



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

NPM No. 44-2013

31 May 2013

HON. ROGELIO L. SINGSON

Secretary

Department of Public Works and Highways (DPWH)
DPWH Compound, Bonifacio Drive,
Port Area, Manila

Re: Procurement of Foreign Consultants

Dear Secretary Singson:

We respond to the Honorable Secretary's letter dated 15 May 2013, seeking our opinion on whether the DPWH may validly and legally procure the services of foreign consultants who entered into a Joint Venture with local consultants as Independent Consultant (IC) for the NAIA Expressway Project (Project) under the Public-Private Partnership (PPP) regime.

Procurement of Foreign Consultants

Please be informed that Section 24.3.1(e) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provides that persons/entities forming themselves into a JV, *i.e.*, a group of two or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract, shall be allowed to participate in the bidding for consulting services, provided that Filipino ownership shall be at least sixty percent (60%), which shall be based on the contributions of each of the members of the JV as specified in the JV Agreement (JVA).

Foreign consultants who formed a JV with Filipino consultants could validly and legally participate in the procurement for the Project under such JV vehicle for as long their ownership or interest in the JV does not exceed forty percent (40%).

Additionally, foreign consultants, without entering into a JV with Filipino consultants, may be hired in the event that Filipino consultants do not have the sufficient expertise and capability to render the services required under the project, as determined by the Head of the Procuring Entity (HOPE), subject to the following qualifications:

- a) must be registered with the Securities and Exchange Commission (SEC) and/or any agency authorized by the laws of the Philippines; and
- b) when the types and fields of consulting services in which the foreign consultant wishes to engage involve the practice of regulated professions, the foreign

consultant must be authorized by the appropriate GOP professional regulatory body to engage in the practice of professions and allied professions: Provided, however, that the limits of such authority shall be strictly observed.¹


Procurement Funding from Public and Private Sources

As regards the issue on the applicable law that shall be used in the procurement of the IC taking into account that the funding source is based on a 50-50 share between the government and the winning concessionaire, it is our position that RA 9184 and its IRR govern the transaction, as the procurement law and its associated rules shall apply to the procurement of Infrastructure Projects, Goods, and Consulting Services, regardless of source of funds, whether local or foreign.²

The mere fact that the procurement of the IC is partly funded by private funds (*i.e.* 50% from the winning concessionaire) does not change the nature of the procurement nor take it outside the coverage of RA 9184 and its IRR, specifically so when the transaction involves the expenditure of public funds. As long as public fund is utilized or contemplated to be spent for any procurement activity, it shall by force, fall within the ambit of the present procurement law.³

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

Copy furnished:

Hon. Maria Catalina E. Cabral. Ph. D.
Assistant Secretary for Planning and PPP
Department of Public Works and Highways (DPWH)
DPWH Compound, Bonifacio Drive,
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¹ Section 24.3.3 of the revised IRR of RA 9184.

² Section 4 of RA 9184 and its IRR.

³ NPM No. 141-2004 dated 5 November 2004.