



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City, Philippines 1605

NPM No. 20-2008

15 September 2008

HON. GIL S. BELTRAN

Undersecretary

DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo Sr. Street

Manila

Re: Negotiated Procurement under Section 53 (b)

Dear Sir:

We respond to your letter dated 5 September 2008 requesting for a clarificatory opinion on whether the Department of Finance (DOF) can directly negotiate with Meralco Industrial Engineering Services Corporation for the supply and installation of a new power service on the basis of Sections 53 (b) of Republic Act (R.A.) No. 9184 and its Implementing Rules and Regulations Part A (IRR-A).¹

We understand that the DOF is currently experiencing an electric power shutdown resulting from the breakdown of its transformer. Consequently, all offices housed in the DOF building had to be temporarily relocated, including the office of Secretary Margarito B. Teves. As a result, delivery of service is severely hampered and employee's productivity adversely affected.

In accordance with Section 10 of R. A. No. 9184, the procuring entity shall, as a general rule, adopt public bidding as a mode of procurement. However, in order to promote efficiency and economy, the procuring entity may resort to any alternative mode of procurement, subject to the approval of the head of the procuring entity, whenever justified by the conditions provided therein (Section 48, R. A. No. 9184). For instance, under Section 53 (b) of the IRR-A, negotiated procurement may be resorted to in order to immediately restore vital public services, *to wit*:

¹ The DOF also cites Section 54 (c) as basis. However, R.A. No. 9184 nor its IRR-A do not contain any Section 54 (c).

“Section 53. Negotiated Procurement

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

x x x.

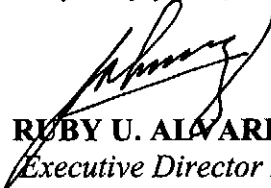
b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. x x x.”

Please be advised that under Section 12 of R. A. 9184, it is the Bids and Awards Committee (BAC) which shall recommend to the head of the procuring entity the use of any of the alternative methods of procurement. Consequently, the determination and accountability for the use of any of the alternative methods rest with the BAC and the head of the procuring entity since they are in the best position to determine the existence of conditions and validate the urgency of the situation.

The BAC may, thus, recommend the use of the alternative method of negotiated procurement after ascertaining that said method is justified pursuant to Section 53 (b) above, subject to the approval of the head of the procuring entity.² No approval from the Government Procurement Policy Board is required unless said resort involves a contract amounting to at least Five Hundred Million Pesos (P500,000,000).³

We hope to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

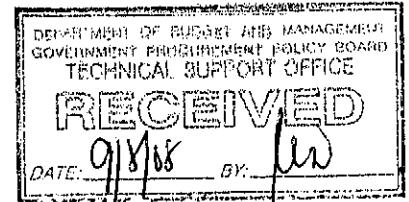
² Please refer to Section 12 in relation to Section 48.1 of the IRR-A of R. A. No. 9184.

³ Section 4, Executive Order (E.O.) No. 423, s. 2005, as amended by E.O. No. 645, s. 2007.



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
 Manila 1004



September 5, 2008

Atty. Ruby Alvarez
 Executive Director
 Government Procurement Policy Board
 Technical Support Office
 Unit 2506 Raffles Corporate Center,
 Ortigas Center, Pasig City

Dear **Executive Director Alvarez**:

This is to request clarificatory opinion whether the Department of Finance can directly negotiate with and engage of services of Meralco Industrial Engineering Services Corporation (MIESCOR) for the supply and installation of a new power service entrance at the DOF Building on the basis of the exceptions of Section 53(b) and Section 54(c).

MIESCOR is a wholly-owned subsidiary of Manila Electric Company (MERALCO), the Philippines' largest electric utility firm. It is a licensed contractor and classified under the highest category "AAA" by the Philippine Contractors Accreditation Board (PCAB).

As a backgrounder, it may be informed that at present the Department of Finance has a total electrical power shutdown resulting from the breakdown of a transformer. All offices housed in the DOF building including the office of Secretary Margarito B. Teves has to be relocated, greatly hampering the efficient and effective delivery of services for the domestic and international clientele. Employees' productivity has likewise been affected because of a limited supply of electrical load.

For purposes, of energizing and restoring the DOF Building into its original structure installation of a service entrance is urgent and necessary.

Anticipating your favorable consideration on our request.

Thank you.

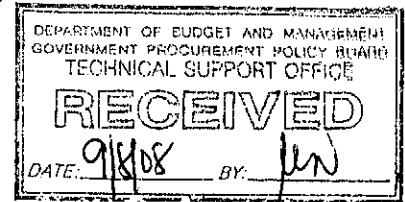
Gil S. Beltran

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 Undersecretary



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Executive Director
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