



RE TRY RECEIPT
 ORY CENTER POST OFFICE
 Post Office FABIG POWER MANILA
 Letter/Package No. 037438
 Posted on NOV 5 2008
 Preserve this receipt for reference in case of inquiry
 Postmaster/Teller

NPM No. 44-2008

5 November 2008

MR. ALDRIN A. MERCED
 Sales/Marketing Manager
POWER DIMENSION INC.
 PDI Corporate Centre, No. 3 Antonio Luna St.,
 Project 4, 1109 Quezon City.

Re : Mixed Procurements

Dear Mr. Merced:

We refer to your letter dated 21 September 2007 requesting for clarification regarding Clark Development Corporation's (CDC's) project entitled "Furnishing, Delivering, Installing, Testing and Commissioning of 2X50 MVA 69 KV Clark Load End Substation Project" (the "Project")

As can be observed from the bidding documents, CDC classified the project under goods, even though the Project requires the construction of steel structure, construction of a power house, architectural works and installation, testing and commissioning of substation equipments. We also understand that during the pre-bid conference, CDC reiterated that the project is classified as procurement of goods considering that the value of the equipment is higher than the value of the works.

A clarification now arises on how CDC should classify the project: whether it be considered as procurement of goods or procurement of infrastructure projects.

Under Section 5 (p) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184, when a particular project falls under the definition of goods and infrastructure projects, the procuring entity is mandated to determine the nature of the procurement based on the primary purpose of the contract. Section 5 (p) of the IRR-A states:

- (n) *Procurement.* Refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. **In case of projects involving mixed procurements, the nature of the procurement, i.e., goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract.** Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of R.A. 8974 and other applicable laws, rules and regulations. [Emphasis supplied]

Hence, CDC as the procuring entity is in the best position to determine the primary intention and/or purpose for which the contract is sought to be undertaken. While the procurement may have been conceived for a number of purposes or uses, the primary purpose of the contract, as determined by the procuring entity, shall dictate the nature of the existing procurement activity.

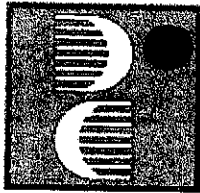
If any bidder is uncomfortable with the classification of the project, then clarifications and/or complaints should be lodged to the procuring entity concerned being the foremost authority of determining the primary intent of the project.

We hope to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III



POWER DIMENSION, INC.

CONSULTANTS

ENGINEERS

DESIGNERS

CONTRACTORS

PDI CORPORATE CENTRE, #3 ANTONIO LUNA ST., PROJECT 4, 1109 QUEZON CITY PHILIPPINES
TOLL FREE: +63 (2) 9118166 (Connecting All Departments) FACSIMILE: +63 (2) 9118153
Visit Our Website : <http://www.powerdimension.com>

September 21, 2007

Atty. Ruby U. Alvarez

Executive Director

Government Procurement Policy Board-TSO

Unit 2506 Raffles Corporate Center

F. Ortigas Jr. Road, Ortigas Center

Pasig City

Subject:

Clark Development Corporation

Dear Madam,

This is in connection with the proposed project of Clark Development Corporation (CDC) "**Furnishing, Delivering, Installing, Testing and Commissioning of 2X50 MVA 69 KV Clark Load End Substation Project**" classified as "**PROCUREMENT OF GOODS**".

Based on the issued Instruction to Bidders of the Tender Documents (Annex A) they classified this project as "GOODS" which was confirmed by CDC during the pre bid conference. But on their issued Schedule of Requirements and Technical Specifications and Bid Price Schedule (Annex B) the project requires construction of Steel Structure, construction of Power House, Architectural Works and Installation/testing and commissioning of substation equipment. We raise this issue to them during the pre bid conference and their reply was the value of the equipment is much bigger than the value of the construction works that is why they classified this as a Procurement of Goods.

In reference to Article I General Provision under section 5 Definition of Terms paragraph (k), **Infrastructure Projects** are clearly defined as "construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control, and drainage, water, supply, sanitation, sewerage and solid waste management system, shore protection, **energy/power and electrification facilities**, national buildings, school building, hospital buildings and other related construction projects of the government."

Chels,

Pls. draft reply.

I think that CDC, as this procuring entity, is in the best position to determine what they are primarily procuring (i.e. whether goods or intangible or both).

CDC's reason given during the pre bid conference is not justifiable. If the bidder is not satisfied with it, then classification complaint should be lodged w/ the Proc. Entity.

94.
per

In view of this, may request for your opinion and suggestion on what classification should this project be classified, "**Procurement of Goods**" or "**Procurement of Infrastructure Project**"

Thank you very much and we are hoping for your immediate action on this matter in the spirit of open and competitive bidding.

Very truly yours

Power Dimension Inc.


Adrin A. Merced
Sales/Marketing Manager