



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 23-2013

27 March 2013

MGEN. VICENTE GUERZON, JR. AFP (RET.)
Chairman, Bids and Awards Committee (BAC)
MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA)
MIAA Administration Building,
MIA Road Pasay City

Re: Suspension Order against a Joint Venture Bidder

Dear MGen. Guerzon:

This is in response to your letter dated 4 January 2013, seeking our opinion on whether a Blacklisting Order against a Joint Venture (JV) results in the blacklisting of all the partners, including those who are not at fault.

It is represented that a JV of Company U and Company P was declared the bidder with the Lowest Calculated Bid for the Supply and Delivery of Aerial Work Platforms for the Ninoy Aquino International Airport Terminal 2 (Project). During post-qualification, the Bids and Awards Committee (BAC) of MIAA discovered that the Manufacturer's Authorization Form (MAF) that was submitted by Company P as official representative of the JV, was falsified. Thus, the BAC sent a Notice of Suspension/Blacklisting to the JV for submitting a spurious document in violation of Paragraph 4.1.1 of the Uniform Guidelines¹ for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants, in relation to Section 69.1(a) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. Subsequently, the MIAA General Manager, as the Head of the Procuring Entity (HOPE), issued a Suspension Order suspending both Company U and Company P from participating in any of MIAA's procurement projects and similar activities from 13 November 2012 to 13 November 2013. Company U then sought reconsideration of the said Suspension Order alleging that Company U and Company P are separate entities, and should be treated as such in terms of liability, considering that the purported falsification was committed only by Company P. It is in this context that you are seeking our opinion on whether Company U could be excluded from the coverage of the Blacklisting Order since the violation of the Guidelines was entirely due to the fault of Company P.

A JV is an association of persons or companies jointly undertaking some commercial enterprise; generally all contribute assets and share risks.² It is often characterized as being similar to a partnership in the sense that there exists among the parties to the JV, commonality of interest and mutual right of control, not to mention the mode by which profits or losses are shared. However, unlike a partnership, a JV does not have a legal personality distinct from its partners. Moreover, the rules governing the rights and liabilities of parties to a JV as against third persons are similar or analogous to those applicable to partnerships. Each party in a JV stands as both principal and agent of the other parties in respect of those matters falling within the scope of the

¹ Appendix "11" of the IRR of RA 9184, issued through GPPB Resolution 09-2004, dated 20 August 2004, and published in the Official Gazette on 30 November 2004.

² Kilosbayan, Inc. et al. vs. Guingona et al., 232 SCRA 110 dated 05 May 5, 1994.

JV. The act of one binds the others. Even the unauthorized act of a party may bind the others in respect of a third party, if the latter has no knowledge of such lack of authority, provided that the act in question is within the scope of the JV business.³

Moreover, Section 2 of the Guidelines provides that a JV or consortium which is blacklisted or which has blacklisted member/s and/or partner/s as well as a person/entity who is a member of a blacklisted JV or consortium are, likewise, not allowed to participate in any government procurement during the period of disqualification.

The Guidelines expressly provides that the Blacklisting Order shall apply to all the JV partners as they are treated collectively as one bidder. This rule follows the legal concept that a JV which is similar to a partnership, does not have a legal personality distinct from its partners. Thus, as previously opined by this office, the members of the JV expectedly intend themselves to be jointly and severally responsible or liable for the obligations and civil liabilities actually incurred by the particular joint venture.⁴

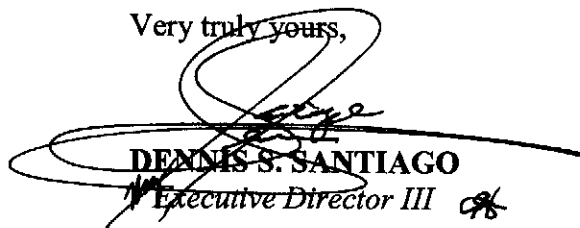
Based on the foregoing, we are of the view that since Company U and Company P are JV partners, the Suspension Order,⁵ and eventually the Blacklisting Order, necessarily apply to both of them. Consequently, both companies are subject to the penalty of suspension from participating in procurement activities of MIAA for the duration of the Suspension Order, and banned from participating in any government bidding activity once the Blacklisting Order is issued within the timelines provided in the Guidelines.

We wish to emphasize that Blacklisting Orders should be issued in accordance with the Guidelines and contain the information provided in Section 9.1 thereof, and should reflect that the blacklisted entity is prohibited from participating in all procurement activities of all government agencies.

Lastly, we wish to clarify that the eligibility documents required under Section 25.1 of the IRR of RA 9184 are absolute and exclusive. Thus, procuring entities do not have authority to add or deduct any eligibility documents enumerated in said section for its procurement activities conducted through competitive bidding.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

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³ Justice Artemio Panganiban, *Legal Aspects of Joint Venture*, presented before the Seminar on International Business Law and Practices on March 20, 1995, at the Hotel Nikko-Manila Garden Hotel, and published in its English and French versions in the *Institute of International Business Law and Practice Newsletter*, 14 (1st Semester, 1995), pp. 67-81; the *Journal of the Integrated Bar of the Philippines*, XXII and XXIII (3rd and 4th quarters 1994 and 1st and 2nd quarters 1995), pp. 1-39; *The Lawyers Review*, IX (May 31, 1995), pp. 8-18; and the *LCMP Bulletin* (June 1995), pp. 10-25.

⁴NPM 004-2005, dated 19 January 2005.

⁵ Through a Suspension Order, the penalty of suspension is imposed as a preventive sanction. It is applied so that the bidder concerned is prohibited from participating in any bidding of the procuring entity while the process of blacklisting is ongoing. If no motion for reconsideration or protest is filed or the decision to suspend the bidder becomes final and executory, the Suspension Order is replaced with a Blacklisting Order, if warranted under the circumstances, which now bars the bidder from participating in any government procurement activity for the applicable period.