

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

*Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
Telefax Nos. (02) 900-6741 to 44*

NPM No. 021-2005

March 17, 2005

ATTY. JOSEF O. CALIDA
Counsellors' Circle Law Firm
Unit 1510 Cityland 10 Tower I,
6815 H.V. Dela Costa Street,
Salcedo Village, Makati City

**Re : Evaluation of the Eligibility Requirement for Largest Single
Contract of Joint Ventures**

Dear Atty. Calida:

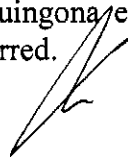
This refers to your letter dated 07 February 2005, which we received on 09 February 2005, requesting clarification on the Implementing Rules and Regulations Part A (IRR-A) of Republic Act 9184 (R.A. 9184), specifically on the following:

Whether the largest single contract of all parties to a joint venture may be combined and considered as one contract for purposes of complying with Section 23.11.1.2.

This clarification is being raised in view of your client's intention to participate in the bidding for 60,840 pieces of combat rig, OD by the Armed Forces of the Philippines.

Evaluation of the Largest Single Contract for Joint Ventures

We are cognizant of the definition of joint venture enunciated by the Supreme Court in the case of *Kilosbayan, Inc. et. al. vs. Guingona et. al.*¹ from which the purpose for entering into such agreement may be inferred.



¹ 232 SCRA 110, May 5, 1994.

Although it is correct to state that a joint venture agreement is entered into by parties for purposes of collectively complying with the eligibility requirements by pooling its resources, qualifications, and assets, each resource, qualification, and assets, however, will be evaluated independently of others such that compliance of a party will be treated as compliance of the entire joint venture. This does not mean that the parties to a joint venture can add the amount of each of their largest single contract to be able to comply with the eligibility criterion for at least fifty percent (50%) of the approved budget for the contract to be bid.

The wisdom behind the allowance of joint ventures is to accord bidders greater opportunity to comply with the requirements for a particular procurement project. However, such opportunity cannot be used to circumvent the intention behind each eligibility criteria.

As discussed in an earlier opinion,² the purpose of the eligibility criterion for the largest single contract is to ensure the Government that only those with experience on a project involving equal or greater value may be deemed eligible, to wit:

This criterion is so provided in order to ensure that the Government is contracting with an entity that has accomplished at least one project with a value no less than fifty percent (50%) of the contract to be bid. In this regard, the Government is assured that it is not the first time that the prospective bidders will be required to accomplish such an undertaking, and therefore provides the Government a level of security that such bidder, if awarded the contract, will be able to fulfill the contract requirements.

Thus, interpreting the above-quoted eligibility criteria to mean that parties to a joint venture may add each of their largest single contract for purposes of complying with the requirement under Section 23.11.1.2 of the IRR-A will undeniably defeat the purpose for which such provision has been included in the law. It is in this same vein that the years of experience of each party to a joint venture cannot be added to comply with the minimum required experience of a firm set by the procuring entity.

Moreover, despite the fact that we have acknowledged in NPM 066-2004, dated 13 May 2004, that joint venture is a viable mode of technology transfer and capacity-building since each joint venture partner has a stake and therefore shares in all the risks and responsibilities for the entire project, such statement cannot be interpreted to mean that partners to a joint venture may consolidate their completed contract in order to meet the requirement under Section 23.11.1.2 of the IRR-A.

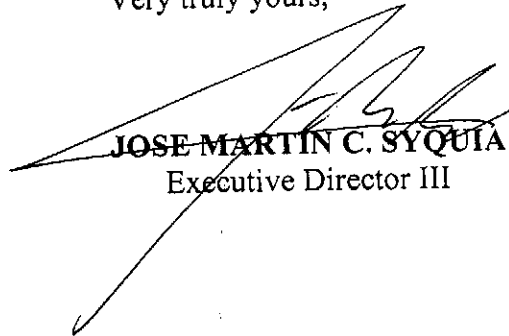
In view of the foregoing, we reiterate our opinion that although parties to a joint venture share in the profits and losses that may result from the contract, the eligibility criterion for a largest single contract of at least fifty percent (50%) of the

² NPM 020-2004.

approved budget for the contract to be bid should be complied with by at least one of the parties to the joint venture for purposes of determination of its eligibility.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

/disc/npm/march.05

REGISTRY RECEIPT

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February 9, 2005

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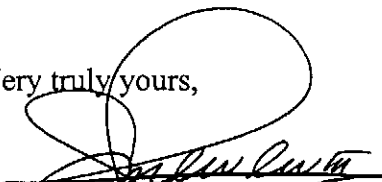
Dear Atty. Calida:

With reference to your letter dated 07 February 2005, addressed to Executive Director Jose Martin C. Syquia, requesting clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, we are acknowledging receipt of the said request on 09 February 2005.

We wish to inform you that we shall communicate to your office any necessary clarification that may arise from the initial study and consideration of your query. Should it be determined that the answer to the query raised in your letter is either clearly expressed and established in applicable laws, rules, regulations, and other issuance or for which no further construction is necessary for its resolution, this office shall immediately advise you on the appropriate law, rule, regulation, or issuance that may be referred to.

However, in case the query may not be categorically dealt with by any of the afore-mentioned issuances and for which administrative interpretation proves necessary for its resolution, this office shall either issue a written opinion therefor or raise the same to the Government Procurement Policy Board for appropriate resolution, should referral thereto becomes necessary.

Very truly yours,



ATTY. SALVADOR C. MALANA III
Head, Legal and Policy Group