

**NPM No. 034-2005**

July 29, 2005

**MR. CYRIL C. DEL CALLAR**  
President  
National Power Corporation  
Cor. Quezon Avenue & Agham Road,  
Diliman, Quezon City

**Re : Request for Confirmation of DOJ Opinion on the Adoption  
of Alternative Method of Procurement through Negotiated  
Procurement for the Supply and Delivery of 6 x 65,000 MTs  
Imported Steaming Coal to Masinloc CFTPP for CY 2005**

Dear Mr. Del Callar:

This refers to your letter dated 16 June 2005 which we received on 05 July 2005, requesting from this office confirmation of the Department of Justice (DOJ) Opinion No. 23, Series of 2005. The said DOJ Opinion was issued at the request of the National Power Corporation (NPC) for purposes of compliance with the provisions of Executive Order 109-A, Series of 2004 (E.O. 109-A)<sup>1</sup> anent NPC's intention to resort to Negotiated Procurement for the contract for Supply and Delivery of 6 x 65,000 MTs Imported Steaming Coal to Masinloc CFTPP for CY 2005 (hereinafter the "Project").

The confirmation being sought from this office arose from the issuance of Executive Order 423, Series of 2005 (E.O. 423) that repealed E.O. 109-A,<sup>2</sup> which circumstance brought about the predicament upon NPC in determining the applicable process and necessary authorizations to be accomplished for the effective and valid implementation of the intended Negotiated Procurement for the Project. The sole substantive issue to be resolved therefore is as follows:

Whether or not in light of the repeal by E.O. 423 of E.O. 109-A it is necessary for the Government Procurement Policy Board (GPPB) to

<sup>1</sup> Section 4, E.O. 109-A requires an opinion from the Secretary of Justice and an approval from the Director General of NEDA before resorting to Alternative Methods of Procurement for projects involving an amount of at least Three Hundred Million Pesos (Php300 Million).

<sup>2</sup> Section 14, E.O. 423 (April 30, 2005).

confirm the DOJ Opinion issued for purposes of the requirement under Section 4 of E.O. 109-A.

We answer in the negative.

By our reading of Section 13 of E.O. 423, it is our considered view that the procedures and authorizations provided under E.O. 423 are intended to apply only to those Government contracts that are presently being processed and/or reviewed in accordance with E.O. 109-A and not to those which have been processed and/or reviewed in accordance with the latter. The conclusion of the processing and review by DOJ, through the issuance of DOJ Opinion No. 23, S. 2005, on the legality of pursuing a Negotiated Procurement for the Project as required under E.O. 109-A effectively reels it out of the ambit of Section 13, E.O. 423.

Thus, the opinion issued by DOJ, having been exercised on the strength of and under authority given by a valid law, is in itself an issuance that should be given weight and authority – the wisdom of which the GPPB cannot pass upon, much more, confirm.

Lastly, it may be well to emphasize that the DOJ Opinion alone is not sufficient to justify application of Negotiated Procurement for the Project. The requisite NEDA approval should still be acquired, which will now be on the basis of E.O. 423, following the spirit of Section 13 thereof.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director III