



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

**NPM No. 40-2013**

25 April 2013

**HON. ROGELIO L. SINGSON**

*Secretary*

**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH)**  
Bonifacio Drive, Port Area, Manila

**Re : Eligibility of Consultants to Participate in Government Procurement Projects**

Dear Secretary Singson:

We write in relation to your letter dated 11 April 2013, addressed to the Honorable Secretary Florencio B. Abad, requesting clarification/guidance whether there will be inconsistency with the provisions of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184 if the past experiences of a corporation will be credited to the newly created/formed joint ventures, professional partnerships, or sole proprietorships in the evaluation of their qualifications in connection with procurement of consulting services.

As represented, the DPWH issued Department Order No. 195, Series of 1992 to suspend procurement and employment of corporations as consultants for locally funded projects pursuant to the respective sections of RA 544<sup>1</sup>, RA 4374<sup>2</sup>, and RA 545<sup>3</sup>, prohibiting the registration or licensing of any firm, company, partnership, association, or corporation to practice in the fields of civil engineering, geodetic engineering, and architecture, respectively. For this reason, consulting corporations have formed/created professional partnerships or sole proprietorships in order to participate in the procurement of consultants for locally funded projects. However, a number of these professional partnerships or single proprietorships cannot be eligible due to insufficient experience in terms of the number of years and projects undertaken considering their present/new status.

It is a settled rule that a corporation is an artificial being created by operation of law<sup>4</sup>, and has a legal personality of its own<sup>5</sup>, separate and distinct from the persons composing it, as well as any other legal entity to which it may be related<sup>6</sup>. As such, joint ventures, professional partnerships, or sole proprietorships cannot be credited with the past experiences of their

<sup>1</sup> Section 2 and Section 24 of RA 544.

<sup>2</sup> Section 28 of RA 4374.

<sup>3</sup> Section 34 of RA 545.

<sup>4</sup> Section 2, Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines.

<sup>5</sup> Article 44, Civil Code; *Kukan International Corporation v. Hon. Amor Reyes*, G.R. No. 182729, 29 September 2010.

<sup>6</sup> *Philippine National Bank v. Andrada Electric Engineering Company*, G.R. No. 142936, 17 April 2002.

corporation of origin inasmuch as the newly formed joint ventures, professional partnerships, or sole proprietorships are considered entirely separate and distinct from the principal corporation.

However, as provided in Sections 24.5.3(a) and 33.2.2(b) of the IRR of RA 9184, in the case of new firms, the individual experiences of the principal and key staff, including the times when employed by other consultants, may be considered as part of the new firms' overall experience. It must be pointed out, however, that in Sections 24.5.3(a) and 33.2.2(b), the new consulting firm is the one taking advantage of the experiences of the individual principal and key staff, and not vice versa.

In view of the foregoing, although the past experiences of the consulting corporations cannot be credited in favor of the newly formed joint ventures, professional partnerships, or sole proprietorships, new firms may utilize the experience of their principal and key staff in their overall experience.

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*



REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
OFFICE OF THE SECRETARY  
MANILA

APR 11 2013

Secretary **FLORENCIO B. ABAD**  
Chairman  
**Government Procurement Policy Board**  
Unit 2506, Raffles Corporate Center  
F. Ortigas Jr. Road, Ortigas Center  
Pasig City



**SUBJECT : Eligibility of Consultants to Participate In Government Procurement Projects**

Dear Secretary Abad:

This has reference to Clause 24.3.1, Eligibility Criteria of Republic Act 9184 and its Implementing Rules and Regulations (IRR), prescribing the eligibility of persons/entities to participate in the bidding for consulting services, as follows:

- a) *Duly licensed Filipino citizens/sole proprietorships;*
- b) *Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;*
- c) *Corporations duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;*
- d) *Cooperatives duly organized under the laws of the Philippines, and of which at least sixty (60%) percent belongs to citizens of the Philippines; or*
- e) *Persons/entities forming themselves into joint venture, i.e. a group of two (2) or more persons/entities that intend to jointly and severally responsible or liable for a particular contract: Provided, however, that Filipino ownership or interest thereof shall be at least sixty percent (60%). For this purpose, the Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in the Joint Venture Agreement (JVA).*

