

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. 076-2004

Atty. ROGELIO C. YAUN
Chairman, Bids and Awards Committee
Mactan Cebu International Airport
Authority
Lapu-Lapu City

May 25, 2004
POSTAL RECEIPT
REGISTERED 641
Post Office MALACANANG POST OFFICE
Letter/Package No. MANILA
Posted on PHILIPPINE
Preserve this receipt for reference in case of inquiry
NO. JUN 2 2004
Postmaster/Teller

Re : **Amount of Bid Security and
Venture under the IRR-A of R.A. 9184**

Dear Atty. Yaun:

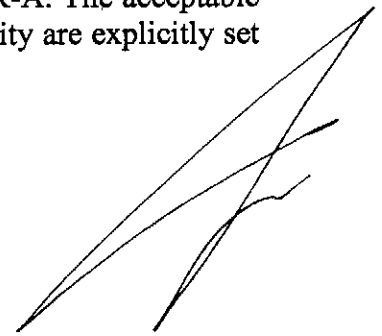
This refers to your letter dated May 11, 2004, which was forwarded to our office by Secretary Emilia T. Boncodin, Chairperson of the Government Procurement Policy Board (GPPB) on May 18, 2004, requesting for opinion on these issues:

Whether or not a procuring entity may prescribe a higher amount for the Bid Security to be furnished by bidders, over and above the percentage of the approved budget for the contract (ABC) set by Section 27.2 of the Implementing Rules and Regulations Part A ("IRR-A"); and

Whether or not entities forming themselves into a joint venture need a separate license from the Philippine Contractors Accreditation Board ("PCAB") to be eligible to participate as a bidder.

Amount of Bid Security under the IRR-A of R.A. 9184

Similar to the old procurement laws, rules and regulations, the IRR-A of R.A. 9184 also requires the bidders to accompany their bids with a Bid Security, payable to the procuring entity concerned. This serves as a guarantee that the successful bidder shall enter into contract with said procuring entity within ten (10) calendar days or less, as indicated in the Instructions to Bidders, from receipt of the Notice of Award and to furnish the performance security provided for in Section 39 of R.A. 9184 and its IRR-A. The acceptable forms of instruments that may be furnished by the bidders as a Bid Security are explicitly set forth in Section 27.2 of the IRR-A of R.A. 9184, to wit:



The Bid Security shall be in an amount at least equal to, and not lower than, a percentage of the approved budget for the contract to be bid, as advertised by the concerned procuring entity, in any of the following forms:

- a) Cash, certified check, cashier's check/manager's check, bank draft/guarantee confirmed by a reputable local bank or in the case of a foreign bidder, bonded by a foreign bank;
- b) Irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the same shall be confirmed or authenticated by a reputable local bank;
- c) Surety bond callable upon demand issued by a reputable surety or insurance company;
- d) Any combination thereof; or
- e) Foreign government guarantee as provided in an executive, bilateral or multilateral agreement, as may be required by the head of the procuring entity concerned.

Correspondingly, the IRR-A of R.A. 9184 prescribes the required amount of the above forms of security, which is based on a percentage of the ABC and in accordance with the following schedule:

Form of Security	Minimum Amount in % of Approved Budget for the Contract to be Bid
1. Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit	One percent (1%)
2. Bank guarantee	One and a half percent (1 ½%)
3. Surety bond	Two and a half percent (2 ½%)
4. Foreign government guarantee	One hundred percent (100%)

Based on the foregoing, it can be readily observed that the IRR-A of R.A 9184 only prescribes the minimum amount for Bid Security that a bidder should furnish with their bid. Thus, procuring entities may require a higher amount of Bid Security from its bidders, over and above the percentage of the approved budget for the contract (ABC) prescribed by Section 27.2 of the IRR-A of R.A. 9184. In other words, procuring entities have the discretion to specify in its bidding documents the form, amount and validity period of the Bid Security as long as such satisfies the minimum requirements of the law.

Accordingly, we find no irregularity in requiring the bidders for projects of the Mactan Cebu International Airport Authority ("MCIAA") to accompany their bids with a Bid Security either in the form of Cash, Certified Check, Cashier's Check, Manager's Check,

Based on the aforementioned provision, it can be observed that although entities under a joint venture participating in a particular procurement as prospective bidders are required to submit a valid joint venture agreement as part of its Class "B" eligibility documents, they are still required to submit as part of their Class "A" eligibility documents a valid PCAB license and registration for the type and cost of the contract to be bid. Thus, aside from their separate individual license and registration with the PCAB, contractors forming themselves into a joint venture must have obtained a license and registered with the PCAB as early as the time when it submits its eligibility documents, considering that such contractors shall be treated a single entity for such project under the name of the joint venture. This is also in consonance with Section 38 of Republic Act No. 4566, otherwise known as the "Contractors' License Law", which explicitly provides:

Joint Licenses. – It is unlawful for any two or more licensees, each of whom has been issued a license to engage separately in the capacity of a contractor, to jointly submit a bid or otherwise act in the capacity of a contractor without first having secured an additional license for acting in the capacity of such a joint venture or combination in accordance with the provisions of this Act as provided for an individual, partnership or corporation.

In view of the foregoing, entities forming themselves into a joint venture are required to submit a valid PCAB license to act in such capacity as part of their eligibility requirements. Failure to submit such license shall render the joint venture ineligible to participate in the bidding, and shall be rated as "failed" under the non-discretionary "pass/fail" criteria prescribed by the IRR-A of R.A. 9184.

With the foregoing elucidations, we trust that our opinion has provided the MCIAA with the needed information relative to its concerns on Bid Security and eligibility of contractors forming themselves as a joint venture.

Please note that that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily applicable upon a different set of facts or circumstances

Very truly yours,



JOSE MARTIN SYQUIA
Executive Director