DBM bats for direct procurement from suppliers deemed 'reliable'

THE Department of Budget and Management's (DBM) Procurement Service (PS) is proposing two new methods to streamline government procurement, including the direct purchase of goods from suppliers with acceptable track records and the direct purchase of goods used in research and development.

Dennis S. Santiago, executive director of the PS, proposed the two methods in a letter to Senator Juan Edgardo M. Angara, who heads the Senate Finance Committee. The letter had been provided by Mr. Angara's staff.

"We have really introduced a lot of measures that would open up and (inject) more flexibility on government contracting... especially with the use of fit-for-purpose procurement or proportionality," he told a committee hearing on Wednesday.

"We will be using modalities that are most useful to the government."

The committee is considering amendments to the Government Procurement Reform Law to minimize delays to government projects and the resulting impact of underspending on the economy.

In his letter, Mr. Santiago described the proposed direct-purchase mode as applicable to suppliers that have "satisfactorily delivered goods or services to another government agency under a contract."

This can only be pursued if a previous contract has been awarded through competitive bidding and if the supplier agrees to the terms of the procurement contract, according to Mr. Santiago's letter, dated Feb. 12 and sent to *BusinessWorld* on Wednesday.

The PS is also proposing easier procurement rules for products used in innovation projects and research and development, including raw materials, substances, chemicals, and animals.

Mr. Santiago noted that competitive bidding is the primary method of procurement of government agencies under the law, noting that alternative methods of procurement often flagged when transactions come under scrutiny.

Senate Bill No. 2466, which was filed by Mr. Angara, aims to analyze current procurement modes, manage their risks, and establish a single electronic procurement portal. The measure would also make procurement from an electronic marketplace an option.

The committee also tackled Senate Bill No. 1123, filed by Senator Maria Imelda Josefa Remedios R. Marcos, which seeks to abolish the PS, who alleged that funds are often stalled at the procurement stage.

The DBM has been pushing to amend the procurement law, seeking the adoption of a single electronic portal known as the Philippine Government System for all procurement activities.

The cash utilization rate of government agencies at the end of 2023 was 98%, it said earlier this month.

Mr. Angara cited the need to improve procurement since many agencies tend to go for the lowest bidder, risking delivery of subpar goods.

"We're forced to buy those given the inflexibility in the law, which is obviously unintended," he said at the committee hearing. — **John Victor D. Ordoñez**

Recto calls on dev't banks to keep poor countries from lagging further

DEVELOPMENT BANKS and institutions must ramp up their assistance to poor countries, calling current programs "no longer sufficient," Finance Secretary Ralph G. Recto said.

"We have now reached a critical threshold. Without decisive and major corrective action to protect our hard-won gains, the developing world is at the risk of falling even further behind," Mr. Recto was quoted saying in a speech during the Intergovernmental Group of Twenty-Four (G-24) Board of Governors meeting on Wednesday.

"This particular moment calls for more responsive and strong-willed international financial institutions," he added.

Mr. Recto called on the Asian Development Bank, the World Bank, the International Monetary Fund, and other institutions to "redouble their efforts in helping developing countries mitigate and reverse these factors that threaten our growth prospects."

"Traditional interventions are no longer sufficient. We need bold and innovative solutions to help developing economies sustain productivity, boost long-term growth prospects, and increase resilience to economic shocks," he added.

Mr. Recto also said that the government is open to forging "stronger collaboration" with lenders and member countries to "build up their respective capacities to weather global challenges."

"We must develop strategies to efficiently mobilize fiscal resources and prevent leakages as much as we can, not only to manage debt but to provide protection to our people in these difficult times," he added.

In 2022, the Philippines' active portfolio of official development assistance loans and grants stood at $32.4 billion, composed of 106 loans and 320 grants provided by 20 development partners. — **Luisa Maria Jacinta C. Jocson**

Maharlika studying foreign JVs to build rural telecom towers


JACKSON DAVID-UNSPLASH

THE Maharlika Investment Corp. (MIC) said it is studying the potential of joint ventures (JVs) with foreign investors to build telecommunications towers in rural areas.

Maharlika Chief Executive Officer and President Rafael D. Consing told reporters on the sidelines of an event on Wednesday that the rural segment is difficult for incumbent telecom firms to invest in because they are reluctant to risk their own capital, opening the door for Maharlika to step into the gap.

"One of the strategies that we're looking at is to help rollout and support the rollout of telecom towers in rural areas," he said.

