

NPM No. 22-2008

16 September 2008

ENGR. EDWIN R. REYES
Interim General Manager
METRO ILOILO WATER DISTRICT
Bonifacio Drive, Iloilo City

Re : Multi-Year Contract

Dear Engr. Reyes:

We respond to your letter dated 11 April 2008 seeking our opinion on matters pertaining to multi-year contracts.

Based on your representation, Metro Iloilo Water District (MIWD) has decided to outsource the generation of potable water to third party suppliers through competitive bidding as per Republic Act No. 9184 (R.A. 9184) and the contract therefore shall be for a period of ten (10) years.

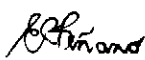
At the outset, please be advised that R.A. 9184 and its Implementing Rules and Regulations Part A (IRR-A) are silent on the issue of multi-year contracts. Nonetheless, for guidance purposes, we would like your good office to take note of the Department of Budget and Management (DBM) Circular Letter No. 2004-12 dated 27 October 2004 which prescribes the guidelines and procedures for the implementation of multi-year contracts.

Further, we would like to direct the attention of the agency concerned to the corporate charter or legislative franchise, if any, for purposes of determining whether entering into multi-year contracts is among the powers granted to the governing board. Otherwise, such act may be declared ultra vires, at a later time.

Lastly, it bears stressing that the general mode for government procurement, such as these multi-year contracts you are proposing, is public bidding under R.A. 9184.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

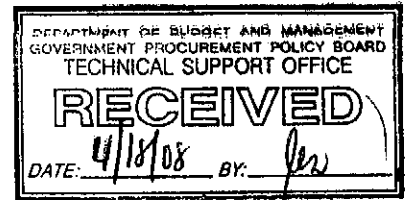
Very truly yours,


RUBY U. ALVAREZ
Executive Director III



METRO ILOILO WATER DISTRICT
Bonifacio Drive, Iloilo City

*Atty. Jerry,
Draft reply. Coordinate
with Bryan.*



April 11, 2008

*TN
4/18/08*

ATTY. ESTANISLAO GRANADOS, JR.
Executive Director
GOVERNMENT PROCUREMENT POLICY BOARD
Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center, Pasig City

*Ennis,
Pls. handle. Sign in
my behalf.*

4/17/08

Dear Sir;

Metro Iloilo Water District (MIWD) is planning to engage the participation of a private sector to develop and produce potable water for bulk sale, and has decided to outsource the production of potable water to the third party suppliers hence called Bulk Water Supply Project.

The project involves the supply of potable bulk water to MIWD based on a specified water quality and quantity standards over a **period of ten (10) years**. This project will be bidded through a competitive bid using the guidelines of the Implementing Rules and Regulations of the Republic Act No. 9184, otherwise known as the Government Procurement Reform Act.

Question?

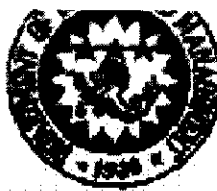
One provision on the Term of Reference (TOR), is that the bulk water to be sold has no escalation for the whole contract period, however price escalation may be allowed under extraordinary circumstances as may be determined and approved by the Government Procurement Policy Board and National Economic Development Authority (NEDA).

With this may we ask clarification if a multi year contract for ten (10) years has no violation on the IRR of R.A. 9184.

Your early response on this request will be highly appreciated.

Very truly yours,

[Signature]
ENGR. EDWIN R. REYES
Interim General Manager



Republic of the Philippines
Department of Budget and Management
Malacañang, Manila

CIRCULAR LETTER

NO. 2004-12
October 27, 2004

TO: All Heads of Departments/Agencies/Heads of Finance Units; Budget Officers; Chief Accountants and All Others Concerned

SUBJECT: Guidelines to Implement Section 33 of the General Provisions of the FY 2003 General Appropriations Act (GAA) under RA 9206, As Re-enacted

1.0 PURPOSE

To prescribe the guidelines and procedures to implement Section 33 of the General Provisions of the FY 2003 GAA (RA 9206), As Re-enacted, quoted hereunder:

"Section 33. Contracting of Multi-Year Projects. In the implementation of multi-year projects, no agency shall enter into a multi-year contract without a Multi-Year Obligational Authority issued by the DBM for the purpose. Notwithstanding the issuance of the Multi-Year Obligational Authority, the obligation to be incurred in any given calendar year, shall in no case exceed the amount programmed for implementation during said calendar year."

