



REPUBLIC OF THE PHILIPPINES
Department of Budget and Management
Malacañang, Manila

PROCUREMENT POLICY BOARD
Technical Support Group

NPM No. 05-2003

February 27, 2003

MR. WINIFREDO SM. PANGILINAN
Vice President/Head, Engineering Services,
Chairman, Special Bids & Awards Committee
National Transmission Corporation
NPC Complex, Agham Road cor. Quezon Avenue,
Diliman 1104, Quezon city, Philippines

Re : **Leyte-Cebu Interconnection
Uprating Project Re-Bidding Under
Turn-Key Contract with Financing**

Dear Mr. Pangilinan:

This refers to your letter dated January 30, 2003, which we received through fax on January 31, 2003, requesting confirmation on the following clarifications made by the National Economic Development Authority (NEDA), through Deputy Director Ruben S. Reinoso, to wit:

1. The Eligibility Requirements on Filipino ownership and interest can be waived for prospective foreign bidders using foreign financing for the project, in accordance with the waiver provision of E.O. 40;
2. Import Duties, Taxes and other Fees should be included in the calculation of the bid regardless of the nature of the foreign financing, since TransCo is not tax exempt and will eventually pay for the taxes and duties;
3. In the determination of the NFCC of a joint venture or consortium bidder, the negative NFCC of any member/partner should not be

included in the computation of the collective NFCC of the joint venture/consortium as long as there is a member/partner which can fully satisfy the NFCC requirements. In any event, all member-partners will be jointly and severally liable to the full execution of the contract.

Waiver of Nationality Requirement

Whenever a project is funded from foreign sources, whether it be procurement of goods, civil works or consulting service, Executive Order No. 40, series of 2001 (E.O. 40), and its Implementing Rules and Regulations (IRR) give due deference to the procurement rules, regulations and procedures of the International Financing Institution (IFI). Section 1 of E.O. 40 provides:

Section 1. Scope and Application. This Executive Order shall apply to the procurement of: (a) goods, supplies, materials and related services; (b) civil works; and (c) consulting services, xxx xxx xxx.

Nothing in this Order shall negate any existing and future government commitments with respect to the bidding and award of contracts financed partly or wholly with funds from international financing institutions as well as from bilateral and other similar foreign sources.

Similarly, Section 1.2. of the IRR of E.O. 40 states that:

1.2. For procurement financed wholly or partly from Official Development Assistance (ODA) funds from International Financing Institutions (IFIs), as well as from bilateral and other sources, the corresponding loan/grant agreement governing said funds as negotiated and agreed upon by and between the Government and the concerned IFI shall be observed.

In view of the foregoing, for the procurement of goods, civil works and consulting services, if the project to be procured is funded by an IFI, we believe that the provisions of the relevant loan or grant agreement shall govern, and those of E.O. 40 and its IRR would apply suppletorily. As such, if the said loan or grant agreement does not provide for any nationality requirement, we agree with the view that the eligibility requirements in E.O. 40 and its IRR regarding Filipino ownership and interest may be waived.

Inclusion of Import Duties, Taxes and other Fees in the calculation of the bid

E.O. 40 and its IRR are silent on whether or not the bidder should include the cost of import duties, taxes and other fees in its bid/price proposal. However, considering that the transactions of TransCo are not tax exempt, the bid or price proposals of bidders should include the costs relating to duties, taxes, imposts and similar fees. For this purpose, it would be the duty of the Government agency concerned to provide in its Instruction to Bidders (ITB) such details as that requiring bidders to quote their prices

inclusive of taxes. This would avoid confusion, otherwise, different bidders may end up quoting different prices based upon different assumptions. It would be dangerous for an agency to assume that its bidders would quote bid prices inclusive of taxes, because the matter of tax liability is different from the matter of including such tax liability in the price quotation.


Collective Compliance in the Computation of the NFCC

It should be noted that bidders are allowed to form joint ventures under the law in order that they may take advantage of their respective strengths. For this reason, the computation of the Net Financial Contracting Capacity (NFCC) is couched on collective compliance, so that the compliance of one member or partner could satisfy this requirement. As such, we agree with the view that the negative NFCC of any member/partner need not be included in the computation of the collective NFCC of the joint venture or consortium as long as there is a member or partner that can satisfy the NFCC requirement.

We also agree that the liability of members or partners in a joint venture or consortium is solidary in nature, such that the government may claim against any of the members in the event a violation of the Contract occurs.

We trust that this clarifies matters.

Very truly yours,


JOSE LUIS C. SYQUIA
Acting Executive Director