



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

NPM No. 129-2014

17 November 2014

MS. GLENDA A. INOJALES
Marketing & Admin Head
LRCA TRADING, INC. (LTI)
Door 2 WADI Bldg., #43 Sobrecarey St.,
Bo. Obrero, Davao City

Re: Requirements for a Valid Joint Venture

Dear Ms. Inojales:

This refers to your letter sent by electronic mail (email) seeking our opinion on the following issues:

- a. Whether two companies having the same majority incorporators can validly enter into a joint venture agreement under Republic Act (RA) No. 9184 or the Government Procurement Reform Act.
- b. If yes, whether the legal documents, sans Tax Clearance, of Metro Davao Supreme Pumps (MDSP) suffice the requirements for purposes of joint venture under RA 9184.
- c. What are the specified implementing procedures for joint venture agreement (JVA)?

As represented, MDSP, a new company, intends to participate in the procurement of infrastructure project with the General Santos Water District (GSWD) through a JVA with LRCA Trading, Inc. (LTI). However, MDSP does not have the required Tax Clearance; Audited Financial Statements; Income Tax Return and track record for completed projects. Insofar as LTI is concerned, it has complete legal, technical, and financial eligibility documents required under RA 9184. It is in this context that our opinion is sought.

Corporations have Distinct and Separate Juridical Personalities

It is a well-settled doctrine 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.¹ Since MDSP and LTI have been organized as separate corporate entities, it does not matter whether both corporations have the same majority incorporators because they have separate juridical personalities. Further, the fact that the majority of the incorporators of MDSP are the same with LTI does not mean that the two (2) corporations are adjunct and conduit. In fact, there is no express provision under the Corporation Law prohibiting stockholders or incorporators of a corporation from being a stockholder or incorporator of another corporation.² Thus, MDSP and LTI may validly enter into and execute a JVA for purposes of participating in procurement opportunities with government, provided that they possess all the required eligibility requirements under RA 9184 and its revised Implementing Rules and Regulations (IRR).

**Each Partner in the JVA must
Submit all Legal Eligibility Documents**

Relative to the required legal documents for joint venture partners, we would like to refer you to Instructions to Bidders (ITB) Clause 24.6, Philippine Bidding Documents (PBDs) for Infrastructure Projects, which states that:

Each partner of a joint venture agreement shall likewise submit the documents required in ITB Clauses 12.1(a)(i) and 12.1(a)(ii). Submission of documents required under ITB Clauses 12.1(a)(iii) to 12.1(a)(vi) by any of the joint venture partners constitutes compliance. (Underscoring supplied)

ITB Clause 12.1(a)(i) provides for the submission of the *Registration Certificate* from the Securities and Exchange Commission (SEC) in case of corporations, while ITB Clause 12.1(a)(ii) provides for the *Mayor's Permit* issued by the city or municipality where the principal place of business of the prospective bidder is located. Both these legal documents are required for submission by each partner in the joint venture. In addition, a Tax Clearance is now included as part of the Class "A" legal eligibility documents.³ Thus, although MDSP and LTI may validly execute a JVA, none submission of the required legal eligibility requirement by LTI is a ground for ineligibility, and the eventual disqualification of the joint venture.

Execution of a JVA

There is no specific guideline in the execution of JVAs. However, a JVA involves a contractual relation between or among the members of the association, where "[t]he contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy."⁴ Thus, taking into consideration the endeavor, service or work to be undertaken, the parties may agree and stipulate on any arrangements, terms, conditions and limitations towards the successful execution and implementation of the identified project. Nonetheless, the relevant provisions in the revised Implementing Rules and Regulations

¹ *Ever Electrical Manufacturing, Inc. and Vicente Go v. Samahang Manggagawa ng Electircal*, G.R. No. 194795, June 13, 2012.

² *April Toy, Inc. Workers Union et al. v. NLRC et al.*, G.R. No. 108936, October 4, 1996.

³ GPPB Resolution No. 21-2013.

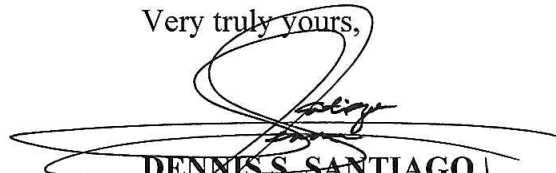
⁴ Article 1306, The Civil Code of the Philippines.

(IRR) of RA 9184 can provide guidance in the formulation of the agreements and stipulations in the JVA, specifically, Sections 23.5.2.1.(e)⁵ and 24.1(b)⁶ of the IRR of RA 9184.

In view of the foregoing, it is our considered view that companies having the same majority incorporators can be joint venture partners and execute a JVA. In addition, each joint venture partner shall submit all the required legal eligibility documents, that is, (a) SEC Registration Certificate in case of corporations; (b) Mayor's permit; and (c) Tax Clearance. Lastly, there is no specific guideline in the execution of a JVA, but parties should consider appropriate stipulations and agreements to completely accomplish the endeavor, service or work subject matter of the JVA.

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



⁵ Section 23.5.2.1. The following persons/entities shall be allowed to participate in the bidding for infrastructure projects:

...

e) Persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That, in accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest of the joint venture concerned shall be at least seventy-five percent (75%): Provided, further, That joint ventures in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement: Provided, finally, That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.

⁶ Section 24.1 For purposes of determining the eligibility and short list of bidders in accordance with Section 24.4 and 24.5 of this IRR, only the following documents shall be required by the BAC using the forms prescribed in the Bidding Documents:

...

b) Class "B" Document

Valid joint venture agreement (JVA), in case a joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful, shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security. Each partner of the joint venture shall submit the legal eligibility documents. The submission of technical and financial documents by any of the joint venture partners constitutes compliance.