GUIDELINES FOR THE ISSUANCE OF SPECIAL LICENSE TO FOREIGN CONTRACTORS PURSUANT TO CIAP RESOLUTION NO. 1, SERIES OF 1997

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August 15, 1997

WHEREAS, the Construction Industry Authority of the Philippines issued CIAP Board Resolution No. 1, Series of 1997, prescribing its policy on the issuance of special contractor's license with respect to the construction of specific projects which under Philippine laws and bilateral agreements may be undertaken by foreign contractors;

WHEREAS, the PCAB, as an implementing agency of the CIAP under PD 1746, is vested with the powers to issue contractor's license under RA 4566;

WHEREAS, the CIAP has directed the PCAB, to implement Sec. 5.9 of the Implementing Rules and Regulations (IRR) of RA 4566 and the Revised Guidelines for Registration and Classification, which refer to categorization of foreign contractors, and prescribed certain terms and conditions to be used in the determination thereof;

NOW, THEREFORE, for and in consideration of the foregoing premises, the Board RESOLVES as it is hereby RESOLVED, to adopt the following guidelines:

I

General Conditions of License

1. The licensee must observe and abide by the provisions of Republic Act No. 4566, as amended by Presidential Decree No. 1746, its implementing Rules and Regulations, and other orders or instructions which the Philippine Contractors Accreditation Board shall issue from time to time pursuant to its powers and authority under the Law.

2. The Special License shall be valid for bidding and undertaking the construction project stated therein, more specifically the phase/package of the project which is the subject of the bidding during the contracting fiscal year it was issued provided it has not been suspended, canceled or revoked by the Board.

3. In case the Licensee wins the bid and is awarded the contract, the Special License must be renewed annually on or before 30 June of every year during the pendency of the completion of the project, and ipso facto invalidated upon completion of the project.

4. The Licensee must not use the special license after it has already expired and before the same is re-issued/renewed otherwise the contractor shall be liable for appropriate disciplinary action and payment of additional licensing fee in accordance with existing schedule.

5. The Licensee is not eligible to prequalify for, bid on and undertake a construction project which is not within the scope of the license classification.

6. If the Licensee is unsuccessful in the bidding, the Special License is ipso facto invalidated after bidding.

7. The Licensee's qualification is subject to review at any time to ascertain the contractor's eligibility to the

present classification and category of his license.

8. The Licensee must immediately notify the Board in writing of the resignation or disassociation of its Sustaining Technical Employee, Resident Alien Representative, and Resident Filipino Representative and must replace the said employees within a period of ninety (90) days from the date of resignation or disassociation. Failure to notify the Board within 30 days from date of resignation of the Sustaining Technical Employee is a ground for revision of the category and classification of the foreign contractor.

9. The Licensee must submit to the Board monitoring reports that may be required from time to time.

10. Submission of falsified documents or any misrepresentation or false information in the application for a special license or renewal thereof shall subject the Licensee to administrative disciplinary action without prejudice to the imposition of penal sanctions provided for by Law.

11. The Licensee must at all times observe and adhere to the letter and spirit of the code of ethics of contractors.

12. The Special License is valid only when signed by the Authorized Managing Officer of the LIcensee.

13. In the absence of the resident Filipino Agent or where such agent cannot be found at his address of record or upon cessation of the foreign contractor's business in the Philippines, any summons or legal processes may be served on PCAB as if the same were made upon the firm at its home office.

14. The Special License is non-transferable.

II

Qualification Required for the Grant of Special Contractor's License to Foreign Contractors

1. Legal

1.1 The foreign contractor-applicant must be a bona fide contractor in its home country.

1.2 Its subsidiary or branch office must be duly registered with the Securities and Exchange Commission for the purpose of engaging in construction contracting business in the Philippines.

1.3 The project, which is the subject of the special license application must either be:

a. Foreign financed/internationally-funded and that international bidding is required, or the participation of foreign contractors is allowed under the terms and conditions of the Bilateral Agreement entered into by and between the Philippine Government and the Foreign/International Financing Institution; or

b. To be implemented in accordance with the Amended BOT Law or RA #7718 and other projects of similar nature.

2. Technical

2.1 It must have, under its employ, qualified Sustaining Technical Employees qualified for the minimum requirements of the category and classification applied for.

3. Financial/Capitalization

3.1 Networth

It must meet the minimum networth requirement of the category applied for.

3.2 Networth Determination

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Unencumbered assets invested in the Philippines may be in the form of cash and construction-related equipment, which may neither be repatriated or withdrawn from the Philippines nor transferred, sold or leased to another within the validity of the license.

3.3 Back-to-Back Guarantee

In case the applicant is a subsidiary of a foreign contractor, a back to back guarantee from the parent company shall be required.
4. Track Record

4.1 It must have a project already completed and duly accepted by the project owner/client, which is of such type and size as to qualify it for the project kind and size range applied for.

Foreign contractors shall be categorized and classified in accordance with the Revised Categorization and Classification Table hereto attached as Annex A*.

Foreign contractor shall likewise be given the appropriate size range in accordance with the size range Table hereto attached as Annex B*.

IIIJoint Venture/Consortium

1. Foreign contractors forming themselves into a joint venture or consortium must likewise secure a separate license for the joint venture or consortium other than the special license issued to each individual contractor.

2. A joint venture or consortium shall be assigned the category of the contractor-partner with the biggest equity share therein or, in case of absence of equity predominance, whose representative holds the highest executive position thereof provided that, if applied for by the joint venture or consortium, the Board shall evaluate the category corresponding to the combined capabilities and resources of the partners which are to be summarized in joint statements by the partners under oath, and audited and/or authenticated as the Board may require.

IVApplication Documents for Special Contractor’s License

An application for a special license shall comprise, on a case o case basis, of the following:
1. Foreign Contractor

The documentary requirements for foreign contractor applicants are hereto attached as Annex C*.

2. Joint Venture/Consortium of all Filipino and Foreign Partners
The documentary requirements provided for in Sec. 4.6 a or c of the Rules and Regulations shall be applicable.
3. Joint Venture/Consortium of Filipino and Foreign Partners Partners
The documentary requirements provided for in Sec. 4.6 b or d shall be applicable.

V

Effectivity

These guidelines shall take effect after fifteen (15) days from the date of publication in two(2) newspapers of general circulation.

Adopted: 15 Aug. 1997

(SGD.) ANTON C. KHO
Chairman

(SGD.) JOSE V. ANGELES
Member

(SGD.) LORETO C. AQUINO
Member

(SGD.) FROILAN S. CASTRO Executive Director

(SGD.) CONSOLACION C. VILLAFUERTE
Acting Board Secretary

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