

NPM No. 114-2016

6 December 2016

ATTY. ALLAN REIZ C. MACARAIG
Legal Counsel
MACARAIG LAW OFFICE
Door 5, Pavilion 3, Panganiban Drive, Naga City

Re: Non-Refundable Protest Fee

Dear Atty Macaraig:

This refers to your letter regarding your request to the Department of Environment and Natural Resources (DENR) Regional Office No. 5 to refund to your client, MCRG Engineering Services & Technical Consultancy, the protest fee it paid.

We understand that your request for refund is made after obtaining a favorable resolution on the Protest it filed where the subject fee was paid. And since your client's protest was found to be meritorious and in good faith, you represent that it is a matter of course that the procuring entity must refund the protest fee.

While we understand your sentiment, however, Section 55 of Republic Act (RA) No. 9184, otherwise known as the Government Procurement Reform Act, provides for the payment of a **non-refundable protest fee**, *to wit*:

SEC. 55. Protests on Decisions of the BAC. – Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and **paying a non-refundable protest fee**. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR. (Emphasis supplied)

In our previous opinion¹ we explained that the nature of the protest fee as non-refundable was imposed by the procurement law itself. Basic is the rule in government financial transactions and operations that “no money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.”² Moreover, “trust funds shall not be paid out of any public treasury or depository except in fulfillment of the purpose for which the trust was created or funds received, and upon authorization of the legislative body, or head of any other agency of the government



¹ NPM No. 138-2015 dated 27 November 2015.

² Section 4(1) of Presidential Decree No. 1445 or the "Government Auditing Code of the Philippines."

having control thereof, and subject to pertinent budget law, rules and regulations.”³ Thus, after payment of the non-refundable protest fee by a bidder protesting a decision of the BAC, the procuring entity cannot, without valid appropriations or statutory authority therefor, return such money to the bidder. This is likewise in consonance with the rule that “all laws and regulations applicable to financial transactions shall be faithfully adhered to.”⁴

All told, the nature of the protest fee determined by the law itself as non-refundable, and the fundamental principles in disbursement of public funds, limits the authority of DENR to effect the return of the protest fee paid for by the bidder, notwithstanding the result of the protest.

We hope that the opinion issued by GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situation 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.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

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³ Section 84(2), *Ibid.*

⁴ Section 4(7), *Id.*