"Today, incumbent telecom companies won't do it on their own, because it's going to be their capital expenditure (capex). Here, it will be our capex. We will create towers that can accommodate both satellite and telecom equipment," he added.

He said the joint ventures with foreign investors will seek to sign up telecom firms as clients for the towers.

"The incumbent telecom companies can then go and lease space in those telecom towers, to reduce their capex, right? So we're basically helping them convert their capex into opex (operating expense) and bringing their equipment to start serving rural areas," he added.

Mr. Consing said that these proposals are undergoing study, though he has held initial meetings with potential foreign investors.

He did not disclose details on the foreign investors, joint venture agreements, or the scope of the telecom tower building program.

The MIC's first commitment this year will likely be an energy-related project, Mr. Consing has said, which will be announced in the latter half of the year. The energy sector is also expected take up the bulk of the fund's initial investments.

The MIC has initial capital of P125 billion and authorized capital stock of P500 billion. — **Luisa Maria Jacinta C. Jocson**

Foreign RE investors to be matched with potential Philippine partners

THE Department of Energy (DoE) said it plans to link up potential renewable energy (RE) investors from overseas with local partners.

"There is heightened enthusiasm from international investors for unlocking the country's RE potential, and we are linking them up with financing institutions, development organizations, government institutions, and engineering, procurement, and construction (EPC) companies for potential partnerships and access to financing," Energy Secretary Raphael P.M. Lotilla said in a statement on Wednesday.

The DoE will host a business-to-business matching event on Feb. 22 aimed at assisting foreign investors in finding local partners.

The government has a target of increasing the share of RE to 35% by 2030 and 50% by 2040, according to the 2023-2050 Philippine Energy Plan.

As of January, the DoE has awarded 1,267 RE service contracts with a combined potential capacity of around 129,000 megawatts across various technologies.

"Their full development would benefit from partnerships among various private businesses," the DoE said. — **Sheldeen Joy Talavera**

African Swine Fever still present in 15 provinces

THE Bureau of Animal Industry (BAI) said 15 provinces still have active cases of African Swine Fever (ASF).

The BAI reported that the most number of active cases was in Oriental Mindoro, where hog farms in eight cities or municipalities were trying to contain ASF as of Feb. 6.

The first ASF outbreak in the Philippines was detected in 2019.

Oriental Mindoro detected its first ASF case in October in two barangays in Roxas municipality, according to the provincial government.

The BAI also noted the presence of ASF in three Occidental Mindoro town, which had triggered culls to depopulate farms within the surrounding area.

Towns are classified as red zones if an outbreak is detected in a single barangay, with hog movements restricted. The mobility restrictions ramp up with outbreaks in two or more barangays.

The Department of Agriculture (DA) reimburses farmers P5,000 for each culled hog, up to a limit of 20 head.

Abra, Apayao, Zambales, Quezon, Laguna, Camarines Norte, Camarines Sur, Sorsogon, Negros Oriental, Southern Leyte, Misamis Occidental, Sultan Kudarat, and Agusan del Sur provinces also have active ASF cases.

The BAI also reported that nine provinces have active cases of type H5N1 Highly Pathogenic Avian Influenza (HPAI), or bird flu.

It said Bulacan, Pampanga, Nueva Ecija, Tarlac, Laguna, Sultan Kudarat, Kalinga, Cagayan and Bataan provinces still have bird flu outbreaks as of Feb. 16.

According to the guidelines issued by the World Organization for Animal Health, a country or area may be declared free of avian influenza 28 days after the completion of depopulation, disinfection of the last affected establishment, and no infections observed while under monitoring.

As of mid-February, 15 provinces were classified as having recovered from bird flu outbreaks.

Last week, the DA announced Benguet was free of HPAI, after the first case was detected in 2022.

The DA has said that more than 90 days have passed since the completion of its cleaning and disinfection operations, and no trace of the disease has since turned up.

The DA has also declared Pangasinan, Aurora, Quezon, Capiz, Batangas, Ilocos Norte, Ilocos Sur, Rizal, Cotabato, Isabela, and Maguindanao del Sur provinces as avian influenza-free. — **Adrian H. Halili**

OPINION

How FAR will RMC 5-2024 take us?

