



TECHNICAL SUPPORT OFFICE

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

NPM No. 23-2008

16 September 2008

HON. EDGAR S. SAN LUIS
Representative, 4th District Laguna
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Re: Resort to Alternative Modes of Procurement

Dear Congressman San Luis:

We respond to your letter dated 1 August 2008, which we received last 01 September 2008 through an indorsement by Dir. Rowena T-Sanchez of the Office of the President, expressing your support for the Metropolitan Waterworks and Sewerage Authority's (MWSS) efforts at securing the President's approval for MWSS to directly negotiate with the two (2) participating bidders for the MWSS Potable Water Supply Project that will address the current supply gaps not only in Metro Manila but even in the outlying provinces, including parts of the fourth (4th) district of Laguna.

Please be advised that under Section 10 of Republic Act No. 9184 (R. A. 9184) and its Implementing Rules and Regulations Part A (IRR-A), the procuring entity shall, as a general rule, adopt public bidding as a mode of procurement. However, in exceptional cases and in order to promote economy and efficiency, the procuring entity may resort to any of the alternative modes of procurement provided that it falls under any of the conditions stated under Sections 49 – 53 of the IRR-A (Section 48, R. A. No. 9184 and its IRR-A).

The accountability and responsibility for justifying the conditions for the use of any of the alternative methods of procurement, like direct negotiation as being proposed by MWSS, rests primarily on the determination and recommendation of the Bids and Awards (BAC) and the approval thereof by the Head of the Procuring Entity (HOPE) or his duly authorized representative.

Generally, the approval of the Government Procurement Policy Board (GPPB) on the use of a particular alternative method of procurement is not required under R.A. 9184 and its IRR-A. However, under Section 4 of Executive Order (E.O.) No. 423, as amended by E.O. 645, the HOPE, before proceeding with any of the alternative methods of procurement provided under R.A. 9184 and its IRR-A, must first obtain the

approval of the GPPB that said government proposed undertaking falls within the exceptions from public bidding and that the proposed alternative method of procurement is appropriate, in cases of government contracts involving an amount of at least Five Hundred Million Pesos (Php. 500,000,000.00).

Hence, the determination of whether MWSS's procurement of its bulk water supply falls within the exceptions from the conduct of public bidding and satisfies the conditions for resorting to direct negotiation, as the most appropriate alternative method of procurement, lies within the exclusive jurisdiction of the MWSS BAC, subject to the prior approval of the MWSS Board, as its HOPE, or its duly authorized representative.

This opinion is being rendered on the basis of the facts and particular circumstances as represented.

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

Very truly yours,


for **RUBY U. ALVAREZ**
Executive Director III

Copy Furnished

ATTY. ROWENA TURINGAN-SANCHEZ
Director IV
OFFICE OF THE PRESIDENT
Malacañang Compound, Manila

Office of the President
of the Philippines
Malacañang

Eng.
Pls. draft reply. It is the MWSS
BAC which has jurisdiction/authority to
determine the mode of procurement for their
water supply project & the conditions that
would warrant the same.

DEPARTMENT OF BUDGETING AND FINANCE TECHNICAL SUPPORT OFFICE	
RECEIVED	
DATE: 9/1/08	BY: <i>pen</i>

rv.
pp
9/1/08

1st Indorsement
Manila, August 22, 2008

Respectfully referred to the Honorable Chairperson, Government Procurement Policy Board, Pasig City, for comment and/or recommendation, the attached Letter of Hon. Edgar S. San Luis of the 4th District of Laguna dated July 23, 2008, endorsing the MWSS water supply project and the intent of MWSS officials to just enter into negotiations with the bidders.

Advice of the action taken hereon direct to the writer, copy furnished this Office, will be highly appreciated.


Atty. ROWENA TURINGAN- SANCHEZ
Director IV



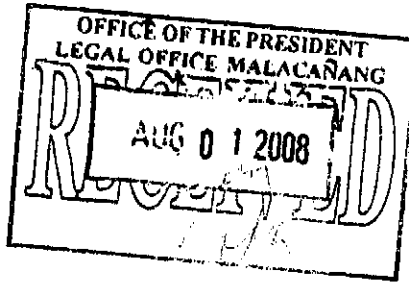
Republic of the Philippines
House of Representatives
Quezon City, Metro Manila

Office of the President of the Philippines
In Reply, Please Cite: R02446405
Received On: 07/30/08 By: MRO

EDGAR S. SAN LUIS
Representative
4th District, Laguna

July 23, 2008

HER EXCELLENCY
GLORIA MACAPAGAL-ARROYO
President of the
Republic of the Philippines
Malacañang Palace
San Miguel, Manila



Thru: HON. EDUARDO ERMITA

Madame President:

The threat of a looming shortage of potable water supply for Metro Manila is incrementally rising by the year that if the government doesn't address it now, we may one day wake up with our spigots running dry and empty.

It is for this reason that the Metropolitan Waterworks and Sewerage Authority (MWSS) recently bid out for an alternative bulk water supply project for Metro Manila as a short-term solution in view of expected delays in the implementation of the massive Laiban Dam Project which was originally planned and conceived to address the growing potable water supply requirements of Metro Manila on a long-term basis. In that public tender that unfortunately failed on financial grounds, the two participating bidders would both source the bulk water supply from the province of Laguna: one from Laguna de Bay and the other from Pangil River which happens to be located in my district. The pristine water supply from the latter source is just unimaginably wasted as it flows out to the Pacific Ocean on a daily basis without any economic use whatsoever.

COMMITTEES:

Vice-Chairman: *ES*
Economic Affairs; Public Information; Government Reorganization

Member:
Economic Affairs; Public Works and Highways; Agriculture and Food; Trade and Industry; Cooperatives Development; Special Committee On Southern Tagalog; Overseas Workers and Affairs; Justice; Human Rights; Labor and Employment

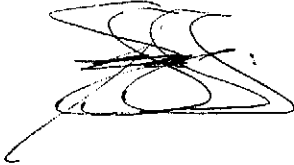
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08-05-21-08

I was informed that MWSS officials are seeking the intervention of Your Excellency to just enter into negotiations with both bidders given that both sources combined will result to approximately 300mml daily for Metro Manila which could very well address the current supply gaps not only in Metro Manila but even in the outlying provinces, including many parts of my district which are still underserved.

I believe this is going to be a win-win solution even for the host community in Pangil which have been eagerly anticipating the commencement of this MWSS project as it is expected to generate economic opportunities for the townsfolk, including the creation of jobs, additional local revenues in form of taxes and royalties, generate much-needed reforestation projects and thereby eliminate the constant threat of floods and landslides, and more importantly supply them with water both for drinking and irrigation.

Maraming salamat and God bless po!

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.