INCLUSION OF COUNTERTRADE UNDERTAKING OF FOREIGN SUPPLIERS IN BIDDED OR NEGOTIATED CONTRACTS COVERED BY E.O. 120 (S. 1993) AND ITS IMPLEMENTING RULES AND REGULATIONS

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A

Introduction

To ensure that "best efforts" are exerted by Government procuring offices to adopt countertrade as a supplemental trade tool with respect to their procurement/importation of foreign capital equipment, machinery, products, goods and services as mandated under E.O. 120 dated August 19, 1993 and its Implementing Rules and Regulations ("IRR") dated January 10, 1995, the following measures shall be complied with.

B

Integration of a Countertrade Undertaking/Proviso in Bid Tenders or Related Product Offers of Foreign Suppliers

B.1 It shall be the responsibility of all Government procuring offices, whose foreign procurement or importations are covered by E.O. 120 and its IRR, to require its foreign suppliers to submit, together with their bid tender (in case of bidded purchases) or product/sales offer (in case of negotiated purchases) a written Undertaking to pursue countertrade in the Philippines in the event that said supplier is awarded the subject contract.

The text of said written Undertaking is hereto attached as Annex "A" and made integral parts hereof.

B.2 The aforesaid Undertaking shall be signed by the duly authorized representative of the foreign supplier and shall be submitted to the Government procuring office together with, and at the time as, the bid tender or product/sales offer for the particular equipment, machinery, product, goods or services being offered to the government.

B.3 The government procuring office concerned shall take all necessary steps to integrate the above-mentioned requirement in its bidding or related procurement procedures for importations covered by E.O. 120 and its Implementing Rules and Regulations.

To this end, said office shall ensure that its foreign suppliers are duly informed of such a requirement PRIOR to submission of their respective formal bid or related offers.

B.4 Pursuant to Section 6.3. of the IRR, the Government procuring office shall, in the evaluation of bid tenders/offers of foreign suppliers, give preference/priority (product specifications, quality considerations, pricing and related terms being equal) to the foreign supplier offering the most favorable countertrade arrangement for the Philippines.

B.5 Following Section 6.4 of the IRR, the Government procuring office shall, within five (5) working days from the selection of their foreign supplier, notify PITC in writing of the details of the importation/purchase together

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with the countertrade Undertaking of the selected foreign supplier.

C

Compliance

C.1 Compliance of the above-mentioned requirements, shall be prima facie proof that "best efforts" were exerted by the concerned Government procuring office to ensure compliance with E.O. 120 and its IRR.

C.2 Foreign suppliers who fail or refuse to submit such written Undertaking, as imposed by the Government procuring office concerned, may be disqualified by said procuring office, at its sole option/discretion.

D

Suppletory Document

This Circular shall be considered as a binding supplement to the IRR and shall form integral parts thereof.

E

Effectivity

This Circular shall take effect immediately.

Adopted: 17 April 1995

(SGD.) JOSE LUIS U. YULO, JR.
President

Annex "A"

UNDERTAKING/COMMITMENT TO PURSUE COUNTERTRADE ARRANGEMENTS RELATIVE TO THE SUPPLY OF

_____
(CITE TYPE OF IMPORTATION)

Pursuant to the national policy on countertrade as enunciated in E.O. 120, S. 1993 relative to the adoption of countertrade in government procurement; and in order to assist in the economic progress of the Philippines, the undersigned bidder hereby commits that should it be awarded the Supply Contract for the above-cited project by the _____ (name of government office) it shall, directly or through a nominated third party, undertake Countertrade Arrangements such as but not limited to the export of Philippine products, the usage of Philippine services, offsets, and/or investments and technology transfers for Philippine industrial development, equivalent to not less than fifty percent (50%) of the total contract price of the supply Contract, said Countertrade Arrangements to be conducted in writing between the undersigned (or its duly designated nominee) and PITC within ninety (90) days from the signing of the Supply Contract.

Failure on the part of the undersigned to comply with this commitment to enter into Countertrade Arrangements (directly or through its nominee) with PITC within the 90-day period prescribed herein shall entitle the _____ (name of government office) to rescind/cancel the Supply Contract and award the same to another party and/or disqualify the undersigned from participating in future supply contracts with this office, without liability on the part of _____ (name of government office).

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This Undertaking/Agreement shall form part and parcel of the undersigned's bid tender for the above project.

Issued this _____ day of _____ in _____ Metro Manila.

Name of Company Representative:

(Supplier/Bidder) Title:

_____
SIGNATURE

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