TAXWISE OR OTHERWISE
CRYSTABELLE CRUZ-LUCAS

One of the hot topics in tax circles is Revenue Memorandum Circular (RMC) No. 5-2024, which was issued by the Bureau of Internal Revenue (BIR) to clarify the tax treatment of cross-border services, applying the Supreme Court (SC) decision in Aces Philippines Cellular Satellite Corp. v. Commissioner of Internal Revenue. The RMC imposes Philippine withholding tax on payments for services rendered by non-resident foreign corporations (NRFCs), even if rendered entirely outside the Philippines, as long as the utilization or consumption happens within the Philippines. Because of the widespread impact and apparent shift in the tax treatment, the new issuance has raised uncertainty on the proper taxation of service fees paid to NRFCs by service recipients in the Philippines.

It should be noted that the parties involved in the SC case are associated enterprises located in various jurisdictions. Since associated enterprises or related parties are bound by international and local transfer pricing rules, I wonder whether the Court took into account the transfer pricing considerations present in the case.

Transfer pricing comes into play in determining whether the profits earned by related parties are appropriate considering the proper allocation of the income earned across various jurisdictions and among enterprises based on their functions, assets, and risks (FAR). Given the facts of the case, with various phases of the service being performed by different entities in multiple jurisdictions, personally, I find it reasonable (and even necessary) to consider the application of transfer pricing principles.

In the SC case, the court acknowledges the fact that the NRFC's provision of satellite communication services relies on its entire system, consisting of a communications satellite located in outer space that is interconnected with a network control center in Indonesia, and terminals and gateways located in Indonesia, Thailand, and the Philippines. The case also emphasized that some activities and assets such as: (i) the communication satellite which receives, switches, amplifies, and/or transmits signals to and from the terminals and gateways; (ii) the satellite control facility that monitors and controls the satellite; and (iii) the network control center which consists of the hardware, software, and facilities required in the management and control of the telecommunications system, are performed, located, owned and maintained by NRFCs outside the Philippines. Specific terminals and gateways located in various jurisdictions receive, route, and process the call to a local subscriber until termination. Accordingly, if the network control center beams the signal to the Philippine gateway, any subsequent activities to be performed by the local entity will take place in the Philippines.

Consistent and aligned with economic theory, transfer pricing principles dictate that the more functions being performed, the more assets used, and the more risks assumed, the higher would be the expected profitability or returns. Having said this, it is appropriate to determine each party's proportionate share of the overall revenues based on their FAR profiles specific to the transaction, and subject to tax only the allocated share of the entity. Aligning with the SC's decision in Commissioner of Internal Revenue v. British Overseas Airways Corp., it is the property, activity or service that produces the income. Accordingly, only the NRFC's income, which is attributable to any functions it performs, any of its own assets that is used, and any risks it assumes in the Philippines, should be considered Philippine-sourced income. The remaining portion of the income derived by the NRFC from FAR outside the Philippines should be subject to tax in the jurisdictions where the foreign parties are residing for tax purposes, and hence should be beyond Philippine taxation.

As far as the allocated portion which ties in with the FAR that the NRFC has/employs in the Philippines, any Philippine income taxation should also consider any relief available under an existing tax treaty. Based on Philippine tax treaties, an NRFC's income can only be taxed if the company has a taxable presence in the Philippines, whether through a fixed place, employees or personnel present and providing services in the Philippines, or through definite actions of a dependent agent. While the SC ruled that the OECD Commentaries on Article 5 of the Model Tax Convention on Income and on Capital is irrelevant to the Aces case simply because the NRFC is a Bermudan resident, which is a non-treaty country, the RMC did not expressly disregard the OECD nor the availability of applicable treaty benefits. Given this, I think it is safe to assume that NRFCs residing in treaty countries would still be able to avail of the treaty relief if requirements under the treaty are met.

Contrary to the circumstances present in the SC case where service providers are in multiple jurisdictions, some of the specific cross-border services enumerated in the RMC can likely be performed completely offshore by a single NRFC. In other words, the income from satellite airtime fees, which require the completion of segmented processes before the communication services can be delivered, is not comparable with the income that may be derived from other cross-border services listed in the RMC. However, assuming a similar case where a cross-border service involves multiple related parties from various jurisdictions, I believe a FAR and an economic analysis should be conducted to properly allocate the income, and consequently, determine the tax base.

We are all pondering how far the RMC will take us, especially now that taxpayers, through a number of business and professional organizations, have submitted their unanimous stand on the RMC. Now, the ball is in the BIR's court. Perhaps the BIR can likewise consider transfer pricing when it revisits the RMC and address the taxpayers' uncertainty.

The views or opinions expressed in this article are solely those of the author and do not necessarily represent those of Isla Lipana & Co. The content is for general information purposes only, and should not be used as a substitute for specific advice.

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