

[PPA MEMORANDUM ORDER NO. 04-97, February 20, 1997]

PRESCRIBING GUIDELINES FOR THE PRIVATIZATION OF THE PAN PHILIPPINE HIGHWAYS FERRY TERMINALS

1. INTRODUCTION

Following the instructions of President Fidel V. Ramos, the administration and operation of the Pan Philippine Highways Ferry Terminals was turned over to the Philippine Ports Authority by the Department of Transportation and Communications. This was effected through a Memorandum of Agreement signed last 25 September 1996 (copy attached as Annex 1).

In consonance with the policy of encouraging private sector participation in the management, operation and maintenance of government ports and facilities, the Pan Philippine Highways Ferry Terminals shall be privatized. The privatization shall be implemented under the lease, manage, operate and maintain scheme through public bidding. This Order covers the bidding guidelines for the purpose.

2. SCOPE

This Order shall govern the prequalification and bidding procedures for the privatization of the Pan Philippine Highways Ferry Terminals.

3. OBJECTIVES

- 3.1 To procure the required services only from qualified competent operators.
- 3.2 To allow fair and equitable treatment of prospective bidders.
- 3.3 To choose a bidder which will offer the highest advantage to the PPA.

4. TERMS OF REFERENCE

The terms of reference which defines the scope of the undertakings, rights and obligations that are expected from both the PPA and the winning bidder as described in Annex "A".

5. METHOD OF PROCUREMENT

- 5.1 The process of privatizing the ferry terminals shall be done through open competitive bidding.
- 5.2 Negotiated procurement may be resorted to only where there have been

two failures of prequalification or two failures of bidding. The procedures to follow in case of negotiated procurement are described in Annex "B".

6. FAILURE OF PREQUALIFICATION

6.1 The PBAC shall declare a failure of prequalification under the following conditions and shall readvertise anew for prequalification:

- a. none or only one (1) bidder responded to the prequalification, or
- b. none or only one (1) bidder is prequalified.

6.2 Notwithstanding the prequalification of a bidder, PPA reserves the right to review the qualifications of the selected bidders before or during the bidding or before actual award of the contract is made.

Should such review uncover any misrepresentation made in the prequalification statements or in violation of Section 8 of this Order or any changes in the situation of the bidder to materially downgrade the substance of such statements, PPA shall disqualify the bidder from submitting a bid or from obtaining an award of contract.

6.3 Should there still be a failure of prequalification after the readvertisement, PPA may resort to negotiated procurement pursuant to the provisions as contained in Annex B.

7. PREQUALIFICATION, BID AND AWARD COMMITTEE (PBAC)

7.1 The existing PBAC under the Port District Offices shall be responsible for the conduct of the prequalification and bidding evaluation of the bids. It shall likewise be responsible for recommending award of the contract.

7.2 The Managers of POSD, CSD and LSD or their respective representatives shall act as official observers in the PDO PBAC.

8. BIDDERS ELIGIBILITY

8.1 Only Filipino citizens or firms duly organized, registered or licensed under the laws of the Philippines with at least sixty percent (60%) capital stock owned by Filipino citizens shall be allowed to participate in the prequalification and in the bidding process.

8.2 The firms referred to under Section 8.1 may either be a partnership or corporation or a joint venture of two or more business organizations that intend to jointly and severally assume the contract if they become successful bidder.

Likewise, natural persons may bind themselves by appropriate contract to form partnership or corporation for the purpose of operating the ferry terminal if they become successful bidder.

8.3 A duly prequalified joint venture of business organization or group of natural persons is not allowed to reduce or to replace any member; however, additional member may be allowed with prior approval of PPA.

8.4 A foreign firm can become a member of a joint venture provided the total foreign interest shall not exceed 40%. Foreign nationals combining with Filipino citizens to organize a partnership or corporation for the purpose of operating the terminal if they become successful bidder shall also be limited to hold 40% interest in the partnership or corporation to be established.

8.5 Only eligible bidders as defined above may be awarded the contract provided the same bidders are found qualified in accordance with the pertinent provisions of these guidelines.

8.6 Firms whose existing contract have been preterminated due to their own fault, or those under suspension, or those with arrears with PPA and DOTC as of the submission of the prequalification document, are not eligible to participate in the bidding and shall, therefore, be disqualified.

8.7 Only one of the applicant firms with interlocking interest, directors and/or whose major principals and/or stockholders are one and the same, is eligible to participate in the bidding. The rest shall be disqualified.

9. PROSPECTIVE BIDDERS RESPONSIBILITIES AND DISCLAIMER

9.1 The prospective bidder shall be responsible for having taken steps to carefully examine all the prequalification and bid documents. Failure to do so shall be at the bidder's risk.

9.2 It shall be the sole responsibility of the prospective bidder to determine and to satisfy himself by such means as are necessary or desirable as to all matters pertaining to the services, including the location of the ferry terminal and the extent of the services, the climatic conditions of the area, the availability of labor, transportation and communications and other factors that may affect his costs and his price.

The prospective bidder, by the act of submitting his bid, acknowledges that he has inspected the ferry terminal location and determined the general conditions of the same. An affidavit of such port inspection from the prospective bidder is required to be submitted with the Bid.

9.3 Prior to submittal of bids, the prospective bidders are considered to have become familiar with all existing laws, decrees, ordinances and regulations of the Philippines and of the locality where the ferry terminal is located.

9.4 The Authority shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective bidder out of the information and data furnished by the Authority.

9.5 The Authority has the right to reject any or all bids or to declare a failure of prequalification or bidding pursuant to the provisions of these guidelines and the right to verify the statements submitted.

9.6 The Authority assumes no obligation whatsoever to compensate or indemnify the bidders for any expense or loss that they may incur in the preparation