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NPM No. 34-2008

06 October 2008

MR. ALFREDO M. DE LA PAZ
Chairman, Bids and Awards Committee
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT
IRC Building, #82 EDSA, Mandaluyong City

Re : Petroleum, Oil and Lubricants Procurement

Dear Mr. Alfredo M. De La Paz:

This is in response to your letter dated 11 September 2008 relative to the Presidential Commission on Good Government's (PCGG's) earlier request for clarification on its procurement of petroleum, oil and lubricant (POL) products vis-à-vis GPPB Resolution No. 11-2007 (*Re: Revised Guidelines on Index-Based Pricing for Procurement of Petroleum, Oil, and Lubricant Products*)¹.

As per your representation, you state that:

1. For the past twenty (20) years, the PCGG has not included in its annual public bidding activities the procurement of POL products for its vehicles. Instead, the PCGG enters into a Memorandum of Agreement (MOA) with its supplier who provides a credit facility to the former upon posting of a certain deposit bond. Payment is made based on actual monthly consumption;
2. The Commission on Audit (COA) has allowed the above practice for the past twenty (20) years; and
3. Other government agencies like DOTC, SEC and POEA procure their POL requirements in the same manner as PCGG.

Further, PCGG propounds that GPPB Resolution No. 11-2007 applies only to bulk procurement of POL products through public bidding by government agencies and instrumentalities whose POL procurement is a major requirement in their operations.

¹ GPPB Resolution No. 11-2007, Amending the Revised Guidelines on Index-Based Pricing for Petroleum and Oil Products, approved and adopted by the GPPB on 31 May 2007 and became effective on 28 August 2007

General Policy

At the outset, it bears stressing that the general mode for government procurement under Section 10 of Republic Act No.9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) is public, competitive bidding. However, in order to promote efficiency and economy, the procuring entity may resort to any alternative mode of procurement, subject to the approval of the head of the procuring entity, upon prior recommendation of the Bids and Awards Committee (BAC) and whenever justified by the conditions provided under Sections 48 to 54 of R.A. 9184 and its IRR².

Hence, any condition, however exceptional, which is not included or contemplated therein, is deemed not to have been considered by the law as to warrant the use of alternative method of procurement.

Scope of GPPB Resolution No. 11-2007

The abovesited resolution governs the use, under extraordinary circumstances, of an index-based pricing scheme for the procurement of POL products, through public bidding, by all government agencies and instrumentalities when their POL is a major operational requirement necessary for the prosecution of their principal mandate.

Further, while said resolution provides that, the use of index-based pricing shall not be made available to POL procurement from retailers or dealers other than major suppliers, or from those engaged in the business of selling the same to the general public for ultimate consumption and which are sold at pump prices, there is nothing in said guidelines which gives license to any procuring government entity to do away with public bidding. In this case, these government entities must still undergo public bidding for their POL procurement but, they are not entitled to the use of an index-based pricing scheme for the purpose.

Thus, from the foregoing, it may be said that, while it may be true, as impliedly proffered by PCGG, that it is a government agency whose POL procurement is not a major operational requirement necessary for the prosecution of its principal mandate, the fact remains that its procurement activities, as a government entity, remain to be covered under R.A. 9184. And, absence any exceptional conditions that would warrant resort to alternative method of procurement, the default mode is still public bidding.

However, we wish to assure your good office that we understand your predicament. As a matter of fact, we have been in receipt of similar requests for clarification on POL procurement from other government agencies. In this regard, please be informed that, pursuant to a Presidential Directive, the Procurement Service of the Department of Budget and Management has been conducting a series of consultations on POL procurement with all stakeholders, with the end in view, of resolving the issue.

² Section 48, R.A. 9184 and its IRR-A

Rest assured that our office has been and will continue to actively participate in the consultations as cited above. In the meantime, we strongly encourage the Bids and Awards Committees of all government agencies to exert best efforts in procuring their POL requirements thru public bidding, in compliance with R.A. 9184 and its IRR-A.

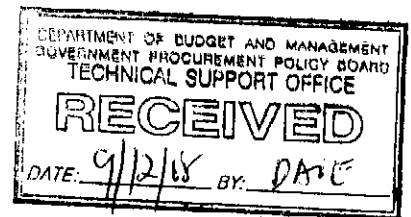
We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


for **RUBY U. ALVAREZ**
Executive Director III



REPUBLIC OF THE PHILIPPINES
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT



11 September 2008

Ms. EMILUISA PEÑANO

Deputy Executive Director
Government Procurement Policy Board (GPPB)
Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road
Ortigas Center, Pasig City

Emilia
9/15/08

Dear Director Peñano:

This refers to your letter to the PCGG Bids and Awards Committee (BAC) dated 22 January 2008 informing that further study and/or research is necessary before the GPPB can render an opinion on the issues raised by the BAC in its letter dated 15 November 2007 with respect to the procurement of gasoline, oil and other petroleum products. Copies of aforesaid letters are hereto attached for easy reference.

The BAC has started the bidding process for the procurement of goods and services for the year 2009, and we would appreciate if you can provide us the GPPB's advice/opinion on the matter as requested in our letter of 15 November 2007.

Very truly yours,

Alfredo M. De La Paz
ALFREDO M. DE LA PAZ
Chairman, BAC

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