

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 087-2004

June 18, 2004

Mr. VESMINDO M. SANTIAGO
Chairman, Bids and Awards Committee
Metropolitan Cebu Water District
M.C. Briones, P. Burgos St., Cebu City

**Re : Matching Privilege of Provincial Bidders under Section 45 of the
Implementing Rules and Regulations Part A of Republic Act
No. 9184**

Dear Mr. Santiago:

This refers to your letter dated June 9, 2004, which we received on June 11, 2004, requesting for guidance on this issue:

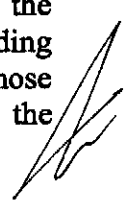
Whether or not the matching privilege of provincial bidders under Section 45 of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act no. 9184 ("R.A. 9184") is applicable to procurement of infrastructure projects regardless of source of funds.

This issue arose in connection with the public bidding being conducted by Metropolitan Cebu Water District ("MCWD") for the upliftment and rehabilitation of its existing office building.

Matching Privilege of Provincial Bidders

Based on the principle of valid classification, the crafters of R.A. 9184 introduced an innovative provision in the law which grants some degree of preference, if not advantage, to provincial based bidders, Section 45 thereof provides:

SEC. 45. Provincial Bidders. – Within five (5) years from the effectivity of this Act, a contractor who participates in the bidding of provincial priority programs and infrastructure projects, whose principal office is within the same province, and who submits the



lowest bid among the provincial bidders which is higher than the lowest bid made by a contractor with principal office outside the said province shall be granted the privilege to match the bid made by the latter: *Provided, however,* That the release of funds for said projects shall be published in a local newspaper with the widest circulation and the website of the DBM, the mechanisms of which shall be spelled-out in the IRR.

However, the foregoing provision, which is further amplified by Section 45.1 of the IRR-A of R.A. 9184 is limited in application. It must be noted that Section 45 of R.A. 9184 is qualified by Section 44 of R.A. 9184 and its IRR-A, to wit:

Section 44. Bidding of Provincial Projects

Priority programs and infrastructure projects funded out of the annual GAA [General Appropriations Act] which are intended for implementation within the province shall be subject to the same public bidding and to the procurement processes prescribed in this IRR-A. For purposes of this Section, Engineering District infrastructure projects and priority programs fully funded by the Government and identified in consultation with the concerned members of Congress, shall constitute "provincial projects" and shall be governed by this Section and Section 45 of this IRR-A.

Considering that the term "provincial projects" is specially defined by law, it follows that the matching privilege for provincial bidders provided under Article XIII of R.A. 9184 and its IRR-A on bidding of provincial projects exclusively applies only to those priority programs and infrastructure projects that are located in engineering districts, funded out of the annual GAA, and are identified in consultation with the concerned members of Congress. Thus, the matching privilege or preference to provincial bidders accorded by law cannot be invoked in all types of government projects located within a province.

While it is true that Section 4 of R.A. 9184 provides that said law shall govern all types of government procurement regardless of source of funds, this general provision is subject to the special provisions of R.A. 9184 and its IRR-A. Evidently, Sections 44-45 are special provisions of the law that has specific application on bidding provincial projects, whereas Section 4 of R.A. 9184 is the proviso providing for the general application of the law. The two must not be confused or interchanged.

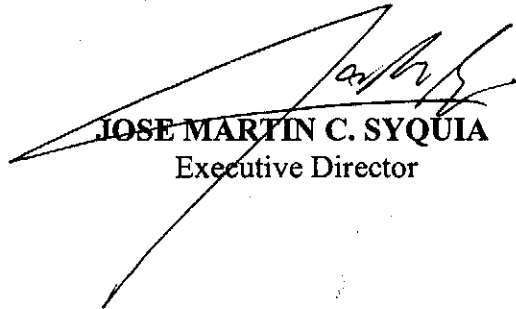
In view of the foregoing, we are of the opinion that the matching privilege of provincial bidders stated in Sections 44-45 of R.A. 9184 and its IRR-A finds no application in the MCWD's conduct of public bidding for the rehabilitation of its office building. Apparently, said project is not a "provincial project" as specially defined under Section 44 of the IRR-A of R.A. 9184.

With the foregoing elucidations, we hope that the concerns of your agency were sufficiently addressed. Please note that 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,



JOSE MARTIN C. SYQUIA
Executive Director

/rhb/npm/mc wd/06.18

REGISTRY RECEIPT

Post Office **1812**
REGISTERED
Letter Package **MANILA**
Postage on **11.11.19**
Preserve this receipt for reference in case of inquiry

JUN 25 2004
Postmaster/Teller

RESPONSE SHEET FOR PHONE OPINIONS

PhO No. _____

Date Received: 06.11.04 Date Called: 06.15.04

Requesting Entity: Metropolitan Cebu Water District

Contact Person / Number: Mr. Vesmino Santiago (032) 412-1836 ; (032) 256-3339

Issue(s) / Request(s): Application of Section 45 (Right to match of provincial bidders)

Response: Sec. 44 identifies the types of infrastructure projects which to which the of provincial bidders to match the lowest bid made by an outsider may be applied.

(Section 45 applies)

This section mentions provides that ^(to) only those projects and priority programs fully funded by the ~~Govern~~ Gov't & identified in consultation with the concerned members of Congress.

Remarks: Written response requested.

Assigned to: Dennis