2.0 COVERAGE

This Circular covers all national government agencies implementing multi-year programs/projects/activities except the DND-AFP Modernization

3.0 DEFINITION OF TERMS

As used in this Circular, the following terms are defined as follows:

- 3.1 **Multi-Year Obligational Authority (MYOA)** – refers to an authority issued by the Department of Budget and Management (DBM) to enable an agency to enter into a multi-year contract whether for locally funded projects (LFPs) or foreign assisted projects (FAPs).
- 3.2 **Multi-Year Project (MYP)** – refers to a program/project which will take more than one (1) year to complete including suppliers' credit. These may be classified into:
 - a) MYPs with appropriations available in full during the first year of implementation;
 - b) MYPs which require multi-year appropriations; and,
 - c) ~~Annual Recurring Projects/Activities~~ which require multi-year appropriations.
- 3.3 **Multi-Year Contract (MYC)** – refers to a contract for MYPs the implementation of which will take more than one year to complete, and require multi-year appropriations. Thus, contracts executed for MYPs with appropriations available in full during the first year of implementation, or those falling under 3.2.a above, do not fall under this definition.
- 3.4 **Medium Term Expenditure Program (MTEP)** – refers to a forward estimate/financial plan with a term of three to five years of the agency's yearly priority programs, activities and projects (PAP) within a given/assumed budget ceiling.
- 3.5 **Funding Strategy** – refers to a funding program for a specific multi-year project indicating sources of financing to support said project for the entire duration of the project. Such sources can either be a "free/freed" portion of the agency budget ceiling (e.g., allocations for completing or completed project), reallocations/realignment from other programs, activities, projects (thus involving a PAP de-prioritization process) or projected revenues authorized to be used for the purpose. The Funding Strategy should be part of the MTEP subject to DBM review/validation.

4.0 GUIDELINES AND PROCEDURES

- 4.1 Prior to entering into a MYC, national government agencies must first secure a MYOA from the DBM using the attached form referred to as Annex A. In cases where the project has several categories

such as civil works, vehicles, equipment and materials, consultancy, training, operation and maintenance, taxes, loan charges, contingencies and others, the allocation per category shall be attached to the request for MYOA.

- 4.2 A MYOA shall be issued to an agency who (i) voluntarily commits to give priority and include the annual budgetary requirements of the MYP in its budget proposal within the prescribed budget ceiling, and (ii) whose funding strategy indicates that the annual budgetary requirement of the MYP may be accommodated within the annual budgetary ceiling of the agency over a period of time. Hence, a prerequisite for the issuance of a MYOA is the submission of the following documentary requirements:
- a) Request for MYOA including a confirmation on the commitment of the Agency (Annex A);
 - b) Funding Strategy/Medium Term Expenditure Program (MTEP) (Annex B);
 - c) Investment Coordination Committee/NEDA Board approval for Locally Funded Projects (LFPs) costing more than P300 million, and for all foreign-assisted projects (FAPs);
 - d) Approved loan agreement for FAPs); and,
 - e) All other prior clearances as may be required under existing law, policies, rules and regulations, e.g., NCC endorsement of computerization project; NTC clearance for acquisition of communication equipments; PNP clearance for purchase of firearms; and other similar authorizations.
- 4.3 The MYOA per attached Annex C shall be the basis of the agency for entering into MYC/s. In cases where the project has several components, the allocation per component shall be attached to the MYOA.
- 4.4 The Forward Obligational Authority (FOA) being issued for FAPs which certifies that funds shall be made available to cover total project cost shall continue to be used for loan negotiation purposes only but not as basis for entering into a contract.
- 4.5 Notwithstanding the issuance of a MYOA, obligations to be incurred in any given calendar year shall in no case exceed the programmed appropriations released by the DBM or of any authorized realignment/augmentation from savings consistent with the scrap and build policy.

