



RESOLUTION NO. 23-2019

APPROVING THE REQUEST OF THE DEPARTMENT OF TRANSPORTATION AND THE BASES CONVERSION AND DEVELOPMENT AUTHORITY TO USE THE FIDIC¹ CONDITIONS OF CONTRACT FOR ENGINEER, PROCURE AND CONSTRUCT/TURNKEY BIDDING DOCUMENTS AND ADOPTION OF THE CUSTOMIZED TECHNICAL EVALUATION PROCEDURE IN FINDING THE LOWEST CALCULATED RESPONSIVE BID FOR THE SUBIC-CLARK RAILWAY PROJECT

WHEREAS, Republic Act (RA) No. 9184 otherwise known as the “Government Procurement Reform Act” took effect on 26 January 2003, while its 2016 revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

WHEREAS, Section 63 of RA No. 9184 and its 2016 revised IRR authorize the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend its IRR, whenever necessary;

WHEREAS, Section 6 of RA No. 9184 provides for the Standardization of Procurement Process and Forms, thus:

To systematize the procurement process, avoid confusion and ensure transparency, the procurement process, including the forms to be used, shall be standardized insofar as practicable. For this purpose, the GPPB shall pursue the development of generic procurement manuals and standard bidding forms, the use of which once issued shall be mandatory upon all Procuring Entities;

WHEREAS, Section 6.2 of the 2016 revised IRR of RA No. 9184 mandates procuring entities to use the Philippine Bidding Documents, thus:

Procuring Entities are mandated to use the Generic Procurement Manuals (GPMs), Philippine Bidding Documents (PBDs), and other standard forms of the GPPB. However, whenever necessary to suit the particular needs of the Procuring Entity, modifications may be made, particularly for major and specialized procurement, subject to the approval of the GPPB;

WHEREAS, on 22 May 2019, the GPPB-Technical Support Office (GPPB-TSO) received a letter signed by the Department of Transportation (DOTr) Secretary Arthur P. Tugade and Bases Conversion and Development Authority (BCDA) President and Chief Executive Officer Vivencio B. Dizon requesting for GPPB’s review and approval of the proposed bidding documents, which include a proposed technical evaluation procedure in finding the Lowest Calculated Responsive Bid (LCRB) for the Subic-Clark Railway Project;

WHEREAS, on 13 June 2019, DOTr and BCDA representatives presented an overview of the Subic-Clark Railway Project during the 4th regular meeting of the Inter-Agency Technical Working Group (IATWG). The IATWG agreed and instructed the GPPB-TSO to meet with DOTr and BCDA representatives to discuss line-by-line the proposed bidding documents and proposed technical evaluation procedure in finding the LCRB for the Subic-Clark Railway Project;

¹ Fédération Internationale Des Ingénieurs-Conseils

WHEREAS, on 24 and 26 June 2019 and 04 and 25 July 2019, GPPB-TSO representatives, with several members of the IATWG, met with DOTr and BCDA representatives to discuss line-by-line the proposed bidding documents, particularly the proposed adoption of the *Fédération Internationale Des Ingénieurs-Conseils* (FIDIC) Conditions of the Contract for EPC/Turnkey Contracts in lieu of the General Conditions of the Contract in the existing Philippine Bidding Documents, and the proposed technical evaluation procedure in finding the LCRB for the Subic-Clark Railway Project. It was agreed during the 25 July 2019 meeting that DOTr and BCDA will submit a revised version of the bidding documents based on the discussions during the series of meetings;

WHEREAS, on 08 August 2019, during the 5th regular meeting of the IATWG, the GPPB-TSO presented to the members the output of the line-by-line discussions conducted by the GPPB-TSO and several members of the IATWG, and DOTr and BCDA representatives. The IATWG instructed the GPPB-TSO to schedule a separate meeting in order for the members to discuss the details of the proposed bidding documents and the proposed technical evaluation procedure in finding the LCRB for the Subic-Clark Railway Project;

WHEREAS, on 30 August 2019, the DOTr and BCDA submitted to the GPPB-TSO² their revised proposal, which was then sent to members for their comments, as agreed during the 5th regular IATWG meeting;

WHEREAS, on 05 September 2019, during the 6th regular meeting of the GPPB, the GPPB-TSO apprised the Board of the status of the proposal and enjoined their respective IATWG representatives to submit their comments and inputs on the revised proposal. The GPPB instructed the GPPB-TSO to consult with Dr. Fiorello Estuar, Department of Public Works and Highways (DPWH), and representatives from Philippine National Oil Company (PNOC) and National Power Corporation (NPC) considering their actual experience with Turnkey Contracts;

WHEREAS, during the 7th regular meeting of the IATWG on 12 September 2019, the GPPB-TSO reminded the members that no comments on the revised proposal were received from the members, except those from Private Sector Representative to the IAWTG, Mr. Manolito Madrasto, and the Procurement Service, and further informed the members of the instructions of the Board. The IATWG agreed and instructed the GPPB-TSO to schedule the special IATWG meeting after the conduct of consultations with representatives of the PNOC and NPC;

