

NPM No. 26-2007

30 July 2007

MR. MARCIAL P. LICHAUCO, JR.

General Manager

911 ALARM, INC.

2322 Don Chino Roces Avenue,

1231 Makati City

Re: Eligibility Requirements for Joint Ventures

Dear Mr. Lichauco:

We respond to your letter dated 31 July 2006 raising the following questions quoted hereunder:

1. "Do all parties to the Joint Venture have to submit all documents in the Eligibility Documents envelope, or just the Legal Documents as described by the GPPB in the Philippine Bidding Documents-Procurement of Goods?"

2. "If all parties need to submit all documents in the Eligibility Envelope, then how does this reconcile with the GPPB ruling as listed above [Non-Policy Matter No. 018-2005 dated 08 March 2005], in regard whose NFCC is to be used?"

3. "What if instead of an NFCC, the Joint Venture instead submits a credit line certificate or cash deposit certificate, issued by a bank under the name of one of the parties to the Joint Venture, does this mean the other party no longer need to submit an NFCC or credit line certificate or deposit certificate in its name? If that is in fact the case, can the party that obtained the credit line certificate or cash deposit certificate, use that as the submittal for the other parties of the Joint Venture, in the event that all parties need to submit some sort of a document for each item?"

4. "The GPPB appears to be saying that only one of the parties to the Joint Venture would need to submit the normally asked for list of completed projects, similar projects, and single largest project needed for the Eligibility Documents. Is this correct?"

As recognized in this jurisdiction, a Joint Venture (JV) has been generally understood to mean an organization formed for some temporary purpose. It has no precise definition. In a joint venture, there is community of interest in the business,

sharing of profits and losses and a mutual right of control (Aurbach v. Sanitary Wares Manufacturing Corporation, 180 SCRA 131 [1989]). Filipino entrepreneurs in their desire to develop the industrial and manufacturing capacities of a local firm are constrained to seek the technology and marketing assistance of huge corporations usually of the developed world (*Ibid*). In connection therewith, the Securities and Exchange Commission (SEC) has consistently ruled that two (2) or more corporations may enter into a Joint Venture through an agreement if the nature of the venture is in line with the business authorized by their charters (SEC Opinions dated 26 January 1961, 29 February 1980, 29 April 1985, and 18 March 1993).

In order to give the local firms an opportunity to participate in Government procurement and consistent with the intent of Republic Act No. 9184, this Office has ruled in NPM 18-2005 as follows:

“For this reason, the requirement for submission of legal documents should mean the individual submission of all the entities comprising the joint venture. On the other hand, because usually joint ventures have become a remedy to augment on the capability of smaller enterprises to participate in competition and to eventually perform the contract, the submission of financial and technical documentary requirements by any of the entities constitute compliance”

Consequently, as regards your first query, we reiterate our ruling that each member of the Joint Venture shall submit the Legal Documents¹ under the eligibility requirements. This is to ensure that all the parties in the Joint Venture have the requisite legal personality to conduct business.

On the other hand, the Government also recognizes the need to encourage small and medium businesses which are unable, either technically or financially, to carry out a business undertaking on its own, to solicit the assistance of capable or bigger businesses through a Joint Venture. Thus, it is sufficient that the Technical Documents and the Financial Documents under the eligibility requirements should be complied with by at least one of the members of the Joint Venture for purposes of eligibility.

¹ Legal Documents

- a) Department of Trade and Industry (DTI) business name registration or Securities and Exchange Commission (SEC) registration certificate, whichever may be appropriate under existing laws of the Philippines;
- b) Valid and current Mayor's permit/municipal license;
- c) Taxpayer's Identification Number;
- d) Statement of the prospective Bidder that it is not "blacklisted" or barred from bidding by the Government or any of its agencies, offices, corporations or LGUs, including non-inclusion in the Consolidated Blacklisting Report issued by the GOP;
- e) Other appropriate licenses as may be required by the procuring entity concerned.

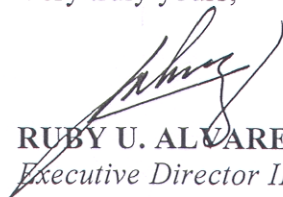
Anent your second query, we confirm that the Joint Venture can only submit the Audited Financial Statement (AFS) of one of its members to prove financial capacity to undertake the procurement project. Said AFS shall be the basis for the computation of the Net Financial Contracting Capacity of the Joint Venture.

As regards your third query, only one member of the Joint Venture is required to submit the credit line certificate or the cash deposit certificate. With the submission of said requirement by one party, the other member/s to the Joint Venture need not submit the same.

Lastly and as previously discussed, we confirm that only one of the members of the Joint Venture needs to submit the Technical Documents under the eligibility requirements, such as the statement of on-going and completed similar projects and the largest single contract (NPM Nos. 20-2005 and 21-2005, both dated 17 March 2005).

We hope to have clarified the matter. Should you have any additional questions, please do not hesitate to contact us.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III