



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

**NPM No. 41-2012**

25 April 2012

**DIR. EDGARDO M. GONZAGA, MD, MSc, CESO III**

*Director III*

**CENTER FOR HEALTH DEVELOPMENT (CHD)**

**– CALABARZON**

QMMC Compound, Project 4, Quezon City

**Re: Tax Evasion Case**

Dear Dir. Gonzaga:

We respond to your letter dated 20 January 2012 requesting for opinion on whether the Bids and Awards Committee (BAC) of CHD may suspend an on-going infrastructure project for a period of one (1) month due to the tax evasion case<sup>1</sup> filed by Bureau of Internal Revenue (BIR) against DQT Builders Corporation.

As represented, the contract for the Repair/Renovation of San Narciso Municipal Hospital at San Narciso, Quezon was awarded to QBT Builders Corporation on 28 November 2011 as part of the Health Facility Enhancement Program FY 2011. During the implementation of the said project, a tax evasion case was filed by the BIR at the Department of Justice with an assessed total tax liability amounting to PhP 76.4 million, including surcharges and interest declared on its 2007 financial statement.

At the outset, please be informed that based on the existing rules on the Contract Implementation Guidelines for the Procurement of Infrastructure Projects<sup>2</sup>, the procuring entity shall have the authority to suspend the work wholly or partly by written order for such period when:

- a) Due to force majeure or any fortuitous events;
- b) Failure on the part of the contractor to correct bad conditions which are unsafe for workers or for the general public;
- c) To carry out valid orders given by the procuring entity or to perform any provisions of the contract; or
- d) Due to adjustment of plans to suit field conditions as found necessary during construction.

<sup>1</sup> I.S. No. XVI-INV-12A-00036 filed on 19 January 2012 with the Department of Justice under the Bureau Run After Tax Evaders (RATE) Program.

<sup>2</sup> Section 9.1, Annex E of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184

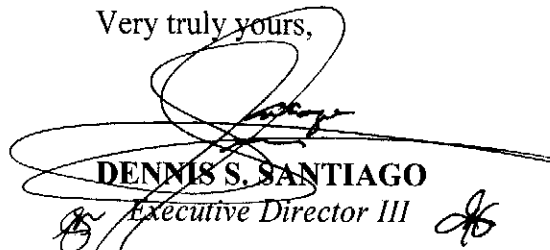
The aforementioned situations are also found in the 4<sup>th</sup> Edition of the Philippine Bidding Documents (PBDs) for Infrastructure Projects, particularly Section 45.1 of the General Conditions of the Contract (GCC).

From the foregoing, the filing of tax evasion case against the contractor is not one of the situations mentioned that will merit the suspension of the work either wholly or partially. Also, the action of the procuring entity to suspend the work may be considered premature since the tax evasion case is not tantamount to tax liability in view of the fact that the BIR has yet to determine with finality the liability of the winning contractor apart from any judicial relief or intervention that the contractor may opt to adopt. However, assuming for the sake of argument that the contractor is liable for the payment of the assessed tax liability, it is the responsibility of the BIR to collect the amount, including surcharge, penalty and interest.

Further, the Constitution states that the use of property bears a social function, and all economic agents shall contribute to the common good<sup>3</sup>. Towards this end, it is the responsibility of the State to ensure the expeditious, efficient implementation and completion of government infrastructure projects to avoid unnecessary increase in construction, maintenance and/or repair costs and to immediately enjoy the social and economic benefits therefrom. Thus, the filing of tax evasion case should not stay or delay the implementation of the infrastructure project since it is not in anyway related to the project being implemented.

We hope that our advice sufficiently addresses your concern. Should you have further inquiries on the matter, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director III*

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<sup>3</sup> Article XII, Section 6 of the 1987 Constitution