



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 02 -2011

2 March 2011

MR. RODRIGO E. CABRERA

General Manager

LAGUNA LAKE DEVELOPMENT AUTHORITY

Km. 24 Manila East Road, Don Hilario Cruz Avenue
Club Manila East Compound, San Juan
Taytay, Rizal

Dear Sir:

We refer to your letter dated 20 September 2010 seeking our opinion on the legality and validity of the contract award, construction agreement, and notice to proceed¹ issued to the contractor concerned in the absence of a confirmatory resolution from the Board of Directors (BoD) of the Laguna Lake Development Authority (LLDA).

Based on your letter, we understand that the Notice of Award was issued on 23 June 2010 and the Construction Agreement was executed on 24 June 2010. In memorandum dated 26 July 2010, however, the LLDA Board Secretary informed the Bids and Awards Committee (BAC) that the BoD could not be constituted because of the ongoing transition under the new administration. Its original meeting scheduled on 23 July 2010 was, thus, cancelled.

Thereafter, through Resolution No. 383 dated 29 October 2009, the BoD approved the financing and implementation schemes for the construction of the LLDA Principal Office and Laboratory Building and directed the LLDA Management to adhere to several conditions for its implementation, among which, is to seek confirmation from the LLDA Board of contracts awarded in connection with the building construction.

In recommending the approval of the issuance of the contract award and notice to proceed, the BAC invokes Section 38.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act 9184 (RA 9184) which prescribes that if no action is taken by the head of the procuring entity (HOPE) or the appropriate approving authority within the periods specified in the IRR then the contract shall be deemed approved.

At the outset, we would like to note that the Government Procurement Policy Board (GPPB) has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding process considering that it has no quasi-judicial functions under RA 9184. The

¹ Attached to letter

determination of the legality and/or validity of the actions and decisions of the BAC including contracts emanating therefrom is not within the expressed mandate of the GPPB.

For guidance, please be advised that perusal of the afore-cited provision and the BoD resolution leads us to infer that there appears to be no conflict between the LLDA-BoD Resolution and Section 38.3 of the IRR of RA 9184. The latter provision aims to facilitate and expedite the procurement by allowing inaction by the HOPE or the appropriate approving authority to be tantamount to an approval. On the other hand, the LLDA-BoD Resolution which requires a confirmatory resolution from the LLDA Board may be construed as merely identifying the higher authority for approval of awarded contracts in connection with the procurement activity.

This means that an awarded contract in relation to the construction of the LLDA Principal Office and Laboratory Building may be deemed approved despite the absence of a confirmatory resolution from the LLDA Board if there was no action on its part within the applicable period provided in Section 38.3 of the IRR of RA 9184.

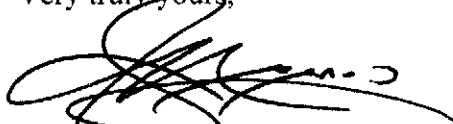
It should be emphasized, however, that "action" mentioned in Section 38.3 of the IRR of RA 9184 is not limited only to the approval or disapproval of the contract. Following the elementary rule in statutory construction that words do not acquire a different meaning when used in a statute or regulation unless otherwise so provided, the word "action" in this case may be deemed to include any act or direction undertaken by the approving authority relative to the performance of his duty.

In this case, if the LLDA Board neither approves the awarded contract nor issues the confirmatory resolution within the period provided in Section 38.3 of the IRR of RA 9184, but nevertheless initiates any act, assertion or direction relative to the project, approval of the contract may not be deemed to have taken place.

It goes without saying that the determination of whether there was no action by the HOPE or appropriate approving authority is within the responsibility of the procuring entity since it is in the best position to identify the facts and circumstances surrounding the matter.

We hope to have provided sufficient guidance on the matter. Should you have additional concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS LORNE S. NACARIO
OIC-Executive Director