

**FACT SHEET ON THE CONSULTANCY SERVICES
OF ENVIRONMENTAL SERVICES AUSTRALIA/GAIA SOUTH, INC.**

I. ANTECEDENT EVENTS:

1. On **12 Sept. 2003**, Atty. Juliano Nacino wrote the President that alleged a conflict of interest when a contract for consultancy services was awarded to Environmental Services of Australia (ESA) whose counterpart local firm, GAIA South, Inc. had Incorporators/Board of Directors composed of former DENR officials and Sec. Gozun.

It is true that Sec. Gozun is one of the Incorporators and member of the Board of Directors when it was established in 1992. However, as early as 1994, or nine years before she became Secretary, she had divested her shares in GAIA South, Inc.

2. In a press conference on **15 Sept. 2003** at Bacolod Chicken Inasal Restaurant in Quezon City, Atty. Nacino announced that he was formally resigning as Director of DENR Legal Services because of the anomalies he had discovered. Further, he said that prior to this, he was asked to resign by Secretary Gozun on **10 July 2003** after he refused to sign a Board Resolution of the Bids and Awards Committee that recommended the award to Environmental Services Australia/GAIA South, Inc. Subsequently, on 28 August 2003, the President replaced Atty. Nacino as Director of Legal Services with the appointment of Atty. Clarence Darrow M. de Guia, a DENR career lawyer.
3. The decision to replace Atty. Nacino with someone who had been in the DENR service for quite a time was a big consideration. The backlog of past administrations have to be unloaded especially the administrative cases and other legal cases whose concerned parties have been waiting for a long time for a decision. The same holds true for other legal cases. And this could be realized only with an official who would have full grasp of the situation and circumstances, knowledgeable on environmental laws, rules and regulations and about the operations of the organization. Having been appointed only in September 2002, not being an expert on environment and natural resources and with the limited time frame to accomplish DENR commitments, Atty. Nacino cannot cope with the enormous task.

II. The main issue Atty. Nacino alleged is the conflict of interest. Hereunder is a fact sheet on the circumstances on the award of the consultancy services to Environmental Services of Australia/GAIA South, Inc.

A. Background:

1. The consulting service for Institutional Strengthening and Capacity-Building (ISCB) for air quality management in Metro-Manila airshed is a component of the Metro-Manila Air Quality Improvement Sector Development Program (MMAQISDP) as provided under the Project Appraisal Report. The ISCB aims to increase capability and capacity to manage data generated from the point source air quality emission measurement program. As provided in the MMAQISDP Loan Agreement, the procurement of consultancy services should be conducted through competitive bidding following strict ADB guidelines on procurement of consultancy services.

B. The Selection Process

• **During Secretary Cerilles' Administration:**

1. As early as **08 May 2000**, the Program Coordination and Monitoring Unit (PCMU) of the DENR requested the assistance of the Asian Development Bank (ADB) for a long listing of consultants to facilitate the procurement of consultancy services.
2. From the long list provided by ADB on **28 July 2000**, the PCMU selected six potential bidders. These were: 1) Environmental Services Australia; 2) Agra and Earth Environmental, Canada; 3) D'apopolonia SpA, Italy; 4) Resource, Environment and Economics Center for Studies, Philippines; 5) Mott MacDonald Environmental Consultants Ltd., UK; and 6) Allen Engineering and Sciences, USA.
3. On **07 December 2000**, the Pre-Qualification and Evaluation Committee (PEVAC) invited these firms to submit pre-qualification documents.
4. All six firms submitted the documentary requirements. They were subsequently short-listed and thereafter, their names were submitted to ADB on **12 January 2001** by DENR represented by USEC Mario Roño for its (ADB's) concurrence. **(It should be noted that the funding agency's concurrence is necessary and not a unilateral decision on the part of DENR.)**

The ADB's response/concurrence was held in abeyance for about nine months due to some unresolved issues on the implementation of the Clean Air Act.

- **During Secretary Alvarez's Administration:**

5. On **19 September 2001**, DENR represented by USEC Ramon Paje re-submitted the short list together with invitation documents to ADB. ADB approved the short list on **13 December 2001**. The firms were immediately notified to submit technical and financial proposals. Only three (3) submitted their papers on time. These are Allen Engineering and Services, Overseas Projects Corporation of Victoria (on behalf of Environmental Services of Australia) and Resources, Environment and Economic Center for Studies, Inc.
6. On **10 Dec. 2001**, former USEC Paje created a Technical Evaluation Committee (TEC) to evaluate the bid proposals. On **17 April 2002**, PEVAC members opened the technical proposals and turned over the same to the TEC for evaluation. One of the Terms of Reference requires the identification of a local counterpart by the proponent. GAIA South, Inc. was identified by ESA.
7. From **06-15 May 2002**, the TEC evaluated the technical proposals. By **28 May 2002**, the TEC submitted the evaluation results to PEVAC during its meeting. Based on evaluation standards and criteria, the firms were ranked. The firms' strengths and weaknesses were also pointed out for better appreciation by ADB.

The ranking are as follows: *First*, Overseas Projects Corporation of Victoria (Environmental Services of Australia); *Second*, Resources, Environment and Economic Center for Studies, Inc.; and *Third*, Allen Engineering and Services. The PEVAC recommended the award of the project to the winning bidder to the Asian Development Bank on **06 June 2002**. The above recommendation to the ADB was reiterated on **13 September 2002** by DENR represented by USEC Paje.

C. The Contract Award Process

1. *Sec. Elisea G. Gozun assumed office only on 13 Dec. 2002.*
2. Between **13 September 2002 and 07 February 2003**, exchanges of communications between ADB and DENR took place. ADB forwarded several requests for clarifications of some technical issues prior to their concurrence of the recommendation.
3. On **07 February 2003**, ADB informed DENR that it may proceed to invite OPCV/ESA for contract negotiations. A Financial Evaluation Team (FET) was created on **05 March 2003** that evaluated OPCV/ESA's financial proposal in a series of meetings held on **20-24 March 2003**.
4. On **03 June 2003**, ADB advised DENR on the submission of signed contract for consultancy services for ISCB for Air Quality Management in the Metro Airshed.
5. On **25 June 2003**, the Bids and Awards Committee for Foreign-Assisted Projects passed Resolution No. 2003-04 that approved the contract between DENR and ESA/GAIA South, Inc.
6. On **18 July 2003**, the contract was approved and signed. It was sent to ADB by DENR represented by ASEC Rafael Camat on **23 July 2003** for concurrence.

It is reiterated that pending ADB concurrence, no consultancy service fees have been released.

The project has not yet been finally awarded. It is still subject to compliance with ADB conditions, one of which is the implementation of the Motor Vehicle Inspection System (MVIS).

On **01 August 2003**, the above facts and chronology of events were transmitted to the Office of the President for information and record.

PUBLIC INTEREST REMAINS THE PRIMARY CONCERN. But it would be unfair to disqualify a company that has abided by the rules and regulations of the bidding process simply because one of its former associates is the approving authority. It is only incidental that at the time the bidding process reached its final stage, the Secretary is Elisea G. Gozun. Had the process been taken at a faster rate, any of her predecessors would have been the signatory.