Sole bidder for Southern Leyte port upgrade project disqualified

THE Philippine Ports Authority (PPA) has declared a bid failure for the upgrade works at the Port of San Juan in Southern Leyte after the sole bidder failed to meet the formatting requirements of the bid submission.

"The lone bidder for the project, R.A. Bensig Construction & General Services, was declared disqualified for its failure to comply with the bid submission required," according to a Jan. 23 memorandum approved by PPA General Manager Jay Daniel R. Santiago.

The project involves the improvement and expansion of the port operational area and construction of other facilities. The contractor will also be tasked with the construction of a passenger shed, pumphouse, powerhouse, and guardhouse. The contract package has an approved budget of P51.26 million, according to the PPA.

The lone bidder was declared "ineligible" because of deficiencies in its bid, according to the Bids and Awards Committee.

"Each bidder shall submit one original and six copies of the technical and financial proposals, properly labeled, book-bound, with hard cover and corresponding index tab, (but the) R.A. Bensig Construction & Services submitted its technical proposals with plastic cover, not book-bound, and without index tabs," the committee said in its resolution.

Mr. Santiago has approved the recommendation to re-bid the contract.

The PPA is committed to modernizing port infrastructure to improve the user experience for shippers, the sea-going public, and tourists.

The United Nations Conference on Trade and Development said in a report that more investment is needed in maritime supply chains, including ports, shipping fleets, and hinterland connections, to boost sustainability and prepare for future global crises.

The Philippines was one of many countries that experienced serious vessel delays and container shortages during the pandemic.

In his first State of the Nation Address, President Ferdinand R. Marcos, Jr. said that his administration will work on improving the transportation system and modernize seaports to maximize the Philippines' strategic location in the Pacific. — **Arjay L. Balinbin**

Universal charge hike proposed to sustain off-grid power services

THE Department of Energy (DoE) will propose raising the universal charge to sustain off-grid services provided by the National Power Corp. (Napocor) as diesel prices rise.

In a virtual briefing on Monday, the DoE and Napocor are considering a higher universal charge for missionary electrification (UCME), which funds Napocor's operations in off-grid areas, many of which are reliant on generator power.

"As you know the price of diesel in the international market has been on the uptick in the last week or so, and for the rest of the year there are indications that unless there are economic developments in the global area that the price will remain high," Energy Secretary Raphael P.M. Lotilla said.

Republic Act No. 9136 or the Electric Power Industry Reform Act authorizes the collection of UCME to fund Napocor's operations, including those of its Small Power Utilities Group (SPUG), which serves remote areas not connected to the grid.

"Electricity prices in missionary areas are subsidized but the subsidy comes from on-grid customers. When increases are needed in order to support the off-grid areas, the on-grid areas customers will have to bear the burden, subject to the approval of the ERC (Energy Regulatory Commission)," Mr. Lotilla said.

The DoE and Napocor are proposing a UCME increase of about 15 centavos per kilowatt-hour (kWh), adding that they hope the ERC would "act swiftly on the petition."

ERC Chairperson and Chief Executive Officer Monalisa C. Dimalanta said in a Viber message that the ERC is currently completing its review of UCME applications.

"The ERC is committed to support the rest of the government in addressing the financing issues of NPC-SPUG in the short term and, in the long term, to come up with a viable program for sustainable development of our off-grid areas," Ms. Dimalanta said.

Assuming that the ERC approves the petition, Bernadette T. Rivero, Napocor spokesperson, said the increase could take effect as early as May.

Mr. Lotilla said regulators are also taking steps to fund a sustainable solution that addresses the "financial woes that are crippling the operations of Napocor."

As of Jan. 26, Napocor's outstanding fuel payables to operate SPUG power plants and barges amount to P1.03 billion for the November-December billing period. Its payables to new power providers and qualified third parties amount to P5.51 billion, representing three to four months of arrears.

The DoE and Napocor's board are planning to borrow P5 billion from government financial institutions, which will require special authority from the President.

