

NPM No. 133-2017

29 December 2017

BGH ENGINEERING OFFICE

bghprocurement@gmail.com

Re: List of Manpower of a Contractor; Government Architect -

Dear BGH Engineering:

This refers to your request for guidance on whether the inclusion of a project architect working in the government, particularly the Philippine National Police (PNP), by the contractor in its submitted list of manpower as part of the bid, is a ground for disqualification.

At the outset, it is noteworthy to emphasize that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) only render policy and non-policy opinions, respectively, on issues pertaining to the interpretation and application of our procurement laws, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from the courts having actual jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the Bids and Awards Committee (BAC), since these duties and responsibilities fall solely within the ambit of its authority and discretion as sanctioned by law.¹

Section 25.2(b)(viii)(2) of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Government Procurement Reform Act, provides for the List of contractor's personnel to be assigned to the contract to be bid, with their qualification and experience, as one of the technical requirements in the procurement of infrastructure projects. These personnel to be assigned to the project, including a government employee assigned as project architect, must be able to comply with all the qualifications and none of the disqualifications provided for by RA 9184, its 2016 IRR, standardized Philippine Bidding Documents, and allied laws and issuances, in order to perform their assigned tasks.

As a rule, public officers or employees are not allowed to practice their profession without securing authority for that purpose, or as otherwise authorized by the 1987 Philippine Constitution, law or regulation. Our Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.²

¹ NPM No. 111-2014, dated 07 November 2014.

² *Dr. Roger R. Posadas and Dr. Rolando P. Dayco V. Sandiganbayan and People of the Philippines*, G.R. Nos. 168951 & 169000, July 17, 2013.

Nonetheless, government officers or employees may engage in the practice of their profession in exceptional cases. Section 12, Rule XVII of the Revised Civil Service Rules provides that:

[N]o officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of Department; Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the officer or employee: And provided, finally, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors.

Moreover, Rule X, Section 1 of the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees³ likewise provides that:

[N]o government official or employee shall engage in the private practice of his/her profession unless authorized by the Constitution, law or regulation, provided that such practice will not conflict or tend to conflict with his official function.

Accordingly, upon verification, validation, and ascertainment of all statements made and documents submitted by the bidder during the post-qualification stage, it is found that the project architect is not authorized to practice his profession, the bidder may be disqualified since its project architect cannot legally perform its functions for the project in accordance with applicable law or regulations; otherwise, the bidder may be declared qualified to bid if the said government employee, has been duly authorized to exercise his profession.

We hope this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and 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.

(sgd.)

DELMONTE S. SANTILAGO
Executive Director V *msm*

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³ Republic Act No. 6713.