

NPM No. 009-2016

21 March 2016


[REDACTED]

Re : PCAB License for Joint Ventures (JVs)

Dear [REDACTED]:

This refers to your letter dated 18 January 2016, requesting our opinion relative to the requirement of a PCAB license for Joint Venture (JV) bidders and the stage at which it has to be submitted per the requirements embodied in Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

It is represented that the Zamboanga City Water District (ZCWD) is requiring bidders for infrastructure projects, participating as JVs, to submit a special PCAB license, apart from the individual PCAB licenses of the JV members, and the Joint Venture Agreement (JVA) during the bid opening. However, it is your interpretation that the submission of the valid PCAB license shall only be submitted within the prescribed period after the bidder has been declared to have submitted the Lowest Calculated Responsive Bid (LCRB) pursuant to Clause 30.3(a)(i)¹ of the Instruction to Bidders (ITB) of the Philippine Bidding Documents (PBD) for Infrastructure Projects. Hence, this inquiry.

We wish to stress that JV bidders are required to submit a special license issued by PCAB in compliance with the requirement for a "valid PCAB license and registration" under Section 23.1(a)(iv) of the IRR of RA 9184 and ITB Clause 12.1(a)(iv) of the PBDs. It will be noted that the requirement under Clause 30.3(a)(ii)², ITB, of the PBD for Infrastructure Projects, relative to compliance with valid PCAB license, refers to foreign bidders if allowed to participate under a treaty or International or Executive Agreement. 

¹ 30.3 Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:

- a. Submission of the following documents within the prescribed period from receipt by the Bidder of the notice that it has the Lowest Calculated and Responsive Bid:
 - (i) Valid JVA, if applicable, within ten (10) calendar days;
 - (ii) **Valid PCAB license** and registration for the type and cost of the contract to be bid for foreign bidders, within thirty (30) calendar days, if allowed under a Treaty or International or Executive Agreement mentioned in ITB Clause **Error! Reference source not found.**

² *Id.*

In an earlier opinion³, we stressed that:

Section 38 of RA 4566, otherwise known as “An Act Creating the Philippine Licensing Board for Contractors, Prescribing its Powers, Duties and Functions, Providing Funds therefor, and for other purposes,” prohibits two or more contractors from jointly submitting a bid without first securing a special license to engage or act in the capacity of a joint venture. In the case of JV bidders, the requirement of a “valid PCAB license and registration” under the IRR and the ITB, is the special PCAB License for JVs in accordance with Section 3.5 of the IRR of RA 4566. For this purpose, the requirement is not only the submission of a PCAB license, but a “valid” PCAB license, the import of which is the submission of a PCAB license that is compliant with existing laws and rules, including Section 38 of RA 4566 and its IRR.

We wish to clarify that the provisions found in Section 23.1(b) of the IRR of RA 9184 and ITB Clause 24.6 of the PBDs for Infrastructure Projects, to the effect that submission of the required technical and financial eligibility documents by any of the JV partners constitutes compliance, should be read alongside Section 38 of RA 4566.

It is noteworthy that Section 23.5.2.3 of the IRR of RA 9184 provides that persons/entities enumerated in Section 23.5.2.1 of the IRR may participate in public bidding if it has been issued a PCAB license to engage or act as a contractor, which necessarily includes a joint venture bidder. Thus, for JV bidders to be engaged as a contractor, a special PCAB license for JVs issued pursuant to Section 38 of RA 4566 and Section 3.5 of its associated IRR must be submitted as part of the technical eligibility documents. The submission of PCAB license and registration individually issued to each JV partner will not suffice.

As regards the stage of its submission, since the special PCAB license for JVs is one of the Class “A” documents under Section 23.1 of the IRR of RA 9184, the same shall be part of the bidders’ first envelope containing the eligibility documents and technical proposal to be submitted on or before the deadline for the submission and receipt of bids indicated in the invitation to bid. Section 25.1 of the IRR of RA 9184 provides for the documents to be included in the bids, thus:

[B]idders shall submit their bids through their duly authorized representative using the forms specified in the bidding documents in two 92) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, **including the eligibility requirements under Section 23.1 of this IRR**, and the second shall contain the financial component of the bid. (Emphasis supplied)

All told, it is our considered view that the submission of the individual PCAB licenses of each joint venture partner participating in a civil works procurement is not necessary if the bidder is participating as a Joint Venture. As mentioned, the submission of the Special PCAB license for JV bidders is required pursuant to Section 38 of RA 4566 and Section 3.5 of its

³ NPM Opinion No. 017-2013, dated 28 January 2013.

associated IRR as part of the technical eligibility documents to be submitted, together with the bid proposal, on or before the deadline for submission and receipt of bids.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

~~DENIS O. SANTIAGO~~
Executive Director V

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[Signature]