

NPM No. 65-2015

12 October 2015

MS. MA. PAZ FATIMA D. PALMARES, CPA
Bids and Awards Committee (BAC), Chairperson
OCCIDENTAL MINDORO STATE COLLEGE (OMSC)
Rizal Street
San Jose, Occidental Mindoro

Re : Disclosure of Relations

Dear Ms. Palmares:

This refers to your letter requesting for an opinion on whether a bidder is prohibited to participate in a bidding opportunity if one of its corporate officers is a sibling of a board member of the procuring entity, and whether the concerned board member can execute a notarized Letter of Intent to abstain from voting or participating in the deliberation for the award of contract.

It is represented that, on 31 December 2014, one of the instructors of OMSC was elected President of its Faculty Federation. The Instructor, by virtue of his position as President of the Faculty Federation, is also appointed as a member of the Board of Trustees of OMSC. However, the Instructor is a brother of the Corporate Secretary of the security agency to which OMSC has an existing contract for security services. The said security agency has been awarded the security services contracts for the past eight (8) years which were approved by the Board of Trustees being the Head of the Procuring Entity (HOPE) of OMSC. Accordingly, the Security Contract is set to expire and the concerned security agency is expected to participate in the bidding process once again. It is for this reason that our opinion is sought.

Automatic Disqualification by Reason of Relationship

Section 47 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 automatically disqualifies a bidder from participating in the procurement activities of a Procuring Entity when such bidder is related by consanguinity or affinity within the third civil degree to the HOPE, members of the Bids and Awards Committee (BAC), the Technical Working Group (TWG), and the BAC Secretariat, the head of the Project Management Office (PMO), or the end-user unit, and the project consultants, if any. For purposes of State Universities and Colleges (SUCs), the HOPE pertains to its governing board, which is the Board of Trustees¹.

¹ Section 5 (t), revised IRR of RA 9184.

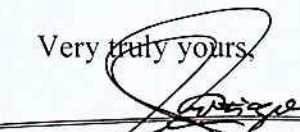
If the bidder is a corporation, the disqualification is applicable to all its officers, directors, and controlling stockholders.²

We emphasize that the disqualification of bidders pursuant to Section 47 of the IRR of RA 9184 is based merely on the existing relationship between the bidder and the aforementioned procurement official. As such, Section 47 is clear as to the legal import of the said relationships. Hence, notwithstanding the inhibition made by the officers or employees concerned, the cause-and-effect link between relationship and disqualification is not severed by the supposed corrective measure.³

All told, the concerned security agency is automatically disqualified to submit a bid and to participate in any procurement contracts of OMSC since one of its officers, the Corporate Secretary, is related to one of the members of the Board of Trustees of OMSC by consanguinity within the third civil degree. The voluntary inhibition and non-participation of the identified Board of Trustee in the deliberation of the Board does not remove his blood relationship with one of the Directors of a would be bidder.

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

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

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² Section 47 (c), IRR

³ Non Policy Matters Nos. 12-2005, dated 15 February 2005, and 007-2014, dated 28 March 2014.