

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**Technical Support Office**

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**NPM No. 05-2005**

January 19, 2005

**HON. CESAR V. PURISIMA**  
Secretary, Department of Trade and Industry  
4F Industry & Investments Bldg.  
385 Se. Gil J. Puyat Ave., Makati City

**Re : Extension of Health and Medical Insurance Contract**

Dear Sec. Purisima:

This has reference to your letter,<sup>1</sup> dated 17 December 2004,<sup>2</sup> requesting for opinion on a possible extension by the Department of Trade and Industry (DTI) of the 2004 health and medical insurance contract it acquired for its employees. The extension is sought to cover the months of January to March 2005.<sup>3</sup> As represented, DTI is in the process of bidding out the health and medical insurance contract for the year 2005 which event apparently stems from the expiration of the 2004 insurance contract. Unfortunately, the bidding process will not be terminated until the end of March 2005. Thus, from January to March, DTI employees will experience an interruption of their insurance coverage and may not be able to afford the medical services that they require.

At the apex of DTI's concern is the plausibility of averting the inconvenient situation already mentioned above by extending the insurance coverage of the employees until March 2005. Thus, the issue for our consideration:

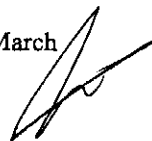
Whether or not DTI may extend year 2004's insurance contract to cover January to March of 2005.

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<sup>1</sup> Addressed to the Hon. Secretary Emilia T. Boncodin of the Department of Budget and Management as Chairperson of The Government Procurement Policy Board.

<sup>2</sup> Letter-request received by GPPB-TSO on January 03, 2005.

<sup>3</sup> The letter indicates on 2<sup>nd</sup> paragraph that extension is sought to cover the months of January to March 2004. However, we understood it to mean year 2005 instead of 2004 in the context of the concern stated in the 1<sup>st</sup> paragraph.



Appended to this issue is the question on whether the extension of the insurance contract under the rules allowing for negotiated procurement is possible as said extension is necessary to prevent damage to the health of DTI employees or perhaps even loss of life.

**Extension of contract to avoid "service vacuum" is permissible but only within a reasonable period**

While the issue at hand may not have been categorically dealt with by Republic Act No. 9184 or its Implementing Rules and Regulations, it is nonetheless a matter of concern which this office is mandated to tackle and ventilate. In this regard, the mind of the Highest Court of the land proves helpful in our endeavor to achieve our objective. Thus, in rejecting<sup>4</sup> the contention of the petitioner that the execution of the new interim monthly negotiated security contracts of NFA<sup>5</sup> are sanctioned by law, the Supreme Court, in the case of National Food Authority v. Court of Appeals,<sup>6</sup> commented by way of obiter that:

xxx what causes eyebrows to arch is the act of petitioners in discontinuing the incumbents' services. xxx It is certainly strange why petitioners chose to do away with the incumbents' services at a time when a "security void" would directly and most necessarily result from their withdrawal. The least the petitioners could have done under the circumstances was to maintain the status quo xxx.

Applying the above-cited jurisprudential crucible, it can be said that services indispensable in the ordinary course of the prosecution of a procuring entity's mandate may be maintained until after a replacement therefor has been lawfully acquired or contracted. Here, the obvious intent is to elude the ill possibility of a "service vacuum" meantime that selection process for a replacement is being made. An extension of contract for a reasonable period of time is but a dictate of prudence and judgment. Elsewise put, if award of contract through competitive bidding cannot be attained due to valid and tenable reasons, the status quo may be maintained for a short span of time until the new contract is awarded to the winning bidder.

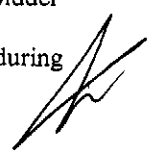
In the case of DTI, the extension sought is due to the fact that the bidding procedure is not expected to be completed before the end of March 2005. Within that period, the extension is fairly permissible in the context of avoiding hiatus in the medical services that the employees require that may directly and most necessarily result from the expiration of the contract. The extension, while may be seen as negotiating an interim measure, is also virtually a measure to maintain the status quo

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<sup>4</sup> The Supreme Court rejected petitioner's contention anent the validity of the negotiated contract on the ground, inter alia, that petitioners' continued failure to conduct a public bidding and select the bidder within a reasonable time casts doubt on the good faith behind the negotiated contract.

<sup>5</sup> The interim monthly negotiated contracts were intended to provide NFA with ample security during the temporary emergency period that a public bidding cannot be conducted

<sup>6</sup> G.R. Nos 115121-25, February 1996.



until after the bidding procedure is finalized and a new contract is awarded to a new service provider.

We appreciate the effort and commitment of DTI to adhere to the rules laid down in the new procurement law, and we take this opportunity to caution agencies that in pursuing contract extensions, good faith must at all times be observed, such that ample proof/evidence should be available to show the actual attempt to bid out the project at the earliest opportunity and for completion within the earliest reasonable time. This goes without saying that the reasons for the extension itself be justified as inevitable because of conditions not attributable to the agency's bad faith or lack of foresight and anticipation.

### **Negotiated procurement is not applicable**

Contrary to the desired approach of DTI, the conditions confronting it and its employees are not embraced within those that justify resort to Negotiated Procurement as an alternative method of procurement. Under par (b), Section 53 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184), in case of causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities, the procuring entity may directly negotiate a contract with a technically, legally and financially capable supplier, contractor or consultant pursuant to the terms and conditions as set forth in Section 54 of IRR-A.

The interruption of insurance coverage arising from the expiration of the insurance contract may hardly be perceived as a direct threat to the health and life of the employees. Granting *arguendo* that such is a threat, this situation is a cause remote to and/or indirect to any damage in health or life of the employees. Hence, Negotiated Procurement may not be resorted to by the DTI in their case.

Moreover, assuming that a view contrary to the foregoing is acceptable, the suggested resort to negotiated procurement would still be unavailing. This is due to the fact that negotiated procurement on the basis that there is necessity to prevent damage to or loss of life or property requires the procuring entity to draw up a list of at least three (3) suppliers or contractors which will be invited to submit bids. Moreover, should such situation become manifest, the procedures for the conduct of public bidding shall still be observed, and the lowest calculated and responsive bid shall be considered for award.<sup>7</sup>

We trust that this clarifies matters.

Very truly yours,

  
**JOSE MARTIN C. SYQUIA**  
Executive Director III

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<sup>7</sup> See Section 54.2 (b) of IRR-A.