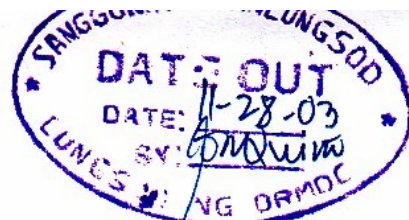




REPUBLIKA NG PILIPINAS
SANGGUNIANG PANLUNGSOD
LUNGSOD NG ORMOC



EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE NINTH SANGGUNIANG PANLUNGSOD NG ORMOC HELD AT THE HONORABLE PLACIDO ENECIO HALL, SANGGUNIANG PANLUNGSOD BUILDING ON NOVEMBER 27, 2003

PRESENT:

Hon. Celso P. Adolfo,	Vice Mayor & Presiding Officer
Hon. Nepomuceno P. Aparis I,	City Councilor, Majority Floor Leader
Hon. Jose S. Serafica,	City Councilor, Minority Floor Leader
Hon. Ruviniu E. Mendola,	City Councilor, Assist. Maj. Floor Leader
Hon. Demosthenes F. Tugonon,	City Councilor
Hon. Eduardo P. Tan,	City Councilor
Hon. Rafael C. Omega, Jr.	City Councilor
Hon. Fernando P. Parrilla,	City Councilor
Hon. Gregorio A. Yrastorza, Jr.	City Councilor, Assist. Minority Floor Leader
Hon. Jovencio A. Laurente,	City Councilor
Hon. Fe. S. Lladoc,	City Councilor
Hon. Emeterio Y. Larrazabal, Jr.,	Ex-Officio City Councilor,
	Chapter President, Liga ng mga Barangay ng Ormoc
Hon. Cheryl L. Alfar,	Ex-Officio City Councilor,
	SK Federation President

ABSENT:

N O N E

RESOLUTION NO. 2003-216

A RESOLUTION RETURNING THE PETITION TO THE PETITIONERS THROUGH HONORABLE MARIA SAMUEL P. AVILES AND HONORABLE PAULITO COTIANGCO URGING THEM INSTEAD TO ADDRESS THE PETITION TO THE HONORABLE CITY MAYOR CARMELO J. LOCSIN IN HIS CAPACITY AS CHAIRMAN, BIDS AND AWARDS COMMITTEE (BAC) FOR THE BIDS AND AWARDS COMMITTEE TO CONDUCT ANOTHER POST-QUALIFICATION FOR THE NEXT HIGHEST RATED BID FOR THE CONSULTING SERVICES FOR DETAILED ENGINEERING AND DESIGN FOR THE REHABILITATION, IMPROVEMENT AND EXPANSION OF THE ORMOC WATER SYSTEM UNTIL AN AWARD IS MADE, AND IF AWARD CANNOT BE MADE, TO REBID THE SAME, IF ONLY TO REALIZE AND IMPLEMENT THE WATERWORKS PROJECTS, PURSUANT TO THE PROVISIONS OF THE R.A. NO. 9184 OTHERWISE KNOWN AS GOVERNMENT PROCUREMENT REFORM ACT.

WHEREAS, on November 13, 2003 the Committee on Good Government and Ethics received an indorsement dated November 12, 2003 from the City Vice Mayor & Presiding Officer of the 9th Sangguniang Panlungsod of Ormoc relative to a PETITION signed allegedly by 1,000 registered voters of this City requesting the 9th Sangguniang Panlungsod to adopt a resolution authorizing the City Mayor to enter into contract with Asiatic Consultants and Associates, Inc., who is the winning bidder for the detailed engineering design and for the City Mayor to conduct a bidding and enter into contract with the winning bidder for the rehabilitation, improvement and expansion of the Ormoc City water supply system;

WHEREAS, the request to adopt the proposed resolution alleged and accused the majority of the members of the 9th Sangguniang Panlungsod of Ormoc that they have deliberately been delaying the implementation of the project and have successfully blocking any efforts to effect the smooth implementation of the water project;

WHEREAS, not only the petitioners but also the whole people of Ormoc are being misled and being made to believe that the majority of the members of the 9th Sangguniang Panlungsod of Ormoc have deliberately delayed and actually blocked the implementation of the said water project when in truth and in fact, they did not;

WHEREAS, in order to erase this misconception and the conditioning of the minds of not only the petitioners but the whole people of Ormoc that the majority members of the 9th Sangguniang Panlungsod have deliberately delayed and blocked the implementation of the water project, it is but of prime importance that they (petitioners) and the whole people of Ormoc be apprised of and be informed of what is the real and true reason AND NOT BECAUSE OF POLITICS why the City Mayor of Ormoc was not given authority to enter into contract for consulting services with the winning bidder Asiatic Consultants and Associates, Inc.;

