

**NPM No. 088-2017**

29 December 2017

**MR. ABNER D. NOTARTE**

*Manager*

**PENJAN BUILDERS AND SUPPLY**  
31 Cecilia Ave., Dona Juliana Hts.,  
Bacolod City

**Re: Earliest Possible Time -**

Dear Mr. Notarte:

This refers to your letter inquiring whether a contract awarded sixteen (16) days from PhilGEPS posting is in conformity with Republic Act No (RA) 9184, the Government Procurement Reform Act, and its 2009 revised Implementing Rules and Regulations (IRR).

In your letter, it was disclosed that a Local Government Unit (LGU) advertised its Invitation to Bid for the procurement of Goods and Infrastructure Projects on 8 March 2016 and the Pre-Bid Conference was held on 11 March 2016. However, due to the Election Ban which took effect on 25 March 2016, the LGU dated the Purchase Order on 23 March 2016. Such that the whole procurement process was finished for only sixteen (16) days.

At the outset, please be advised that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions under the law. Hence, this office has consistently refrained from passing upon decisions of the BAC or the procuring entities on its procurement activities.

Please be advised that Annex "C" of the 2009 IRR of RA 9184 provides for the Period of Action on Procurement Activities, specifically the latest allowable time and the earliest possible time for each stage of the procurement process.

Based on the table for the earliest possible time in Annex "C", and considering the details of the Project *vis-a-vis* the relevant provisions of the IRR, the earliest possible time to complete an entire procurement process from the advertisement/posting of Invitation to Bid (IB) or Request for Expression of Interest up to Issuance of Notice to Proceed is twenty-eight (28) calendar days for goods and infrastructure project, and thirty-four (34) calendar days for consulting services. This is based on the premise that the pre-bid conference is conducted on the day after the last day of posting of the IB and the procuring entity adopted the minimum period between the pre-bid conference and the submission and receipt of bids.

Thus, the rules allow Procuring Entities to adopt a shorter period provided for under the IRR relative to its procurement activity. However, prudence dictates that in setting the

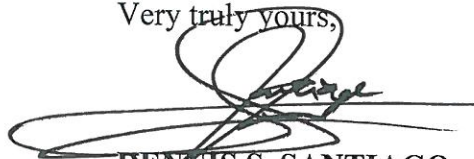
timelines, the Procuring Entity is duty-bound to take into consideration the details of the project, the relevant provision of the revised IRR of RA 9184, and should ensure that competition, fairness, and transparency are well observed in its procurement activity.

In the case at bar, although the LGU adopted a shorter period in its procurement activities, the same falls short in complying with the requirements of RA 9184 and its 2009 IRR as the pre-bid conference was held less than 7 days from the posting of Invitation to Bid and the entire procurement process for the project was completed only in sixteen (16) calendar days.

In sum, although the rules allow procuring entities to adopt the shortest possible period to complete its procurement activities, Procuring Entities are nonetheless bound to abide by the relevant provisions of the 2009 IRR of RA 9184 pertaining to the conduct of mandatory procedures as well as the observance of the periods indicated therein. Failure to comply with these requirements taints the validity of the bidding process.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director V*