

NPM No. 003-2019

4 March 2019

ATTY. MELCHOR P. RIDULME
Chairperson, Bids and Awards Committee
National Power Corporation
BIR Road cor. Quezon Ave.
Diliman, Quezon City

Re: Committed Line of Credit

Dear Chairperson Ridulme:

This pertains to your letter¹ requesting for opinion and guidance on the following matters:

1. Whether the committed Line of Credit needs to be effective or has already been granted by the bank at the time of bid opening?
2. Whether a bidder can submit a committed Line of Credit that will be effective only upon award (or few days after award) of the contract?
3. Whether the bid submission should be disqualified if the bank did not specify a date as to when the committed Line of Credit will be available or if the availability thereof at some future date, i.e., upon award of contract?

At the outset, we emphasize that in the procurement of goods wherein the prospective bidder opts to submit a committed Line of Credit in lieu of its Net Financial Contracting Capacity (NFCC), the Line of Credit must have been granted by the bank to the bidder at the time of submission of bids. Section 23.1(a)(xviii) of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provides:

23.1 For purposes of determining the eligibility of bidders using the criteria stated in Section 23.4 of this IRR, only the following documents shall be required by the BAC, using the forms prescribed in the Bidding Documents:

...

xviii. The prospective bidder's computation of Net Financial Contracting Capacity (NFCC). However, in the case of procurement of Goods, a bidder may submit a committed Line of Credit from a Universal or Commercial Bank, in lieu of its NFCC computation.

Said provision requires an existing Line of Credit not a mere commitment issued by a bank to extend a credit line at some future time. The current provision² was made precisely to change the previous requirement³ for a commitment from a Universal or Commercial Bank to extend a credit line in favor of the bidder, once awarded the contract.

¹ Dated 10 January 2018 and received on 23 January 2018.

² Section 23.1(a)(xviii) of the **2016 IRR** of RA No. 9184.

³ Section 23.1(a)(vi) of the **IRR** of RA No. 9184.

23.1 For purposes of determining the eligibility of bidders using the criteria stated in Section 23.5 of this IRR, only the following documents shall be required by the BAC, using the forms prescribed in the Bidding Documents:

a) Class "A" Documents

Thus, the present requirement for a committed Line of Credit is different from a mere commitment or undertaking to extend a credit line.⁴ The term "committed" denotes a foregone conclusion as to the bidder's Credit Line with a bank. It presupposes that there are already clearly defined terms and conditions set forth by the lending bank and imposed on the borrower-bidder. Accordingly, a Line of Credit that has not yet been extended by the bank to the bidder at the time of submission of bid is not the committed Line of Credit required for eligibility under the rules.

More to the point, a committed Line of Credit is required to ascertain the bidder's liquidity and ascertain its capability to finance the project's implementation or completion, and additional obligations in connection with the contract to be bid. Correlatively, to ensure that the bidder can sustain the operating cash flow of the transaction, Section 23.4.1.5 of the 2016 IRR of RA No. 9184 provides:

If the prospective bidder submits a committed Line of Credit, it must be at least equal to ten percent (10%) of the ABC to be bid: Provided, That if the same is issued by a foreign Universal or Commercial Bank, it shall be confirmed or authenticated by a local Universal or Commercial Bank.

In sum, the committed Line of Credit must be effective or available on the date of the bid submission. Stated differently, a Line of Credit that shall be effective only at some future time other than on the date of bid submission or has no indicative date when the same shall be available is not compliant with the requirements under Section 23.1(a)(xviii) of the 2016 IRR of RA No. 9184.

The above opinion was made on the basis of the particular facts presented and circumstances availing, and may not, therefore, be applicable given a different set of facts and circumstances.

We hope to have sufficiently clarified the matter at hand.

Sincerely yours,


ROWENA CANDICE M. RUIZ
Executive Director V


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Copy furnished:

PIO J. BENAVIDEZ
President and CEO
National Power Corporation
BIR Road corner Quezon Avenue, Diliman, Quezon City

Financial Documents

(vi) The prospective bidder's computation for its Net Financial Contracting Capacity (NFCC) or a commitment from a Universal or Commercial Bank to extend a credit line in favor of the prospective bidder if awarded the contract to be bid (CLC).

⁴ "Manual of Procedures for the Procurement of Goods", Official Gazette Vol. 113, No. 52, December 25, 2017: 148