

**Procurement Policy Board (PPB) – Interim Technical Support Group (TSG)
CALENDAR YEAR – 2003**

For the Month of February

NON-POLICY MATTERS

Name of Agency	Date Received by PPB-TSG	Date Released by PPB- TSG	Issues/ Concerns/ Queries	Brief Conclusion of the Reply of PPB-TSG
1. Philippine Amusement and Gaming Corporation (PAGCOR)	01/28/03	02/05/03 (NPM No. 002-2003)	<p>Re: Effectivity and Implementation of R.A. 9184</p> <ul style="list-style-type: none"> Effectivity and implementation of Republic Act No. 9184 (R.A. 9184), otherwise known as the "Government Procurement Reform Act." 	<p>The GPRA took effect on January 26, 2003 pursuant to Section 78 thereof. On the other hand, although there are self-executing provisions in the GPRA, the same cannot be fully implemented unless and until the IRR therefor has been finally approved by the President and published for dissemination.</p>
			<ul style="list-style-type: none"> Application of Executive Order No. 40, series of 2001 (E.O. 40) and its Implementing Rules and Regulations (IRR). 	<p>Considering that the IRR of GPRA is not yet approved, the law, as already stated, may not yet be fully implemented. For this reason, we believe that the procedures embodied in E.O. 40 and its IRR shall still apply until the IRR of the GPRA shall have been finally approved.</p>
2. National Power Corporation (NPC)	02/06/03	02/10/03 (NPM No. 003-2003)	<p>Re: Confirmation of the Legal Opinion Provided in a Letter to NAPOCOR Before Regarding the 60/40 Requirement:</p>	

			<ul style="list-style-type: none"> • Whether or not the National Power Corporation (NPC) may allow foreign citizens/ proponents/ bidders who do not meet the sixty percent (60%) Filipino ownership/ equity requirements to participate in its coal procurement project. 	<p>The exception provided under Section 1 of Republic Act 5183 (R.A. 5183), which allows a citizen corporation or association of a foreign country to participate in public bidding of this Government shall be applicable. Government provided that its laws or regulations grant similar rights or privileges to citizens of the Philippines.</p>
3. University of the Philippines-Manila (UP Manila)	02/03/03	02/17/03 (NPM No. 004-2003)	<p>Re: Request for Clarification:</p> <ul style="list-style-type: none"> • May the Committee adopt a policy of not requiring the submission of eligibility requirements from those already declared eligible in a rebid where bidders were already declared eligible based on the first envelope? 	<p>“Eligibility check” is an integral part of every competitive bidding, hence, the submission of eligibility requirement is necessary even it a bidder must submit eligibility requirement for every bidding even if the procurement is being conducted by the same department or agency of government. Consequently, to consider past eligibility of a prospective bidder to succeeding or future procurements will be in utter violation of the mandate of E.O. 40 and its IRR for the BAC to conduct “eligibility check” for each procurement made through competitive bidding.</p>
			<ul style="list-style-type: none"> • May the eligibility of a bidder be valid at least one (1) month, provided, previously declared eligible bidders will be required to submit its NFCC and a duly notarized certification that they are not barred from any government/ private entity for every public bidding? 	<p>Determination of eligibility of a prospective bidder in a previous bidding is considered as one-time eligibility, as such, there is no validity period therefor and such declaration or determination shall be binding to the government only for that specific project; and,</p>

			<ul style="list-style-type: none"> If after two (2) failed biddings due to bid offers being higher than the approved budget and negotiation is conducted; still no bidder can meet the approved budget, what alternative action can be done? Likewise, what variation, if any, can you recommend to the Committee for adoption? 	In case no bidder can meet the ABC, the agency may revise its technical specifications or reduce the quantity of the goods to be procured. The ABC shall remain as is considering that it is the ceiling for bid prices.
4. National Transmission Commission (TransCo)	01/30/03	02/27/03 (NPM No. 005-2003)	<p>Re: Leyte-Cebu Interconnection Uprating Project Re-bidding Under Turn Key Contract with Financing:</p> <p>Confirmation on the following clarifications made by the National Economic Development Authority (NEDA), through Deputy Director Ruben Reinoso, to wit;</p> <ul style="list-style-type: none"> 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. 	<p>Waiver of Nationality Requirement:</p> <p>For the procurement of goods, civil works, and consulting services, if the project to be procured is funded by an IFI, 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, the eligibility</p>

				requirements in E.O. 40 and its IRR regarding Filipino ownership and interest may be waived.
			<ul style="list-style-type: none"> • 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; 	<p>Inclusion of Import Duties, Taxes and other Fees in the Calculation of the Bid:</p> <p>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.</p>
			<ul style="list-style-type: none"> • In the determination of the Net Financial Contracting Capacity (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 member/ partner, which can fully satisfy the NFCC requirements. In any event, all 	<p>Collective Compliance in the Computation of the NFCC:</p> <p>The computation of the NFCC is couched on collective compliance, so that compliance of one member or partner could satisfy this requirement. The negative NFCC of any member/partner in a joint venture agreement 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.</p>

			member partners will be jointly and severally liable to the full execution of the contract.	
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