WHEREAS, it is of record that Asiatic Consultants and Associates, Inc., won the bidding in the P12,732,962.00 consulting services for the detailed engineering, design, rehabilitation, improvement and expansion of Ormoc City water supply system which forms part of the P143 Million water project;

WHEREAS, on August 14, 2003 a Notice of Award was issued by the Awards Committee signed by Acting Chairman, Engr. Raoul E. Cam and approved by the City Mayor Carmelo J. Locsin awarding the consulting services contract to Asiatic Consultants and Associates, Inc., and requiring the latter to submit PERFORMANCE SECURITY/BOND within seven (7) days or on before August 21, 2003;

WHEREAS, on August 15, 2003 Asiatic Consultants and Associates, Inc., accepted the award for the eventual execution of the formal written contract;

WHEREAS, instead of Asiatic Consultants and Associates, Inc., posting the required performance security/bond WITHIN THE PRESCRIBED PERIOD and that is within seven (7) days from August 14, 2003, it requested the City to waive the submission of the PERFORMANCE SECURITY/BOND citing Executive Order No. 40 Series of 2001 that it is exempt from submitting one and which request for exemption was approved by the City Mayor;

WHEREAS, Executive Order No. 40, series of 2001 (Consolidating Procurement Rules and Procedures for ALL NATIONAL GOVERNMENT AGENCIES, Government-Owned or Controlled Corporations and/or Government Financial Institutions, and Requiring The Use of the Government Electronic Procurement System) is already repealed by Republic Act No. 9184 otherwise known as Government Procurement Reform Act which was signed into law by President Gloria M. Arroyo on January 10, 2003;

WHEREAS, while it is true and we do not deny that Executive Order No. 40, Series of 2001 provides for exemption in the submission of the PERFORMANCE SECURITY/BOND for consulting services, but the exemption does not apply in the consulting services agreement that the City will enter into with Asiatic Consultants and Associates because Executive

Order No. 40, Series of 2001 applies only to CONSULTING SERVICES FOR NATIONALLY FUNDED PROJECTS and since the consulting services contract to be entered into by the City and Asiatic Consultant and Associates is funded from out of local funds, Asiatic Consultants and Associates, Inc., is therefore NOT EXEMPT from submitting the required performance security/bond;

WHEREAS, under approved Resolution No. 95-132 of the 7th Sangguniang Panlungsod ng Ormoc entitled: "A Resolution to approve and adopt "The Model Guidelines, Rules and Regulations Covering LGU-Funded Infrastructure Projects" Which Was Prepared By The Provincial Engineers' Association of the Philippines (PEAP) In Coordination With The NEDA-Infra Staff, and DILGO-OPDS As The Guidelines, Rules and Regulations Covering Infrastructure Projects Of The City Government Of Ormoc, Effective Immediately", there is no provision exempting contractors entering into contract with the City of Ormoc from putting up the required performance security/bond;

WHEREAS, essential ingredients in the process of perfecting a government contract are the review and approval thereof by other or higher authorities as required by law or regulation which in this water works project, the approval of the President of the Philippines is required considering the water project exceeds Fifty Million (Php50,000,000.00) Pesos;

WHEREAS, it is of record that there is no approval of the Office of the President of the Philippines and when there is a provision of law or regulation requiring approval of a government contract by a higher or superior officer, it is not a valid agreement until so approved;

WHEREAS, Asiatic Consultants and Associates as the winning bidder failed to post a PERFORMANCE SECURITY/BOND WITHIN THE PRESCRIBED PERIOD;

WHEREAS, the purpose of the performance security is to guarantee the faithful performance of and compliance with the winning bidder's obligations under the contract. Performance security is imposed primarily for the protection of the interests of the Philippine Government, in general, and the City Government of Ormoc, in particular. The undertaking of the performance security is to indemnify or compensate the government for any loss or damage due to non-completion of the project or non-performance of the contract.

WHEREAS, we even require the putting up of performance security for projects costing Two Hundred Thousand Pesos only, how much more with this water project where it costs the city millions of millions of pesos; How will the interest of the city be protected if Asiatic Consultants and Associates undertakes the project without a performance security being put up WITHIN THE PRESCRIBED PERIOD?

