "received" by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened.

The above-quoted provision clearly allows a prospective bidder from modifying its bid submitted prior to the deadline for submission and receipt of bids. In this light, Prime cannot seek refuge from the delayed release of its mayor's permit. According to Prime, it received its mayor's permit on the same day it has submitted its bidding documents or on March 22, 2004. However, the last day for the submission and receipt of bids was scheduled on March 23, 2004 at 9:30 a.m. In this case, Prime was not denied the opportunity to include its new mayor's permit in its bidding documents by modifying the documents it earlier submitted.

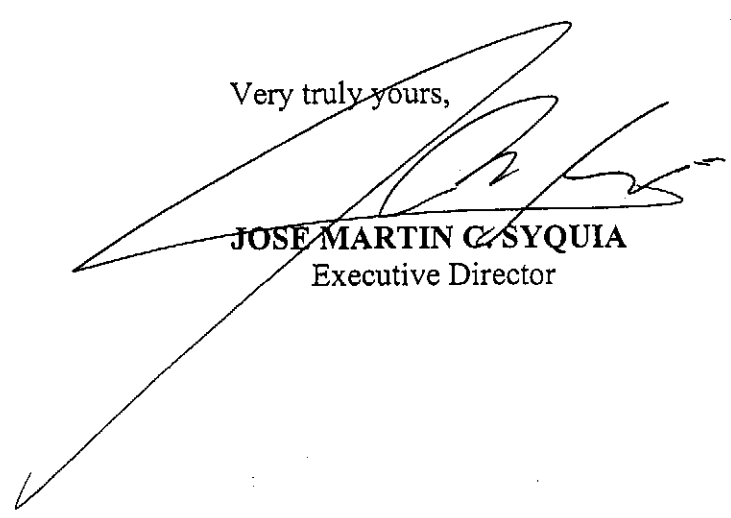
We are cognizant of the fact that a mayor's permit in the process of renewal does not deny a company authority from exercising its business, however, harsh as it may be, the law calls for the submission of a mayor's permit as a requirement for eligibility, not mere proofs of its renewal.

In view of the foregoing, we are of the opinion that the submission of documents proving the renewal of a mayor's permit cannot be considered compliance with the requirement for the submission of a mayor's permit; and, therefore, the declaration by the DOTC BAC of Prime's ineligibility was proper and in accordance with the provisions of R.A. 9184 and its IRR-A.

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 large, stylized handwritten signature in black ink, written over the typed name and title.

JOSE MARTIN C. SYQUIA
Executive Director