



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

NPM No. 55-2009

15 October 2009

Ms. LEILA B. BONIFACIO

Chairperson

BIDS AND AWARDS COMMITTEE

NATIONAL ELECTRIFICATION ADMINISTRATION

NEA Building, 57 NIA Road, Government Center,
Diliman, Quezon City

**Re: Application of Tax Treatment of
Cooperatives as Eligible Bidders**

Dear Ms. Bonifacio:

We respond to your letter dated 8 October 2009 seeking clarification on the application of Section 32.2.2 of the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 9184 in relation to Section 23.5.1.1 (d) of the same IRR, more particularly, the tax treatment of cooperatives as eligible bidders.

As represented, the National Electrification Administration (NEA) is in the process of bidding out the manpower, janitorial and security services for the year 2010. During the pre-bid conference for the janitorial services, a bidder raised an issue on the application of the term equal footing. The bidder is a private corporation subject to Value Added Tax (VAT), while the other bidder is a cooperative duly registered with the Cooperative Development Authority (CDA) and is thus, exempt from all taxes including VAT. The allegation by the private company is that the bids should be evaluated before VAT. Otherwise there is no considered equal footing.

Section 32.2.2 of the IRR of R.A. 9184 provides thus:

“The BAC shall evaluate all bids on an equal footing to ensure fair and competitive bid comparison. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison.”


From the foregoing, and based on previous deliberations by the GPPB on the matter, it is submitted that even if the bidder is a cooperative duly registered with the

Cooperative Development Authority (CDA), it should still be required to include the tax computations in its bidding documents, for purposes of bid evaluation and comparison, but it shall not be required to pay taxes in case it is determined as the Lowest Calculated and Responsive Bid.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

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



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Executive Director III



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pp

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From the foregoing, and based on previous deliberations by the GPPB on the matter, it is submitted that even if the bidder is a cooperative duly registered with the Cooperative Development Authority (CDA), it should still be required to include the tax computations in its bidding documents, for purposes of bid evaluation and

comparison, but shall not be required to pay taxes in case it is determined as the
LRCB. ← spell out

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RUBY U. ALVAREZ
Executive Director III



Win.
Pls. revise per notes

10-14-09
Win response to PCA
10-15-09
Ma'an
Final draft changes
are incorporated.

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Ms. LEILA B. BONIFACIO
Chairperson
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NATIONAL ELECTRIFICATION ADMINISTRATI
NEA Building, 57 NIA Road, Government Center,
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**Re: Application of Tax Treatment of
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Dear Ms. Bonifacio:

We respond to your letter dated 8 October 2009 ^{spell-out} regarding the query ^{seeking clarification} on the application of Section 32.2.2 of the IRR of RA 9184 in relation to Section 23.5.1.1 (d) of the same IRR more particularly, the tax treatment of cooperatives as eligible bidders.

As represented, the National Electrification Administration (NEA) is in the process of bidding out the manpower, janitorial and security services for the year 2010. During the pre-bid conference for the janitorial services, a bidder raised out an issue on the application of the term equal footing. The bidder is Private Corporation subject to Value Added Tax (VAT), while the other bidder is a cooperative duly registered with the Cooperative Development Authority (CDA) and is thus, exempt from all taxes including VAT. The allegation by the private company is that the bids should be evaluated before VAT. Otherwise there is no considered equal footing.

Under Section 32.2.2 of the IRR of R.A. 9184 provides ^{that:} "The BAC shall evaluate all bids on an equal footing to ensure fair and competitive bid comparison. For this purpose, all bidders shall be required to include the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison."

indent this
please

^{thus:} Therefore, ~~as stated in Section 32.2.2 of the IRR of R.A. No. 9184, it is submitted that even if the bidder is a cooperative duly registered with the Cooperative Development Authority (CDA), the treatment is equal in terms of bidding, wherein, the bid shall include all the taxes, and shall be the basis for bid evaluation and comparison.~~ ^{For the foregoing, and based on previous deliberations by the GPPB on the matter,} it should still be required to include tax computations in their bidding documents, ^{which shall be for purposes of bid evaluation and comparison, but said cooperatives shall not be required to pay taxes in case it is determined as the LCRB.}

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there is a conclusion. Kindly provide the basis. State pertinent provisions of the IRR to support your conclusion.
Based on the foregoing and the facts you had given, the bids including the taxes, shall be the basis for bid evaluation and comparison.

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