- 4.6 Under the MYC to be entered into by agencies, the liability of the government to liquidate obligations shall only be to the extent of the programmed appropriation released for the purpose. The DBM shall confirm the availability of funds through the issuance of the Agency Budget Matrix (ABM) or Special Allotment Release Order (SARO) as basis for incurrence of obligations for any particular year(s).
- 4.7 Accordingly, a standard condition shall be stipulated in all MYCs to be entered into by the agency with a third party, as follows:

"Notwithstanding the approval of this multiyear contract, it is understood that the agency may only be held liable for the payment of obligations incurred for that portion of the contract covered by authorized appropriations for the program, activity or project herein described. It commits, however, to include the funding requirements for the remaining portions of the contract in its annual budget proposals until the program, activity or project is completed."

5.0 SAVING CLAUSE

Cases not covered by this Circular shall be referred to the DBM for resolution.

6.0 EFFECTIVITY

This Circular shall take effect immediately and shall remain enforced in accordance with the policy on contracting multi-year projects in the General Provisions of the General Appropriations Act.



EMILIA T. BONCODIN
Secretary

REQUEST FOR MULTI-YEAR OBLIGATIONAL AUTHORITY

Department		Code:	Fund Code:	<input type="checkbox"/> Locally Funded <input type="checkbox"/> Foreign Assisted
Agency		Code:		
Project Type*	<input type="checkbox"/> B <input type="checkbox"/> C			
Project Name/Title				
Total Project Cost:		Project Duration : _____ Years		
Note:				

Project Schedule (Year)	Particulars	Amount Requested
Total		

Checklist of Requirements/Submissions:

- Funding Strategy and Medium Term Expenditure Program
- NEDA/CC Board Approval (where applicable)
- Approved Loan Agreement (for FAPs)
- Others, Specify _____

Certification:

As a prerequisite for the issuance of a Multi-Year Obligational Authority, we are confirming our commitment to give priority and include the annual budgetary requirements of the projects/activities specified above within our annual budgetary ceilings as may be prescribed by the DBM. Said project/activity has been approved by the _____ (cite competent authority/agency, when applicable).

_____ Date

_____ Head of Department/Agency Designation

*Project Type refers to classification of projects as defined under paragraph 3.2 (b) and

Funding Strategy

1. Proponent/Department	2. Project Title
3. Implementing Agency	4. Total Project Cost:

5. SEER (ed) ? YES NO

<p>6. If YES, Priority Classification: RANK:</p> <p>Hi <input type="checkbox"/> Rank <input type="text"/></p> <p>Mid <input type="checkbox"/> of</p> <p>Lo <input type="checkbox"/> Total # of Projects <input type="text"/></p>	<p>7. If NO, Agency Classification: RANK:</p> <p>Hi <input type="checkbox"/> Rank <input type="text"/></p> <p>Mid <input type="checkbox"/> of</p> <p>Lo <input type="checkbox"/> Total # of Projects <input type="text"/></p>
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8. Medium-Term Budget Program and Project Requirement:

Particulars	Allot. Class	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL
a) Regular Programs/Activities	PS						
	MOOE						
	CO						
Sub-total, Programs							
b) Projects:							
A	PS						
	MOOE						
	CO						
Sub-total, Project A							
B	PS						
	MOOE						
	CO						
Sub-total, Project B							
Sub-total, Projects							
GRAND TOTAL							

9. Year	10. Department	11. Agency	12. Project Requirement
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13. Project supports the following MFOs.

MYOA No.: _____



Republic of the Philippines
DEPARTMENT OF BUDGET AND MANAGEMENT
MULTI-YEAR OBLIGATIONAL AUTHORITY

DEPARTMENT:	CODE:	FUND CODE:	<input type="checkbox"/> LOCALLY FUNDED <input type="checkbox"/> FOREIGN-ASSISTED
AGENCY:	CODE:		

PROJECT NAME

YEAR	PARTICULARS	AMOUNT AUTHORIZED

AMOUNT IN WORDS:

NOTES:

The authority herein issued shall be used solely for the purposes indicated.
 Notwithstanding the issuance of this MYOA, the actual obligations to be incurred in any given fiscal year shall in no case exceed the allotment released for the said fiscal year, subject to the usual budgeting, accounting and auditing rules and regulations.
 The amount authorized in this MYOA is subject to the condition that it is the same amount that will be approved by the ICC/NEDA. In case of adjustments as determined by the ICC/NEDA, a revised MYOA shall be issued.