However, corporations are prohibited as consultants for locally funded projects due to the provisions of the following Acts, which states that:

1. Republic Act No. 544, as amended by R.A. 1582 – An Act to Regulate the Practice of Civil Engineering in the Philippines. (*Approved, June 17, 1950 as amended by R.A. No. 1582, approved on June 16, 1956*).
  - a. Section 2 "Definition of Terms". (a) *The practice of Civil Engineering within the meaning and intent of this Act shall embrace services in the form of consultation, design, preparation of plans, specifications, estimates, erection, installation and supervision of the construction of streets, bridges, highways, railroads, airports, and hangars, port works, canals, river and shore improvements, lighthouses, and dry docks; buildings, fixed structures for irrigation, flood protection, drainage, water supply and sewerage works; demolition of permanent structures; and tunnels . The enumeration of any work in this section shall not be construed as excluding any other work requiring civil engineering knowledge and application.*

- b. *Section 24. The practice of civil engineering is a professional service, admission to which must be determined upon individual, personal qualifications. Hence, no firm, partnership, corporation or association may be registered or licensed as such for the practice of civil engineering: Provided, however, That persons properly registered and licensed as civil engineers may, among themselves or with a person or persons properly registered and licensed as architects, form, and obtain registration of, a firm, partnership or association using the term "Engineers" or "Engineers and Architects", but, nobody shall be a member or partner of such firm, partnership or association unless he is a duly licensed civil engineer or architect, and the members who are civil engineers shall only render work and services proper for a civil engineer, as defined in this Act, and the members who are architects shall also only render work and services proper for an architect, as defined in the law regulating the practice of architecture; individual members of such firms, partnership or association shall be responsible for their own respective acts.*
2. Republic Act No. 4374, An Act to regulate the practice of Geodetic Engineering in the Philippines. (Approved, June 19, 1965).
- a. *Section 28. Corporation cannot register.- The practice of geodetic engineering is a professional service, admission to which shall be determined upon the basis of individual and personal qualifications. No firm, company, partnership, association and corporation may be registered or licensed as such for the practice of geodetic engineering: provided, that this section shall not be construed as preventing any combination of geodetic from using the term "Geodetic Engineer"; provided, further, that majority of the members of the partnership, firm or association are properly registered and licensed geodetic engineers.*
- Members of the partnership, firm or association are responsible for their own Individual acts.*
3. Republic Act no. 545, An Act to regulate the practice of Architecture in the Philippines. (Approved, June 17, 1950).
- a. *Section 34. Corporation cannot register. – The practice of architecture is a professional service, admission to which shall be determined upon the basis of individual and personal qualifications. No firm, company, partnership, association or corporation may be registered or licensed as such for the practice of architecture, but this section shall not be constructed as preventing such combinations of individual persons from using the term "Architect": Provided, that each member of the partnership, firm or association is properly registered and licensed. Individual members of a partnership are responsible for his own act.*

Pursuant to the above-mentioned provisions, the DPWH in 1992 issued Department Order No. 195, Series of 1992, "Suspension of Procurement and Employment of Corporations as Consultants for Locally Funded Projects". Said Department Order recognizes the applicability of these sections of the three (3) Republic Acts in the procurement and employment of consultants for locally-funded projects.

In view of the above, Consulting Corporations have formed/created partnerships or single proprietorship in order to participate in the procurement of consultants for locally funded projects. However, our records show that only few sole proprietorships or partnerships have participated and/or are participating in the procurement of consultancy services of DPWH locally funded projects. Likewise, a number of them still cannot be pre-qualified due to insufficient experience in terms of the number of years and projects undertaken considering their present/new status (single proprietorship/partnership).

In this regard, may we respectfully request clarification/guidance if there will be any inconsistency in the provisions of the Implementing Rules and Regulations of R.A. No. 9184 if we credit the past experiences of the corporation to the newly created/formed joint ventures or sole proprietorship in the evaluation of their qualifications.

With best regards.

Very truly yours,

  
**ROGELIO L. SINGSON**  
Secretary

Department of Public Works and Highways  
Office of the Secretary

