

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 98-2004

July 23, 2004

MR. EDGAR A. TIU

Owner
BM Marketing & Construction
116 Salazar St., Tacloban City

Re : Eligibility Requirements for Joint Venture under the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184)

Dear Mr. Tiu:

This refers to your letter dated July 15, 2004, which we received on July 16, 2004 seeking for guidance on the conditions that a Joint Venture Agreement (JVA) should contain in order to be considered as a valid Class "B" Document under Section 23.6 (2) of the IRR-A of R.A. 9184.

Nature of Joint Venture (JV) and JVA

In the case of *Kilosbayan, Inc. et. al. vs. Guingona et. al. (232 SCRA 110, May 5, 1994)* joint venture was defined as "an association of persons or companies jointly undertaking some commercial enterprise; generally all contribute assets and share risks. It requires a community of interest in the performance of the subject matter, a right to direct and govern the policy connected therewith, and duty, which may be altered by agreement to share both in the profit and losses."

Based on the above-quoted definition, it can be logically inferred that the concept of JVs under Philippine law is one, which is established for some transient or temporary business objective. It is often characterized as being similar to a partnership in the sense that there exists among the parties to the joint venture, commonality of interest and mutual right of control, not to mention the mode by which profits or losses are shared. It is usually resorted to by corporations both domestic and foreign, which are not allowed to form partnerships or become partners in a partnership.

Received by 
MELINDA E. ARANDA 7/23/04

Requirement of a Valid JVA for purposes of Eligibility Check

For purposes of conducting eligibility on the prospective bidders for the procurement of goods and infrastructure projects, Section 23.6 (2) of the IRR-A of R.A. 9184 requires the prospective bidders to submit the following Class "B" Documents:

- a) **Valid joint venture agreement, in case of a joint venture;** and
- b) Letter authorizing the BAC or its duly authorized representative/s to verify any or all of the documents submitted for the eligibility check.

As regards the requirement of a "valid joint venture agreement" for JV bidders, the IRR-A of R.A. 9184 does not prescribe a standard form nor does it spell out the specific terms and conditions that should be included in such agreement to be valid. However, for purposes of eligibility check, all JVAs are required to be notarized in order to be considered valid as prescribed in the aforementioned section. Further, it is advised that the JVAs should specifically state the name of the person who is appointed as the lawful attorney-in-fact of the JV to sign the contract, if awarded, and the member who is the lead representative of the concerned JV.

Eligibility Requirements for JVs

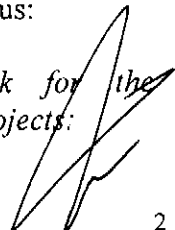
Aside from the foregoing, it is also relevant to discuss the eligibility requirements for JVs. Hence, we are citing the following:

1. Entities forming themselves into a joint venture or consortium are also required to submit as part of their eligibility documents, a valid PCAB license for such joint venture or consortium. This can be deduced from Section 23.11.2 (2), which prescribes the eligibility criteria for the procurement of infrastructure projects, to wit:

In accordance with the principles of the Act on the conduct of an open competitive bidding, the persons/entities enumerated in item (1) of this Subsection may participate in a public bidding: *Provided, however, That he may only engage in the constructing business or individually act in the capacity of a contractor for the project involved if he has been issued a license by the PCAB to so engage or act.* For purposes of this IRR-A, the term "contractor" refers to any person, partnership, corporation, or other juridical entity duly licensed by the PCAB. (Emphasis supplied)

2. Consequently, the determination of eligibility of prospective bidders is based on the submission of Class "A" (legal, technical and financial documents) and Class "B" Documents as specified in Section 23.6 of the IRR-A of R.A. 9184, thus:

Eligibility Check for the Procurement of Goods and Infrastructure Projects:



The determination of eligibility shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and using the criteria stated in Section 23.11 of this IRR-A:

1. Class "A" Documents -

*** *** ***
Technical Documents

- *** *** ***
g) In the case of procurement of infrastructure projects, a valid Philippine Contractors Accreditation Board (PCAB) license and registration for the type and cost of the contract to be bid;

2. Class "B" Documents –

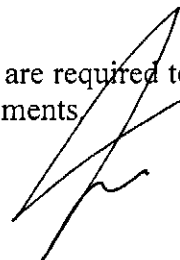
- a) Valid joint venture agreement, in case of a joint venture;

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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 they submit their 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.

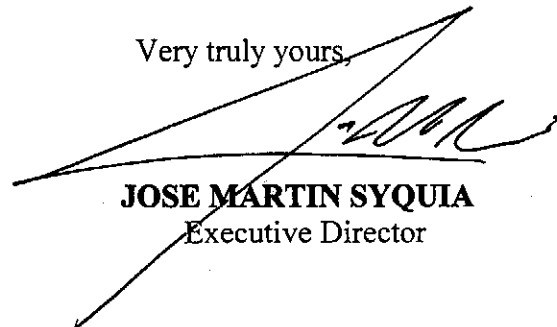
In view of the foregoing, entities forming themselves into a JV are required to submit a PCAB license to act in such capacity as part of their eligibility requirements.



With the foregoing elucidations, we trust that our opinion has provided BM Marketing & Construction with the needed information relative to its concerns on the requirements of a valid JVA and consequently, the eligibility requirements of prospective bidders forming themselves into a JV for procurement of infrastructure projects.

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,

A handwritten signature in black ink, appearing to read 'JMS', is written over a horizontal line. The signature is slanted upwards to the right.

JOSE MARTIN SYQUIA
Executive Director