



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

**NPM No. 31-2013**

27 March 2013

**MR. ELMER S. CEGUERRA**  
*President*

**HG-III CONSTRUCTION & DEVELOPMENT CORPORATION**  
3368 Harvard Street, Pinagkaisahan, Makati City

*Jacob Coronado*  
APR 5 '13

**Re : Carrying Over of Experience of the Sole Proprietorship**

Dear Mr. Ceguerra:

We write in response to your letter dated 12 November 2012, and the succeeding letters<sup>1</sup> related thereto, requesting for confirmation from this office that HG-III Construction & Development Corporation (HG-III) has been in the same line of construction business for at least twenty (20) years.

As represented, when HG-III was incorporated in 2003, Golden City Engineering and Construction (GCEC), which has been operating since 1985, put all its assets, personnel and resources in the corporation. Since HG-III was incorporated only in 2003, documents such as licenses of GCEC and HG-III were presented in a bidding it participated in to show that HG-III has in fact been in the construction business for more than twenty (20) years. It is in this context that you are inquiring whether the construction experience/track record of GCEC may be carried over to HG-III.

[I]t is settled that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.<sup>2</sup> Thus, a corporation should be treated as a separate entity from its owners, stockholders and other business entities.

A sole proprietorship does not possess a juridical personality separate and distinct from the personality of the owner of the enterprise. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual and requires its proprietor or owner to secure licenses and permits, register its business name, and pay taxes to the national government.<sup>3</sup> The same principle has been adopted in the issuance of Non Policy Matter (NPM) Opinion No. 37-2011, wherein we expressed the view that the track record gained by the owner of a sole proprietorship may be used by another enterprise of the same nature established and registered by the same owner.

<sup>1</sup> Dated 29 November 2012 and 6 March 2013.

<sup>2</sup> Ever Electrical Manufacturing, Inc. and Vicente Go v. Samahang Manggagawa ng Electircal, G.R. No. 194795, June 13, 2012.

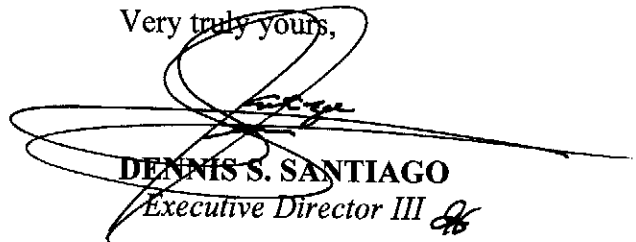
<sup>3</sup> Excellent Quality Apparel v. Win Multi-Rich Builders, G.R. No. 175048, February 10, 2009.

In this scenario, the newly created enterprise, which is also in the nature of a sole proprietorship, may use the experience or track record of the sole proprietorship earlier established, as the two (2) sole proprietorships or enterprises are owned by one and the same individual or owner who possesses the necessary or required experience.

Given the established difference between a sole proprietorship and a corporation, it is clear that GCEC and HG-III are entirely distinct and separate entities. Thus, we are of the view that although GCEC has a proven construction experience/track record, this cannot be carried over to HG-III despite the fact that GCEC's assets, personnel and other resources have been infused into HG-III, inasmuch as the latter is a corporation which has a separate and distinct juridical personality from the former. In addition, NPM No. 37-2011 mentioned above finds no application in this instance since this case involves a sole proprietorship (GCEC) and a corporation (HG-III), as opposed to two sole proprietorships with different names but has the same owner, as was the case in NPM No. 37-2011.

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

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director III*

Copy furnished:

**HON. ROLANDO G. TUNGPALAN**

*Deputy Director General and*

*Designated Alternate Chair, Government Procurement Policy Board*

**NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY**

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