"The big issue here is there is a funding deficit, there is fuel to be bought but the problem is the funding. If we can work together to manage a rationing system, it will be better for everybody; of course, we will do our best to garner additional funding but we have to be prepared to bear some of the cost," Fernando Martin Y. Roxas, Napocor president, said.

If Napocor fails to secure funding, it will need to cut back on SPUG operating hours.

The proposed reduction in SPUG operating hours of SPUG power plants will start on March 1 and run until Dec. 31. Power plants that operate for 24 hours a day will be reduced to 15 hours, while power plants that operate for 16 hours will run for 12 hours. Those that operate for less than 16 hours will run for five hours.

Separately Mr. Lotilla said that the DoE is working on policy reforms to increase investment in the energy industry.

"It is the government that sets the policies but it is the private sector that drives investment and operations in the upstream, midstream and downstream sectors. All our efforts in this administration have been directed at reforming policies that blocked entry of new investment," Mr. Lotilla said on Monday during the panel discussion of Philippine Development Plan 2023-2028 Forum.

Mr. Lotilla added that the DoE will take a market-driven approach to attracting more energy investment.

"One is the secondary price cap that was imposed way back in 2013... this has been difficult to lift at this time because of the impact on prices but we will have to deal with this if we want to attract more investment down the line," he said.

The secondary price cap mechanism was designed to avert excessive rises in market prices. The ERC sets the secondary price cap at P6.245 per kWh in the event of a P9 per kWh breach in the rolling average of the generator-weighted average price over a three-day period.

"We've got to also to address the general attitude of government at all levels towards investment in energy," Mr. Lotilla said, noting that local government units must not refuse the development of power projects.

"When we had typhoons last time in Luzon, a number of efforts to rehabilitate transmission lines could not be implemented immediately because some local government units refused. We've got to make all sectors realize that they cannot be blocking power projects that are going to benefit the entire country if we are to see the sustainable development of our economy," Mr. Lotilla added.

He also called for the need to diversify the country's indigenous sources to achieve energy security, adding that new technologies such as nuclear power are also an option.

"The tragedy of the past is that we tend to ban technologies but our effort is to be open to all technologies," he added. — **Ashley Erika O. Jose**

ADB warns of risks as cross-border banking takes hold in region

CENTRAL BANKS in Southeast Asia need to prepare liquidity support and safety nets to mitigate any risks stemming from financial digitalization and cross-border banking, the Asian Development Bank (ADB) said on Monday.

In a report, the ADB said digitalized transactions have been beneficial to the banking industry in the Association of Southeast Asian Nations plus China, Japan, and South Korea (ASEAN+3), remains important for central banks to consider changes to their regulatory framework in anticipation of such risks.

"In the age of digitization, financial transactions will become more globalized as such transactions cross borders more easily. However, cyberspace makes conflicts of geographical as well as functional jurisdictions more complex," the ADB said.

"Though financial services may go beyond borders, financial regulations continue to be based on territoriality; thus, cross-border regulatory problems must be solved through an appropriate home and host supervisory arrangement. Building trust and confidence in peer regulators is the basis of any effective cross-border regulatory cooperation," it said.

The bank added that the ASEAN+3 is unique compared with other regions, noting that even though intraregional economic linkages are extensive, member economies are in different stages of economic development and trade in their own currencies.

According to the ADB, supervisory entities must be organized for effective coordination. Central banks should also work more on data standardization and efficient data collection, which would allow regulators to use advanced technology in supervising the financial industry.

"The expansion of cross-border banking activities will create more difficulty for supervision and crisis management. Mismanagement of liquidity can trigger a failure of a banking group regionally. The home supervisor can provide liquidity to support the settlement of its own currency, but it is not possible to stop the chain reaction of failures in other markets," the report read.

"Therefore, additional liquidity measures in different local currencies may need to be considered along with the expansion of cross-border financial services, depending on their size, impact on payment and settlement systems, and impact on regional financial stability," it said.

The Bangko Sentral ng Pilipinas (BSP) has signed a memorandum of understanding with other ASEAN central banks to strengthen collaboration in payment connectivity.

