



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 082-2017

29 December 2017

MR. PATRICK LESTER N. TY

Chief Regulator

METROPOLITAN WATERWORKS & SEWERAGE SYSTEM (MWSS)

MWSS Regulatory Office

Re: Multi-Year Contract -

Dear Ms. Manapat:

This refers to your letter requesting the GPPB to authorize the MWSS Regulatory Office (RO) to enter into a multi-year contract for its procurement of analytical laboratory services for water and wastewater quality.

It is represented that despite sufficient planning and attempts for the annual procurement of laboratory services to ensure the RO's continuous water and wastewater quality monitoring, the same remains delayed due to failure of biddings and the inability of the Head of the Procuring Entity (HOPE) to act within the prescribed period. As such, you appeal for the GPPB's consideration to authorize the MWSS RO to enter into multi-year contracts for such procurement similar to that of janitorial and security services.

At the outset, please be informed that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) do not have the authority to determine how a Procuring Entity can proceed with the procurement of its projects. The responsibility of determining the applicable work program and schedule is subject to the wisdom of the Procuring Entity. This includes the discretion on whether to procure and award a project for one year duration or more. In other words, the Procuring Entity has the discretion whether to enter into multi-year or one year contract.

In our earlier opinion¹, we stressed that there is nothing in Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR) that proscribes or limits procuring entities from entering into Multi-Year Contracts (MYCs) for their procurement activities to those involving security and janitorial services. We wish to note, however, that this is subject to budgetary requirements as may be required by the Department of Budget and Management (DBM), such as securing a Multi-Year Obligational Authority (MYOA) following DBM Circular-Letter (CL) No. 2015-7 for a multi-year contract involving a project without full budget for the duration of the contract. In the case of Government Owned and/or Controlled Corporation (GOCC), it is prudent to validate if the governing board is authorized to enter into multi-year contracts under GOCC's enabling law or corporate charter, and if there is an additional budgetary authority, similar to MYOA, required for the purpose.

¹ Non-Policy Matter No. 013-2016, dated 21 March 2016.

In the same opinion, it was discussed that Section 4.1, DBM CL No. 2015-7 provides that “[P]rior to the bidding of multi-year contract for MYPs (both capital and non-capital projects), national government agencies must first secure a MYOA from the DBM. This prerequisite shall ensure that the succeeding funding requirements of the MYP shall be included in the budget program for the corresponding year and is within the total project cost and categories as reflected in the FEs or in the MTEP.”

In the case of *Jacomille vs. Abaya*,² et al., the Supreme Court, citing the Memorandum³ issued by the DBM, held that:

The DBM explained the nature of MYOA. When the government entered into MYC, it was committed to annually pay a given amount to the contractor/supplier of the project, even without the government planning for its payment. Thus, the imperative for MYOA arose, which gave an assurance that the financial commitments included in MYC are considered in the succeeding proposed budget submitted to Congress. With the issuance of MYOA, the DBM commits to recommend to Congress the funding of the MYP until its completion. Evidently, without MYOA, the government runs the risk of breach of contractual obligations if its financial commitments are not met for lack of funding.

In view of the foregoing, procuring entities, such as the MWSS, may enter into Multi-Year Projects that is evidenced by Multi-Year Contracts for any of their procurement activities, subject to compliance with the requirements of a MYOA issued by the DBM; or through a similar document issued and authorized by the MWSS’s Board as may be allowed by its Charter; and/or any other applicable requisites provided by existing laws or corporate charter.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

Executive Director V. [Signature]

//rd4

² *Jacomille v. Abaya, et al.*, G.R. No. 212381, 22 April 2015.

³ 18 October 2010.