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**NPM No. 15-2009**

05 March 2009

**GUILBERT P. ROMERO**  
*OIC Asst. Engineer*  
*Chairman, Bids and Awards Committee*  
**OFFICE OF THE DISTRICT ENGINEER**  
**2<sup>nd</sup> ENGINEERING DISTRICT**  
Baras, Canaman, Camarines Sur

**Re: Conflict of Interest between Related Bidders**

Dear Engr. Romero:

This is in response to your letter dated 4 February 2009 seeking clarification as to whether or not persons related by consanguinity or affinity up to the third (3<sup>rd</sup>) civil degree, who own and operate separate and independent construction firms may join a public bidding at the same time and for the same project. In this regard, you have cited Item 3.5 of the Philippine Bidding Documents (PBDs) First (1<sup>st</sup>) Edition.

At the outset, please be informed that our office has already issued the Second (2<sup>nd</sup>) Edition of the PBDs in May 2005. As such, said Item 3.5 is now found under Item 1.5 of the PBDs for the Procurement of Works Second (2<sup>nd</sup>) Edition.

As to the issue raised, it is worth noting that one of the principles espoused by Republic Act No. 9184 and its Implementing Rules and Regulations Part A is competitiveness. This entails providing equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. This necessarily means, therefore, that, until and unless an interested prospective bidder is found to be ineligible and disqualified, he or she cannot be outrightly prohibited from participating.

Preceding therefrom, bidders who may otherwise be eligible and qualified to participate in public bidding, cannot, and may not be disqualified, on the basis, per se, and solely on account of the fact that they are related to one another within the third (3<sup>rd</sup>) civil degree of either consanguinity or affinity. It is imperative that such filial or blood relations is determined to present a conflict of interest, the circumstances of which must be clearly established, as enunciated in the following provision:

*A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have conflicting interests with another Bidder in any of the events described in paragraphs (a) through (c) below and a general conflict of interest in any of the circumstances set out in paragraphs (d) through (g) below:*

- a. *have common controlling shareholders;*
- b. *receive or have received any direct or indirect subsidy from any of the Bidders;*
- c. *have the same legal representative for purposes of this Bid;*
- d. *have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the PROCURING ENTITY regarding this bidding process;*

xxx xxx xxx<sup>1</sup>

A perusal of the provision cited above reveals that the circumstance of bidders being related to one another, per se, does not automatically give rise to a conflict of interest. However, if it is established that such relationship places them in a position to either (1) have common controlling shareholders; (2) receive or have received any direct or indirect subsidy; or (3) have access to information about or influence on the bid of another bidder, notwithstanding the claim that they are separate and independent construction firms, then said related bidders, whether within the third (3<sup>rd</sup>) civil degree of consanguinity or affinity or beyond, shall be disqualified.

It is therefore incumbent upon the Bids and Awards Committee (BAC) to make a definitive finding of conflict of interest between and among the related bidders before any disqualification is made in the process of bidding. This function is essentially and primarily lodged with the BAC, and our office, being a policy-making body, cannot make that determination in behalf of the procuring entity.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
**RUBY U. ALVAREZ**  
*Executive Director III*

Copy Furnished:

**ROLANDO T. VALDEZ**  
*OIC, District Engineer*

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<sup>1</sup> Item 1.5, Philippine Bidding Documents (Procurement of Works), 2<sup>nd</sup> Edition.