

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 123-2004

September 20, 2004

Mr. PAUL A. AQUINO
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Philippine National Oil Company
Energy Development Corporation (PNOC-EDC)
Energy Center, Meritt Road
Fort Bonifacio, Taguig, Metro Manila

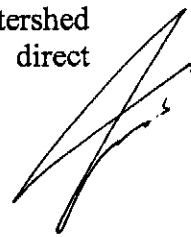
Re : Hiring of Services for Livelihood-Generating Projects in the Watershed Areas Administered and Maintained by the PNOC-EDC

Dear Mr. Aquino:

This refers to your letter dated August 9, 2004, which we received on August 12, 2004 requesting the Government Procurement Policy Board (GPPB) to exempt the procurement of goods and services for the watershed management projects and community projects of the PNOC-EDC from the rules and requirements on public bidding under Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A).

We wish to inform you that during the *Sixth GPPB Meeting*¹, this matter was discussed by the members of the Board in consultation with the PNOC-EDC, focusing on this issue:

Whether or not the PNOC-EDC may directly award the services/labor component of the livelihood-generating projects to the residents in the watershed areas administered and maintained by the said government agency as direct beneficiaries of such project.



¹ August 20, 2004 at Unit 1103, The Taipan Place, Emerald Avenue, Ortigas Center, Pasig City

The PNOC-EDC's initiative of Providing Livelihood Projects to the Residents in the Host Communities of the Government's Geothermal Facilities is in line with its Function of being the Watershed Administrator in Various Geothermal Reservations

Based on the documents presented to us, we have gathered the following information:

1. PNOC-EDC is a government-owned and controlled corporation (GOCC) primarily engaged in the exploration and development of geothermal areas;²
2. However, PNOC-EDC as the watershed administrator of various geothermal reservations, is mandated under E.O. 223 to manage the forest communities in the public lands within the reservations.³ This mandate is also pursuant to MOE Order 83-06-15 which deputized the officers and employees of the PNOC-EDC to undertake the management, protection, development and rehabilitation of the watershed areas in Tongonan, Palinpinon and Bacon-Manito Geothermal Reservations, in conjunction with P.D. 1749;
3. PNOC-EDC's geothermal installations throughout the country are commonly established and built in the mountainous areas, surrounded by poor communities majority of which live below the poverty line where livelihood is a major concern, and found in areas with high influence by the New People's Army (NPA). In view of the harsh or unfriendly conditions where these geothermal installations are found, it is of primordial importance that the company be able to gain the local residents' support for these vital government energy projects so that they build a strong social fence to protect these vital energy installations that are important in the country's economic development⁴.

Anent the foregoing, it can be readily inferred that the generous efforts or initiative of PNOC-EDC to provide livelihood projects that require the active participation of the residents in the host communities of the said geothermal areas is in pursuit of its social responsibility. These residents benefit from the aforementioned projects by obtaining labor opportunities as a source of income, and as part of their development as a community.

It is observed that the aforesaid hiring of services of the said local residents may not be strictly construed as government procurement under R.A. 9184 and its IRR-A considering that the idea of competitive bidding would essentially be difficult to apply in a case where projects are generated, specifically, to provide jobs to selected beneficiaries, pursuant to existing programs and policies implemented by the government.

It is worthy to consider that the geothermal and watershed management projects of the PNOC-EDC are in consonance with the policy of the government to adopt the "Community-Based Forest Management" as the national strategy in all forest conservation and development

² PNOC-EDC Letter addressed to Sec. Emilia T. Boncodin of DBM as Chairperson of the GPPB dated August 9, 2004

³ PNOC-EDC Letter addressed to Exec. Sec. Alberto S. Romulo of the Office of the President dated July 14, 2004

⁴ Ibid.

activities under Executive Order Nos. 263 and 318, issued by their Excellencies, then President Fidel V. Ramos and President Gloria Macapagal-Arroyo, respectively.

Moreover, the idea of embracing a community-based approach in terms of forest management is in line with the government's thrust to obtain the *full and indispensable participation of communities as immediate stakeholders of the forest land resources in the protection and management of the forest ecosystems.*⁵

Conclusion

With the foregoing elucidations, the GPPB is of the opinion that in generating labor-intensive watershed and community projects for the residents of the host communities in these geothermal reservations, the requirements for workers are not subject to the provisions of R.A. 9184 and its IRR-A.

Accordingly, R.A. 9184 and its IRR-A are not enacted to hamper such government social projects which are vital to the general welfare. As a matter of fact, the provisions of the said procurement law should be construed and implemented in such a way as to promote, sustain and uphold all other existing policies and programs of the government.

The GPPB opines, however, that the procurement of the material component of the aforesaid livelihood projects should be undertaken through public bidding in accordance with R.A. 9184 and its IRR-A.

Please bear in mind that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily applicable upon a different set of facts or circumstances.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

Gse/gppb-tso

⁵ E.O. 263, July 19, 1995