WHEREAS, during the 7th regular meeting of the GPPB on 25 September 2019, the GPPB-TSO apprised the Board of the status of DOTr and BCDA's revised proposal and presented several outstanding policy issues initially identified by the GPPB-TSO and the IATWG in the proposal;

WHEREAS, the Board, in discussing the revised proposal and the issues identified by the GPPB-TSO and the IATWG, agreed on a principle-based approval of the revised proposal of DOTr and BCDA, which means that the Board is approving the use of the customized bidding documents, adopting relevant FIDIC Conditions of the Contract for EPC/Turnkey Contract in lieu of the General Conditions of the Contract and adopting the customized technical evaluation procedure for the Subic-Clark Railway Project, subject to the following:

1. The approval does not include Table A (Threshold Technical Requirements) and Table B (Technical Score Evaluation Table) under

² Through electronic mail from Mr. Leonel De Velez of DOTr.

the Technical Proposal Forms of Section VII of the proposed bidding documents, as the Board agreed that such evaluation criteria or requirement is subject to the determination of the DOTr and BCDA;

2. The DOTr and BCDA may use the Statement of Single Largest Completed Contract or any other variations thereof in determining the capability of the prospective bidder in implementing the SCR project; and
3. Issuance of a certification by the DOTr and BCDA, prior to the posting of the proposed bidding documents, that the (i) Threshold Technical Requirements and Technical Score Evaluation adopted for the SCR Project and (ii) all the provisions in the proposed bidding documents do not limit competition and do not violate any existing procurement law, rules, regulations and associated laws and issuances;

WHEREAS, the Board also instructed the GPPB-TSO to continue with the meeting with the PNO, NPC, DPWH and private sector representatives, and the special IATWG meeting in case there are other issues that need to be addressed. That, in case the inputs or comments provided during the said meetings are not substantial in nature or those limited to the refinements of the proposed bidding documents, then there is no need for the GPPB-TSO to raise the matter to the Board and that the resolution covering the above approval of the Board shall be formalized by the members *ad referendum*. Otherwise, the same should be elevated to the Board for discussion;

WHEREAS, on 04 October 2019, the GPPB-TSO held the consultation meeting with representatives from the PNO, NPC and GPPB member, Dr. Fiorello Estuar, simultaneously with the conduct of a special IATWG meeting to finally discuss the details of the proposed bidding documents and the proposed technical evaluation procedure in finding the LCRB for the Subic-Clark Railway Project, and the following comments were raised:

1. With the proposed Turnkey Project, the DOTr and BCDA should change its payment terms to just one final payment after the project has been completed and discuss with the Department of Budget and Management any issues as to inclusion in the budget and disbursement;
2. The DOTr and BCDA should decide whether they would be implementing the Subic-Clark Railway Project as Turnkey or Engineer, Procure and Construct Project to resolve issues on the payment terms; and
3. The DOTr and BCDA should use the financial eligibility criteria or requirement under the 2016 revised IRR of RA No. 9184, *i.e.* Net Financial Contracting Capacity that is 100% of the Approved Budget for the Contract;

WHEREAS, the GPPB-TSO received the comments of the National Economic Development Authority (NEDA) on the revised proposal on the same day, 04 October 2019, and considering that no substantial comments were raised during the said meetings nor in the submitted NEDA comments, the GPPB-TSO finalized this resolution for approval by the members of the Board *ad referendum*;

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US**, by law and

other executive issuances, hereby **RESOLVE**, to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the use by DOTr and BCDA of the proposed bidding documents and the proposed technical evaluation procedure in finding the LCRB for the Subic-Clark Railway Project subject to the following:

1. The approval does not include Table A (Threshold Technical Requirements) and Table B (Technical Score Evaluation Table) under the Technical Proposal Forms of Section VII of the proposed bidding documents, as the Board agreed that such evaluation criteria or requirement is subject to the determination of the DOTr and BCDA;
2. The DOTr and BCDA may use the Single Largest Completed Contract or any other variations thereof in determining the capability of the prospective bidder in implementing the SCR project; and
3. Issuance of a certification by the DOTr and BCDA, prior to the posting of the proposed bidding documents, that the (i) Threshold Technical Requirements and Technical Score Evaluation adopted for the SCR Project and (ii) all the provisions in the proposed bidding documents do not limit competition and do not violate any existing procurement law, rules, regulations and associated laws and issuances;

This Resolution shall take effect immediately.

APPROVED this 7th day of Oct 2019 at Pasig City, Philippines.

SGD

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

DEPARTMENT OF EDUCATION

SGD

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

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DEPARTMENT OF HEALTH

**DEPARTMENT OF INFORMATION AND
COMMUNICATION TECHNOLOGY**

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**DEPARTMENT OF INTERIOR AND LOCAL
GOVERNMENT**

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**DEPARTMENT OF NATIONAL
DEFENSE**

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**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

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**DEPARTMENT OF TRADE AND
INDUSTRY**

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DEPARTMENT OF TRANSPORTATION

PRIVATE SECTOR REPRESENTATIVE