WHEREAS, Republic Act No. 9184 otherwise known as Government Procurement Reform Act, the failure to submit the required PERFORMANCE SECURITY/BOND within the prescribed period has the following consequences:

- (1) forfeiture of the bid security;
- (2) disqualification of the bidder;

- (3) another post-qualification by the BAC for the next highest rated bid until an award is made, otherwise, the contract will be rebid; and
- (4) imposition upon the bidder of administrative sanctions;

WHEREAS, Republic Act No. 9184 also provides in its penal clause that any public officer CONSPIRING in the non-submission of the PERFORMANCE SECURITY/BOND WITHIN THE PRESCRIBED PERIOD/TIME shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years;

WHEREAS, authorizing the City Mayor by the Sangguniang Panlungsod to enter into consulting services contract with Asiatic Consultants and Associates without the latter submitting the required performance security/bond within the prescribed period is not only a clear violation of law but would tantamount as an act of CONSPIRACY on the part of the Sangguniang Panlungsod members in the non-submission of the performance security/bond by the winning bidder and would subject themselves not only to civil, criminal but also administrative sanctions;

WHEREAS, in consideration of the foregoing legal impediment, on October 3, 2003 the majority members of the 9th Sangguniang Panlungsod ng Ormoc approved and passed a resolution not giving authority to the City Mayor of Ormoc in entering into consulting services contract with Asiatic Consultants and Associates, Inc.;

WHEREAS, the rehabilitation/improvement and expansion of the Ormoc City water supply system cannot just be implemented by mere enactment of a Sangguniang Panlungsod resolution as envisioned in the petition allegedly signed by 1,000 registered voters of Ormoc preparatory to the move for a "people's initiative" but by following the process in government procurement system.

WHEREAS, as there is failure on the part of the winning bidder to submit the performance security/bond within the prescribed period and pursuant to R.A. 9184 the Bid and Award Committee (BAC) should have done the following:

- (1) Forfeit the bid security filed by Asiatic Consultants and Associates;
- (2) Disqualify Asiatic Consultants and Associates as bidder;
- (3) Another post-qualification be conducted by the BAC for the next higher rated bid until an award is made, otherwise, the contract will be rebid; and
- (4) Imposition upon the bidder of administrative sanctions;

WHEREAS, FOREGOING PREMISES CONSIDERED, on motion of City Councilor Nepomuceno P. Aparis I, Chairman, Committee on Good Government and Ethics, duly seconded by City Councilor Rafael C. Omega, Jr.; be it

RESOLVED, AS IT IS HEREBY RESOLVED, to pass a resolution RETURNING THE PETITION TO THE PETITIONERS THROUGH HONORABLE MARIA SAMUEL P. AVILES AND HONORABLE PAULITO COTIANGCO URGING THEM INSTEAD TO ADDRESS THE PETITION TO THE HONORABLE CITY MAYOR CARMELO J. LOCSIN IN HIS CAPACITY AS CHAIRMAN, BIDS AND AWARDS COMMITTEE (BAC) FOR THE BIDS AND AWARDS COMMITTEE TO CONDUCT ANOTHER POST-QUALIFICATION FOR THE NEXT HIGHEST

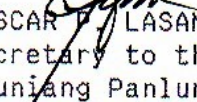
RATED BID FOR THE CONSULTING SERVICES FOR DETAILED ENGINEERING AND DESIGN FOR THE REHABILITATION, IMPROVEMENT AND EXPANSION OF THE ORMOC WATER SYSTEM UNTIL AN AWARD IS MADE, AND IF AWARD CANNOT BE MADE, TO REBID THE SAME, IF ONLY TO REALIZE AND IMPLEMENT THE WATERWORKS PROJECTS, PURSUANT TO THE PROVISIONS OF THE R.A. NO. 9184 OTHERWISE KNOWN AS GOVERNMENT PROCUREMENT REFORM ACT;

ENACTED, November 27, 2003.

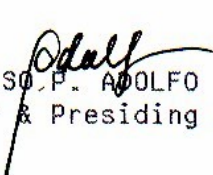
RESOLVED, FURTHER, to furnish copy of this resolution to Hon. City Mayor, Carmelo J. Locsin; Hon. Congressman Eufrocino M. Codilla, Sr., 4th District of Leyte; the Members of the Bid and Awards Committee, the City Department Heads, the President of the Liga ng mga Barangay and all Barangay Captains of the City of Ormoc, the 1,000 signatories of the petition, all Presidents of civic clubs and religious organizations, the Chamber of Commerce and Industry, Presidents of All Parent-Teachers and Community Associations, Head of Schools and Colleges, to the local newspapers and to print this resolution, and others concerned.

CARRIED by Seven (7) Affirmative Votes, Four (4) Votes against registered by City Councilors Eduardo P. Tan, Gregorio A. Yrastorza, Jr., Emeterio Y. Larrazabal and Cheryl L. Alfar and one (1) Abstention registered by City Councilor Jose S. Serafica.

I HEREBY CERTIFY to the correctness of the foregoing resolution.


OSCAR V. LASAM
Secretary to the
Sangguniang Panlungsod

ATTESTED:


CELSO P. ADOLFO
Vice Mayor & Presiding Officer