

NPM No. 14-2006

7 November 2006

MR. PAULINO S. SOO
President
PGMC Marketing Corporation
E-2904A PSE Centre, Exchange Road,
Ortigas Center, Pasig City

M. T. TENSORA
11/07/06

Re : Eligibility Requirements for Joint Venture

Dear Mr. Soo:

We respond to your letter dated 21 September 2006 where you seek clarification on the proper interpretation of the statement -- "[e]ach member of the joint venture shall submit the required eligibility documents". This statement was added to Section 23.6 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184) by virtue of Memorandum Order (M.O.) No. 176 dated 27 June 2006.

It is the position of your company that the eligibility documents to be submitted by each member of the joint venture merely refer to Class "B" eligibility documents and not to all the eligibility documents enumerated under Section 23.6 of the IRR-A of R.A. 9184.

We beg to disagree with your position. Based on the records of the Government Procurement and Policy Board, the eligibility documents referred to under Section 23.6 of the IRR-A of R.A. 9184, as amended by M.O. 176, refer to Class "A" legal eligibility requirements. The intent behind this amendment is to ensure that each member of the joint venture is legally qualified to conduct business in the Philippines. Hence, to limit the meaning of "eligibility documents" to Class "B" documents -- which merely refer to the joint venture agreement and the letter authorizing the Bids and Awards Committee to verify documents submitted by the joint venture -- would unduly defeat the purpose behind the amendment.

Also, our opinion under NPM No. 018-2005 dated 8 March 2005 does not support the position that the required eligibility documents only refer to Class "B" documents. Please note that Class "A" eligibility requirements are classified into three categories: legal, technical and financial. Under NPM No. 018-2005, we stated that the "eligibility documents" referred to under Section 23.6 do not apply to Class "A" technical and financial documents but that it applies to Class "A" legal requirements. It recognizes that one of the main reasons why bidders form joint ventures is to enable them to combine their resources and, thus, offer more competitive rates. Consequently, while submission by any joint venture partner of the technical and financial documentary requirements enumerated under Section 23.6 constitutes

sufficient compliance for all, each member of the joint venture must still be able to individually prove that it has the legal personality to engage in business.

We trust that this clarifies matters.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III