



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

NPM No. 28-2013

27 March 2013

MS. ELIZABETH M. ABEJO

Chairman

ABEJO WATERS CORP.

Oakridge Business Park, Bldg. B, A.S. Fortuna Street,
Mandaue City, Philippines

Re: Joint Venture (JV) between Government and Private Entities

Dear Ms. Abejo:

This refers to your letter dated 19 February 2013, seeking clarification on the following issues relative to the Invitation to Apply for Eligibility and to Submit Proposal (IAESP) to Finance, Design, Construct, Operate and Maintain the Treated Bulk Water Supply Project through a Contractual Joint Venture (Project) issued by Butuan City Water District (BCWD), thus:

1. The propriety of setting the amount of Tender Documents for Volume 1 at One Million Pesos (PhP1,000,000.00); and,
2. The incompleteness of the published IAESP due to the lack of information on the cost for Tender Documents for Volume 2, deadline for the purchase of Tender Documents, and the Volume and Offer price per cubic meter of water.

It is represented that BCWD received an Unsolicited Proposal (UP) for a JV from TwinPeak Hydro Resources Corporation for the Project. Thereafter, BCWD caused the publication of an IAESP inviting interested Private Sector Participants (PSPs) to participate in the "Competitive Challenge" by submitting their Letters of Interest (LOI) to BCWD and purchasing the Tender Documents, which outlines, among others, the requirements that will enable PSPs to participate in Competitive Challenge and eventually be allowed to submit Technical and Financial Proposals for the Project once declared eligible. It is in this context that you are seeking our opinion on the above-stated issues.

A careful reading of the IAESP reveals that the Project pertains to a JV between a Government-Owned and/or Controlled Corporation (GOCC) and a private entity pursuing development goals, the rules for which are governed by the Joint Venture Guidelines¹ issued by the National Economic and Development Authority (NEDA) pursuant to Section 8 of Executive Order No. 423, Series of 2005²; or by Republic Act (RA) No. 6957, or the Build, Operate and Transfer (BOT) Law, as amended by RA No. 7718; and not by RA No. 9184.

¹ Dated 16 April 2008.

² Dated 30 April 2005.

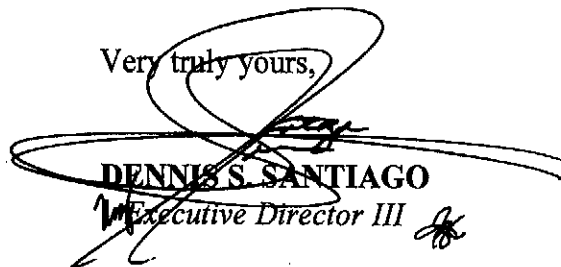
the Government Procurement Reform Act, and its revised Implementing Rules and Regulations. Joint Venture Agreement (JVA) is a type of government contracting arrangement whereby one or more private sector entity(ies) and Government sector entity(ies) contribute capital, services, and/or assets to undertake an investment activity. This is clearly an arrangement that is distinct and different from procurement which pertains to the acquisition of goods, consulting services, or contracting for infrastructure projects by a government entity.

Considering that the Project of BCWD involves a JVA, we are of the view that the rules and issuances associated with RA 9184 and its IRR, such as the Guidelines on Sale of Bidding Documents³ and the required information in an invitation to bid may only be applied in a suppletory manner, as the relevant applicable laws and rules are RA 6957, as amended by RA 7718; or the JV Guidelines.

As regards the applicability of the BOT Law, you may want to seek the advice of the Public-Private Partnership Center of the Philippines, with address at NEDA sa QC, EDSA, Diliman, Quezon City, and Contact No. 9900721. For the JV Guidelines, you may inquire from the NEDA, with office address at 12 Saint Josemaria Escriva Drive, Ortigas Center, Pasig City, and/or contact them at Telephone Numbers 6310945-56.

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

WsdS 

³ GPPB Resolution No. 04-2012, dated 24 February 2012.