NPM No. 47-2012

26 April 2012

MR. EDUARDO RAMON T. DIMAANO
President
BENDIMIL CONSTRUCTION AND DEVELOPMENT CORPORATION
Summerhill Subd., Pasonanca, Zamboanga City

Re: Mixed Procurement

Dear Mr. Dimaano:

We respond to your letter dated 11 October 2011 requesting for clarification on the propriety of the decision of the National Power Corporation (NPC) to classify under "Goods" the project for the Supply, Delivery, Installation, Test and Commissioning of One (1) Unit 77MVA Generator Transformer for AGUS 2 HEP – Re-Bidding New ABC.

As represented, one of your concerns during the bidding of the project is its classification under Goods which was supported by an explanation of NPC that the particular project was categorized as Supply of Goods since the related works and/or services under the contract merely defines the general support services to be rendered specifically on the equipment to be supplied. In addition, the project contract only involves the replacement of existing equipment; hence, no repair/construction/rehabilitation works will be done.

Please note that Section 5(aa) of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 offers an answer to questions of classification in cases involving mixed procurements. It provides that the procuring entity may determine whether the procurement partakes of the nature of goods, infrastructure projects, or consulting services based on the primary purpose of the contract. Hence, under the law, there is no basis to hold that classification will depend on which component has a higher or highest cost.

It appears that the procurement for the Supply, Delivery, Installation, Test and Commissioning of One (1) Unit 77MVA Generator Transformer for AGUS 2 HEP – Re-Bidding New ABC is mixed or one that may fall under one classification, in this case goods or infrastructure project. When the procurement involves both goods and infrastructure projects, the issue necessarily involves the determination of the primary intention for which the contract is sought to be procured. While the procurement may have been conceived for a number of purposes or uses the primary or foremost purpose of the project procurement shall dictate its nature and character.

In this case, the determination of the nature of the procurement activity, *i.e.*, whether Goods or Infrastructure project lies solely on the sound discretion and determination of the procuring entity; this is not within the ambit of the powers of the Government Procurement Policy Board (GPPB), but is well within the authority of the procuring entity to determine as it is in the best position to identify the primary purpose of the contract[1].

We hope we have provided sufficient guidance on the matter. Should you have further questions, please do not hesitate to contact us.

Very truly yours,

DENNIS S. SANTIAGO
Executive Director III

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[1] NPM 017-2010