The Memorandum of Understanding on Cooperation in Regional Payment Connectivity (RPC) was signed on the sidelines of the G20 Leaders' Summit with Bank Indonesia, Bank Negara Malaysia, Monetary Authority of Singapore, and Bank of Thailand on Nov. 14 in Bali.

The RPC agreement aims to foster a more inclusive financial ecosystem by enabling fast, seamless, and cheaper cross-border payments across the region.

"Home and host central banks in ASEAN+3 must prepare their own cross-border, short-term liquidity measures, such as cross-border collateral arrangements and bilateral swap agreements, as another layer of regional financial safety nets. It is important to consider regional risk mitigation measures along with the rapid expansion of new financial services before any crisis happens," the ADB said.

The ADB projects digital transformation in the region to continue gathering pace in the medium term.

The ADB said the digital-banking penetration rate approached 90% in 2021 in some regional economies. Digital wallets have also taken hold as the dominant e-commerce payment platform, accounting for 68% of regional e-commerce transactions by value in 2021, which is projected to expand to over 72% by 2025 with the declining use of cash.

"The progress of financial innovation and digitalization is a great opportunity for the financial industry. Banks have been utilizing financial technologies to improve services (FinTech) and nonfinancial firms have emerged to utilize their technological advantages and offer a part of traditional banking services (TechFin) at a reduced cost, illustrating that the banking industry has increasingly become competitive in recent years," the bank said. — **Keisha B. Ta-asan**

OPINION

Refresher on minimum Philippine TP requirements

LET'S TALK TAX
JOEN JACOB G. RAMAS

After all the merriment and celebrations from Christmas and early-year holidays such as the Feast of the Black Nazarene, the Sinulog Festival, and Chinese New Year, it is finally the last day of January. Accountants and auditors alike are surely thankful that January, which seemed like an eternity, is over. Finally, a fraction of the tax season is over, and we survived. But it doesn't stop there. Before we get tied up with finalizing audited financial statements and income tax returns for the year just ended, it is equally important to focus on the reporting requirements for transfer pricing (TP).

We ended 2022 with a series of TP articles dedicated to aiding taxpayers and businesses in assessing, preparing, benchmarking and reporting TP results. Though TP was introduced fairly recently in the Philippines, several guidelines have since been released by the Bureau of Internal Revenue (BIR) for minimum compliance. In time for the tax season, let us revisit the minimum TP requirements in the Philippines.

WHO ARE REQUIRED TO FILE BIR FORM 1709?

A taxpayer is required to file BIR Form 1709 (Related Party Transactions Form) or RPT Form when the following conditions are present:

- The taxpayer is required to file an annual income tax return; and
- The taxpayer has transactions with domestic and foreign related parties in the covered taxable year; and,
- The taxpayer is either (1) a large taxpayer, (2) enjoying tax incentives, (3) reporting net operating losses for the current and two immediately preceding taxable years, or (4) a related party that has transactions with a taxpayer classified in the aforementioned three sub-criteria.

Taxpayers are advised to monitor the above conditions on a regular basis because they may not be required to file the RPT Form during the previous year but may be required to file one during the current year or the next. For example, a taxpayer who is not required to file the RPT Form in the previous year is now required to file because it is transferred to the Large Taxpayers Service during the current taxable year. Likewise, a taxpayer who recently registered with Philippine Economic Zone Authority is now required to file the RPT Form.

On the other hand, tax-exempt persons under the Tax Code or under special laws are not required to file due to their tax-exempt status.

The RPT Form may be submitted in accordance with the submission and as an attachment to the annual income tax returns, either manually through the Revenue District Offices or through the BIR's eAFS system.

WHO ARE REQUIRED TO PREPARE TP DOCUMENTATION?

In mid-2020, when the first TP compliance regulations were issued, taxpayers rushed to prepare TP documentation (TPD) to comply with the old requirement of attaching TPD to the RPT Form. Since then, the regulation has been amended such that the submission of the TPD is mandatory within 30 days upon the request of the BIR under a valid Letter of Authority.

