

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

NPM No. 164-2012

21 December 2012

MR. PETER GO CHENG

Sales Manager

Authorized Representative of Kolonwel Trading

JOINT VENTURE OF CM COUNTERMEASURES EQUIPAGES

& SECURITY TECHNOLOGIES, CESKA ZBROJOVKA A.S.

& KOLONWEL TRADING

675 Sabino Padilla Street,

Binondo, Manila

**Re: Single Largest Completed Contract (SLCC) Requirement for
Joint Venture (JV)**

Dear Mr. Cheng:

We respond to your letter dated 3 September 2012 inquiring on whether the Government Procurement Policy Board (GPPB) received and granted the request for exemption from the SLCC requirement of at least fifty percent (50%) of the Approved Budget for the Contract (ABC) from the Philippine National Police (PNP) or its Bids and Awards Committee (BAC), and seeking clarification on whether a JV between a local company and a company organized under the laws of Hong Kong may be allowed to submit the SLCC of an Austrian distributor, a sister company of the latter for purposes of compliance with the requirements under Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR).

Exemption from SLCC Requirement

We wish to inform you that the GPPB, through the Secretary of the Department of Budget and Management (DBM), received a letter request for exemption from the SLCC requirement from the PNP, through the Department of the Interior and Local Government (DILG), dated 19 August 2011. The GPPB, upon reply, invited the PNP-DILG to its 7th Regular Board Meeting held on 2 September 2011 to present the matter. In said Meeting, the GPPB denied the PNP-DILG's request stating that the issues proffered did not evince a grant of exemption.

SLCC of a Sister Company

For purposes of determining eligibility in the procurement of goods and infrastructure projects, prospective bidders should submit Class "A" documents consisting of legal, technical, and financial documents to the BAC pursuant to Section 23.1 of the IRR of RA 9184. In the case of a JV, Section 23.1(b) of the IRR of RA 9184 requires the submission of a

Class "B" Document, which refers to a valid JV Agreement (JVA) or duly notarized statements from all the potential JV partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful. Each JV partner shall submit the legal eligibility documents but submission of technical and financial eligibility documents by any of the partners constitutes compliance.

As discussed in a previous opinion¹, 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 may submit the same as part of the bidding documents. Hence, the submission by one of the JV partners of its SLCC can be credited in favor of the other JV partners and constitutes compliance with the SLCC requirement for goods under Section 23.5.1.3 of the IRR of RA 9184.

Please note that Section 23.1(b) of the IRR of RA 9184 clearly states that the submission of technical and financial eligibility documents by any of the JV partners constitutes compliance. However, if distributors and sister or subsidiary corporations of a JV partner are not partners to the JV, the track record of the former may not be used by the latter for purposes of complying with the SLCC requirement.

It is a settled rule that a corporation is an artificial being created by operation of law.² It has a legal personality of its own.³ Under the Corporation Code of the Philippines⁴, such corporate existence and juridical personality commence upon issuance of the Certificate of Incorporation by the Securities and Exchange Commission (SEC).⁵ Thus, a corporation, such as a sister company or a subsidiary assumes a personality separate and distinct from that of the mother or principal corporation. The corporation has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related.⁶

The SLCCs of distributors and sister or subsidiary corporations of a JV partner are personal to each of them and could neither be credited nor recognized in favor of the mother or principal corporate partner to the JVA, in the same manner that the mother or principal corporate partner to the JVA could not be held liable for the obligations and liabilities of the distributor and sister or subsidiary company. The separate personality of distributors and sister or subsidiary corporations of a JV partner may not be disregarded, and the veil of corporate fiction pierced, unless 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.⁷

In view of the foregoing, it is our view that the submission by a JV partner of an SLCC belonging and particular only to its distributor and sister or subsidiary company that is not a partner to the JV does not constitute compliance with Section 23.5.1.3 of the IRR of RA 9184 because the SLCC of the sister company cannot be credited to the JV partner or the JV itself, since the former is an entity that is separate and distinct from the latter entities.

¹NPM No. 24-2012 dated 24 February 2012.

²Section 2, Batas Pambansa Bilang 68 (Corporation Code of the Philippines).

³Article 44, Civil Code; *Kukan International Corporation vs. Hon. Amor Reyes*, G.R. No. 182729, September 29, 2010.

⁴*Supra Note 2*

⁵Section 19. **Commencement of corporate existence.** - A private corporation formed or organized under this Code commences to have corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal; and thereupon the incorporators, stockholders/members and their successors shall constitute a body politic and corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law.

⁶*Philippine National Bank v. Andrada Electric Engineering Company*, G.R. No. 142936. April 17, 2002.

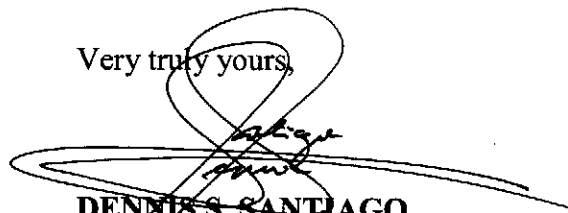
⁷*John F. Mcleod vs. National Labor Relations Commission, Filipinas Synthetic Fiber Corporation (FILSYN), Far Eastern Textile Mills, Inc., Sta. Rosa Textiles, Inc., (Peggy Mills, Inc.), Patricio L. Lim, and Eric Hu*, G.R. No. 146667, January 23, 2007.

Summary

In sum, we wish to inform you that although a request for exemption from the SLCC requirement was submitted by the PNP, such request was denied by the GPPB. On the matter of the submission of an SLCC, we are of the view that the submission by a JV partner of an SLCC belonging and particular only to its distributor and sister or subsidiary company that is not a partner to the JV does not constitute compliance with Section 23.5.1.3 of the IRR of RA 9184.

We hope that our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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