DATE OF ISSUE

SECRETARY OF BUDGET AND MANAGEMENT

INSTRUCTION IN THE FILLING IN OF THE FUNDING STRATEGY FORM

Note	To be submitted as part of the agency request for the issuance of Multi-Year Obligational Authority (MYOA)
1. Proponent/Department	The name of the Department to which the implementing agency is attached.
2. Project Title	Indicates the title to be accepted as the permanent project name until project implementation/evaluation.
3. Implementing Agency	The National Government Agency tasked with the implementation of the project.
4. Total Project Cost	Indicates the cost as proposed, if possible, reflect GOP/PLP and/or GOCC and LGU sharing, if applicable.
5. SEER (ed) 7	Indicates whether the project has passed through the Sector Effectiveness and Efficiency Review (SEER).
6. If Yes, Priority Classification/ Rank	If the project has been subjected to SEER. Indicates whether project is classified as high, medium or low and its rank number among all priority projects.
7. If No, Agency Classification	If the Project has not been subjected to SEER. Indicates whether agency classified as high, medium or low priority and indicates its rank number among the projects of the agency.
8. Medium-Term Expenditure Program:	Refers to how the annual budget ceiling of the department and/or agency in the medium term is allocated among the programs and projects (3 to 6-year forward estimate/projection and the annual project requirement). Specific data are to be reflected in field numbers 9-12.
9. Year	Indicate the years covered by the medium term period (budget year and 3 forward years).
10. Department	Department to implement the project if multi-department, indicate all departments involved.
11. Agency	Indicate the name of the agencies implementing the project, if applicable. For multi-agency project, indicate all the agencies involved in the project and the medium-term budget program (amount) by year.
12. Project Requirement	Refers to the yearly budget/cost requirement of the project from the start to project completion.
13. Project supports the following MFO's	Indicate the major final outputs which the project supports MFO's are goods or services produced/provided by the department/agency for external clients through the implementation of the project.
14. Funding Source	Indicate where the allocation will be taken with details to be indicated in fields 15-21.
15. Year	If multi-year, indicate the year involved from Year 1 to Year n (last year) of project implementation and which require budget ceiling.
16. Agency Budget Ceiling	Indicate the amount sourced from the agency. If multi-agency, indicate all the agencies involved and the amount sourced from their respective budget ceilings.
17-19. Scrap and Build	Indicate the PAP (box 18) which will be offered to be able to fund the requirement of the project and the corresponding amount (box 19) sourced from the "donor" PAP.
20. Others	Indicate other source of funding, ex. use of income and amount by source. Only those authorized to use income shall indicate it as a funding source. Include funding source other than those already identified in the previous boxes.
21. Total	This is the sum of fields 16, 19 and 20.
22. Total	This is the total per boxes - 16, 19 and 20.
23. Other Measure/Remarks/ Explanatory Notes	Indicate any remarks or explanatory notes relevant to the entries in boxes 16 - 20.
24. Prepared by	To be signed by any authorized officer of the Finance and Administrative Service.
25. Endorsed by	To be signed by the Head of the Agency.

Multi-Year Contracts

So as to avoid the recurring issue on the re-negotiation or renewal of lease contracts, it is best to refer to the corporate charter or legislative franchise of PHIC, such that if the charter allows the governing Board to enter into multi-year contracts, the Board within the limits provided for by its charter and applicable laws, may pass a Resolution allowing lease of office spaces on a multi-year basis. It must, however, be reiterated that contracting out by the Board on a multi-year basis should be legally allowed so as not to invalidate, at a later time, its corporate act as *ultra vires*.

