

NPM No. 147-2015

27 November 2015

Re: Joint Venture

Dear [REDACTED]

This refers to your email requesting for clarification on whether Joint Ventures are prohibited from participating in the procurement activity of a procuring entity.

Sections 23.5.1.1(e), 23.5.2.1(e), and 24.3.1(e) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 particularly specify that Joint Ventures can participate in procurement activities involving goods, works, and consulting services. For government procurement purposes, Joint Ventures are formed with the intention to participate in a bid, and can be held jointly and severally responsible and liable for the contract being bid upon. Accordingly, forming a Joint Venture is considered to be the recourse for interested bidders who do not possess the minimum requirements provided by law and the qualifications necessary for the project to be procured.¹

In the procurement of goods and consulting services, bids from existing and prospective Joint Ventures shall be accepted by the Procuring Entity (PE), provided that Filipino ownership or interest in the Joint Venture shall be at least sixty percent (60%)². In compliance with the rules on eligibility requirements, existing Joint Ventures are required to submit a valid Joint Venture Agreement (JVA). On the other hand, prospective Joint Ventures shall submit duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful.³ In this case, a copy of the valid JVA shall be submitted to the PE within ten (10) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be.⁴

In the procurement of infrastructure projects, please be informed that only existing Joint Ventures are allowed to participate. This is in accordance with GPPB Resolution No. 29-2014,⁵ which amended Section 23.1(b) of the IRR pursuant to RA 4566⁶. In this regard,

¹ NPM No. 105-2014, dated 4 November 2014.

² Sections 23.5.1.1(e) and 24.3.1(e), IRR of RA 9184.

³ Sections 23.1(b) and 24.1(b), IRR of RA 9184.

⁴ Section 37.1.4(a)(i), IRR of RA 9184.

⁵ Issued on 5 December 2014.

⁶ Contractor's License Law.


duly notarized statements from prospective parties to a Joint Venture are no longer acceptable in lieu of a valid JVA. Nevertheless, the Joint Venture must still comply with the eligibility criterion that Filipino ownership or interest in the Joint Venture shall be at least seventy-five percent (75%). However, where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement, Filipino ownership or interest in the Joint Venture shall not be less than twenty-five percent (25%).⁷

In view of the foregoing, we emphasize that there is nothing in RA 9184, its IRR, and allied rules that prohibits Joint Ventures from participating in a procurement activity. On the other hand, the establishment of Joint Ventures is encouraged to augment the technical and financial capacity of would be joint venturers, especially in industries where there are limited suppliers, contractors, or consultants to provide wider market participation to enhance competition, pursuant to Section 3 of RA 9184 and its revised IRR.

We hope that 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 there be other concerns, please do not hesitate to contact us.

Very truly yours,

(sgd.)

 **DENNIS S. SANTIAGO**
Executive Director V

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⁷ Section 23.5.2.1(e), IRR of RA 9184.