



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

NPM No. 89-2012

16 July 2012

ATTY. HERNANDO T. CABRERA
Chairman, LRTA - TWG
LIGHT RAIL TRANSIT AUTHORITY
Administration Bldg., LRTA Compound,
Aurora Blvd., Pasay City

Re: Single Largest Completed Contract Requirement for an Incorporated Joint Venture

Dear Atty. Cabrera:

This is in response to your letter dated 12 April 2012 seeking our opinion on whether the track record of partners may be considered and credited in favor of an incorporated Joint Venture (JV) for the purpose of complying with the technical eligibility requirements on the procurement of infrastructure projects.

It is represented that the Joint DOTC-LRTA Technical Working Group is currently conducting post-qualification evaluation process relative to the LRTA Php 1.8 Billion Rehabilitation Projects (Project). It is further represented that during the bidding for the Project, an inquiry was made on whether track records of partners may be credited in favor of an incorporated JV. In response to the aforesaid query, the Bids and Awards Committee (BAC) replied in the negative, stating that the partners could not "cumulatively credit their individual track records" as "there must be a single contract compliant with the requirement". It is in this context that you are seeking guidance on whether the track records of partners may be credited in favor of an incorporated JV and treated as compliant with Section 23.5.1.3 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

Single Largest Completed Contract (SLCC)

Please note that Section 23.5.1.3 of the IRR is applicable to the procurement of goods. Since the rehabilitation projects contemplated in your letter refer to the procurement of infrastructure projects, the applicable provision is Section 23.5.2.5 of the IRR.

Section 23.5.2.5 of the IRR refers to the SLCC requirement which states that the prospective bidder must have an experience of having completed within a period of ten (10) years from the date of submission and receipt of bids, at least one (1) contract that is similar to the contract to be bid, and whose value, adjusted to current prices using NSO consumer price indices, must be at least fifty percent (50%) of the Approved Budget for the Contract (ABC) to be bid.

Nature of a Corporation and a Joint Venture

A corporation is an artificial being created by operation of law, having the right of


succession and the powers, attributes and properties expressly authorized by law or incident to its existence.¹ On the other hand, a JV is an association of persons or companies jointly undertaking some commercial enterprise; generally all contribute assets and share risks.² It is often characterized as being similar to a partnership in the sense that there exists among the parties to the JV, commonality of interest and mutual right of control, not to mention the mode by which profits or losses are shared. However, unlike a partnership, a joint venture does not have a legal personality distinct from its partners. Moreover, a partnership contemplates a general business with some degree of continuity, while the joint venture is formed for the execution of a single transaction, and is thus of a temporary nature.³

Since there are no formalities required before individuals or entities could establish a JV, the partners could opt to decide on establishing an equity JV or a contractual JV. A contractual JV is an unincorporated JV with no equity participation between the partners and their relations, rights and liabilities, as among themselves and in respect of third parties, are principally governed by contract or agreement. It does not have a legal personality distinct from its partners. On the other hand, an equity JV is an incorporated JV, which possesses a legal personality separate and distinct from the partners, who own a certain percentage of the equity. It is treated for all intents and purposes as a corporation and not merely a JV.

Consideration of JV partners' experience

As discussed in a previous opinion⁴, the BAC may consider the individual experiences of the JV partners. Since the SLCC is a technical eligibility requirement under the IRR of RA 9184, any one of the JV partners in the unincorporated/contractual JV may submit the same as part of the bidding documents. Hence, the submission by one of the partners may be credited in favor of an unincorporated/contractual JV and constitutes compliance with the SLCC requirement under Section 23.5.2.5 of the IRR of RA 9184.

However, in the case of corporations, including incorporated/equity JVs, the track record of stockholders or individual juridical joint-ventures could not be credited in favor of the former. It is a settled rule that a corporation has a personality separate and distinct from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter. Moreover, the corporation may not be held liable for the obligations of the persons composing it, and neither can its stockholders be held liable for its obligation.⁵

The SLCCs of the stockholders or individual juridical joint-ventures are personal to them and could neither be credited nor recognized in favor of the newly created equity JV corporation in the same manner that it could not be held liable for the obligations and liabilities of its stockholders. The separate personality of the stockholders of the newly created JV corporation may not be disregarded and the veil of corporate fiction may only be pierced when the corporate vehicle is being used to defeat public convenience, justify wrong, protect fraud, or defend crime, which must be clearly and convincingly established and not merely presumed. 

¹ Section 2 of Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines".

² Kilosbayan, Inc. et al. vs. Guingona et al., 232 SCRA 110 dated 05 May 5, 1994.

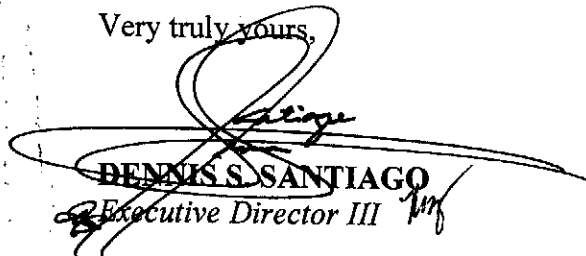
³ Worlgang Auerback, et. al. vs. Sanitary Wares Manufacturing Corporation, et. al., 180 SCRA 130 dated 15 December 1989.

⁴ NPM No. 24-2012 dated 24 February 2012.

⁵ Seaoil Petroleum Corporation vs. Autocorp Group, et. al., G.R. No. 164326 dated 17 October 2008.

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 circumstances as presented. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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