

MWSS PRIVATIZATION: Lessons on Good Governance

Presentation to High Powered Expert Committee on Investment Requirements For Urban Infrastructure in India

29 April 2009

Asian Development Bank

Atty. Mary Mai A. Flor

Urban Water Supply and Governance Specialist
(ADB Consultant)

Manila Concession Key Figures



On Commencement date in August 1997:

- 11 million inhabitants
- 850,000 water supply connections
- 90,000 sewerage connections
- 65% NRW; 16-hour availability
- 8,000 employees; 9/1000 connections
- Debt service is US\$100m p.a.
- Coverage:
 - Water - 67%
 - Sewerage - 8%

Objectives for PPP Option (1995)

- Need for improved standards of service
- Increase coverage
- Increase water supply system efficiency (i.e. reduce NRW; staff/connection ratio)
- Remove debt burden from government

What Was Done

- **Government team formed, headed by Public Works Secretary**
- **New MWSS head appointed to drive process within MWSS**
- **Congress passed Water Crisis Act of 1995**
- **Study tours in England, France and Argentina to determine best model; concession model agreed upon**
- **Tariffs increased from Php 4 to Php 8 per cubic meter**
- **Massive public information campaign**
- **Transaction cost USD 6 million (USD1m grant from France, USD4m for consultants and USD2m success fee); IFC acted as transaction advisor**
- **Draft transaction documents including concession agreement and tender documents**
- **International tender**
- **21 months from drafting to tender**

Bid Basics

- **MWSS divided into two zones: East and West**
- **Bidders to bid for both areas**
- **No bidder can win both areas**
- **Concessions for 25 years with specific targets on coverage for water and sanitation, 24-hour supply, quality**
- **Local private operators must partner with international operator which must own at least 20%**
- **Award based on lowest tariff submitted**
- **Establishment of Regulatory Office under the Concession Agreement**
- **Winning bidders to reimburse Government USD 6 million transaction cost**
- **MWSS debt burden to be paid by concessionaire (approx. USD 900m)**

Measures to Mitigate Risks under CA

- **Grounds for tariff adjustments well defined including rate rebasing every 5 years**
- **Modification of performance targets**
- **Government guarantees for MWSS non-performance**
- **Early termination provisions**
- **International Arbitration in case of conflicts**
- **Performance bond to guarantee concessionaire obligations**
- **Penalties**

Bid Results

	East	West
Pre-bid tariff (Pesos)	8.78	8.78
Bid tariff (Pesos)	2.32	4.97

Aboitiz / CGE	62.9%	56.9%
Ayala / United*	26.4%	28.6%
Benpres / Lyonnaise*	69.8%	56.6%
Metro / Anglian	64.5%	66.9%

Concessions Today

- **Ayala-led consortium very successful, publicly traded and surpassed all targets**
- **Lopez-led consortium met with serious difficulties and has been re-tendered**
- **Maynilad under new ownership and massive investments on-going with encouraging results**

Issues Leading to Failure of West Concession

- Asian crisis with peso falling 100% against US dollar
- USD 800 million Government debt shouldered by West Concessionaire
- No provision in original Concession Agreement for currency rate adjustment
- Fear of action by Regulator and Government in general

The Re-Bidding of West Concession Milestones

- August 1997** – start of concession; Asian financial crisis began a month earlier
- March 2001** – Maynilad suspends concession fee on grounds of “force majeure”
- December 2002** – Maynilad issued a notice of termination of concession
- Feb to Nov 2003** – Arbitration process before Appeals Panel which ended with decision that neither Maynilad nor MWSS was entitled to termination
- Jan 2004** – Deliberations on Maynilad’s Debt and Capital Restructuring began
- April 2005** – Maynilad’s Debt and Capital Restructuring Agreement (DCRA) was signed and took effect in July 2005, including transfer of 84% of Maynilad shares to MWSS on condition of a rebidding
- May 2006** – Financial Advisor hired
- December 2006** – Award for MWSS’s 84% share in Maynilad
- January 2007** – Maynilad’s new owners (DMCI-MPIC) took over

The Re-Bidding of West Concession

Maynilad's Debts Payable at the Time of Restructuring

Creditor	Amount	Nature
MWSS	P7,884,500,000.00	concession fees from 2004–2007; estimated peso equivalent of MWSS' foreign currency–denominated loans as of privatization
	\$30,100,000.00	interest for a \$100-million loan MWSS took out from a bridge bank to cover the concession fees that Maynilad failed to pay
	\$31,000,000.00	financial assistance to Maynilad for capital expenditures and operational expenses, to be derived from future concession fee payments
Suez Group	\$122,651,568.00	Suez payments of its guarantees under the Credit Agricole Indosuez, bridge loan, and performance bond facilities and advances to Maynilad
SBLC banks	\$72,000,000.00	balance owed to the stand by Standby Letter of Credit banks following a draw on the performance bond and the payment by Suez of \$48,000,000.00
Bridge banks	\$46,096,578.06	balance under the bridge loan facility
Peso lenders	P1,421,804,988.06	balance under the peso loan facilities

The Re-Bidding of West Concession

- August 2005** – first announcement with 11 investor groups procuring bid documents
- Second phase** – only 5 groups submitted pre-qualification requirements
- Actual tender** – only 3 firms submitted technical and financial bids
- **Rubia Holdings** – Noonday was disqualified for failure to submit appropriate SBLC for USD2.5 million
- Dec 2006** – financial bids were opened:
 - Manila Water – USD 450+ million
 - DMCI-Metro Pacific – USD 500+ million

ADB

WATER for ALL

Factors Contributing to Success of Rebidding Process

- **Commitment of Government to PPP policy**
- **Cooperation of sponsors, creditors and employees**
- **Hiring of Financial and Technical Advisors**
- **Transparent process with rules followed**
- **Bid amount covers investment into the company for rehabilitation and expansion**
- **High financial requirements weeded out non-serious bidders**