Certain thresholds have also been observed in TPD preparation. TPD is required if the taxpayer is required to file the RPT Form, as discussed above, and meets any of the following thresholds:

- Annual gross sales/revenue for the taxable period exceeds P150 million, with total related party transactions exceeding P90 million but excluding key management personnel compensation, dividends, and branch profit remittances; or,
- Sales of goods to related parties exceed P60 million or sales of services, interest payments or utilization of intangible goods exceed P15 million; or,
- TPD was required within the immediately preceding taxable period.

Take note, however, that the RPT Form requires disclosure of whether or not the taxpayer has already prepared TPD. While some taxpayers prefer to prepare the TPD once they breach the above thresholds, other taxpayers, though not exceeding the statutory thresholds, prefer to prepare ahead.

Tax authorities may be keen to adjust transfer prices to arm's length pricing. As such, TPD should demonstrate that transfer prices are consistent with the arm's length principle. The benchmarking of transfer prices should be properly presented and defended in the TPD to prevent, if not avoid, possible tax deficiency arising from audit adjustments.

As yet, BIR TP audits greatly depend on the initial TP risk assessment based on submitted RPT Forms, analysis of financial statements and tax returns, among others. However, we have recently noticed that BIR examiners started requesting a copy of the taxpayers' TPD during tax audit. Without their TPD, taxpayers may be exposed to the BIR's adjustments to transfer prices and assess possible deficiency taxes. Ultimately, while taxpayers may not be required to file the RPT Form or to prepare a TPD, they may still be required to present sufficient proof that their related party transactions are at arm's length, especially during a BIR audit.

Beyond being a compliance item, TPD is helpful in planning the reasonable transfer price. It also provides an opportunity to explore the industry in which the taxpayer operates and the economic factors affecting the taxpayer's operations. In the words of the BIR, nothing prevents any taxpayer from preparing TPD.

Better to have one than none.

HOW OFTEN SHOULD TPD BE UPDATED?

There is a tendency to misconstrue that the TPD, once drafted and prepared, is a static document.

The BIR does not require annual TPD updates. However, contemporaneous circumstances must be considered by the taxpayer to update the TPD, such as, but not limited to, significant changes in the business model, the factors or conditions considered in drafting the TPD, the nature of the related party transactions, or when the taxpayer's transactions exceed the thresholds required to prepare TPD as enumerated above.

On the other hand, the Organisation for Economic Co-operation and Development (OECD) recommends that the TPD be reviewed and updated on an annual basis in order to determine whether an organization's functional and economic analyses are still accurate and to confirm the validity of the TP methodology previously applied.

The OECD also recommends that the search for comparable companies be updated every three years rather than annually, as long as the operating conditions of the organization remain unchanged. Financial data for the comparable companies, however, should be updated annually.

For instance, TPD that was prepared as of year-end 2020, at the height of the COVID-19 pandemic with unique economic conditions, may not apply to the company at the end of 2022 following shifts made to prepare for the post-pandemic years; hence, the need to revisit and update TPD. In the same manner, if nothing significant has changed in the business model, factors or conditions considered in drafting the TPD, it may just update the financial data of the comparable companies in its TPD and verify whether the result or conclusion remains the same.

The OECD further acknowledges that there may not be significant changes in the economic and functional factors affecting an organization's business, or that a comparable company in TPD has not changed since the last update, and as such, an annual updating may not be applicable to all organizations. In fact, the OECD defers to tax authorities the frequency of updating the TPD.

TAKEAWAY

While we collectively move forward from the woes and successes of 2022, taxpayers and business organizations can also move forward by looking back. With January 2023 over and as the remaining months of the tax season loom, it is best to be TP-prepared. What better way to defend the transfer price than by having robust TPD?

Let's Talk TP is an offshoot of Let's Talk Tax, a weekly newspaper column of P&A Grant Thornton that aims to keep the public informed of various developments in taxation. This article is not intended to be a substitute for competent professional advice.

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