

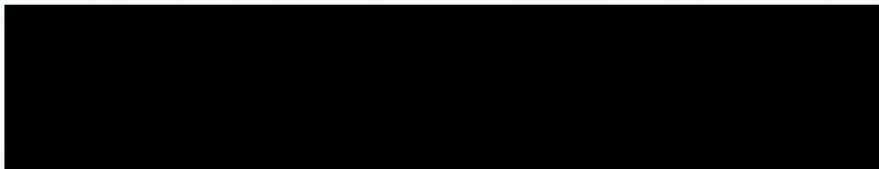


Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 74-2015

13 October 2015



Re: Conflict of Interest

Dear 

This refers to your letter requesting for opinion on the possible existence of a conflict of interest in one of your procurement projects.

As represented, the procurement project pertains to the re-bidding of Philippine Air Force (PAF) Replication/Relocation at BGen. Benito N. Ebuena Air Base (BGBNEAB), Lapu-Lapu City, with an Approved Budget for the Contract (ABC) in the amount of Php 801,409,523.00. The project is an aftermath of a Public Private Partnership (PPP) project that was awarded to GMR/Megawide Consortium by the MCIAA.

It is further represented that during the pre-bid conference for the aforementioned project, one of the interested bidders interposed an objection to the participation of Megawide Corporation. The objection is founded on the alleged existence of conflict of interest on the part of Megawide Corporation, a member of the GMR/Megawide Consortium that is currently in-charge of the operation and maintenance of the Mactan-Cebu International Airport. Hence, this request for opinion.

We take note that under Clause 4.1(d) of the Instruction to Bidders (ITB) of the Philippine Bidding Documents (PBDs) for the Procurement of Infrastructure Projects, all bidders found to have conflicting interests shall be disqualified to participate in the procurement at hand, without prejudice to the imposition of appropriate administrative, civil, and criminal sanctions. Significantly, among the grounds mentioned therein is when *a bidder has a relationship, directly or through 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 the bidding process.* The underlying reason for the disqualification is that this particular ground poses undue advantage in terms of access to information that is generally not available to outside bidders, which may defeat the very essence of competition.

We wish to clarify, however, that the determination of the existence of a conflict of interest is essentially and primarily lodged with the Bids and Awards Committee (BAC) of the Procuring Entity (PE).¹ It is incumbent upon the BAC of the PE to ascertain whether a

¹ NPM No. 34-2009 dated 14 July 2009.

bidder has a relationship, directly or through third parties, that puts them in a position to have access to information thereby unduly influence or be given preference in the award of contract, or in any other manner, substantially affect the result of the bidding or any procurement processes.² Thus, it is well within the responsibility and accountability of the MCIAA-BAC, in the interest of equality, fair play and healthy competition among market participants, to determine whether Megawide Corporation, as member of the GMR/Megawide Consortium, is in a relationship 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 PE regarding the bidding process.

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 other concerns, please do not hesitate to contact us.

(sgd.)

DENNIS S. SANTIAGO
Executive Director

² *Ibid.*