



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

NPM No. 57-2013

26 June 2013

MR. ARMANDO C. RUIZ

Vice-Chairperson, Bids and Awards Committee (BAC)

DEPARTMENT OF EDUCATION

2nd Floor, Dorm B., DepEd Complex,
Meralco Avenue, Pasig City

Re: Extension of Period of Post-Qualification Process

Dear Mr. Ruiz:

We respond to your letter dated 12 April 2013 seeking our opinion on the legality of the procurement process that exceeded the thirty (30) calendar day-period of post qualification and the three (3) month maximum period of procurement under the revised IRR of Republic Act (RA) No. 9184.

It is represented that the DepEd-BAC has extended the post-qualification process *thrice*, for ninety (90) calendar days, due to the complexity and peculiarity of the project¹, consisting of 11 lots and 310 items. The DepEd-BAC resolved that the justifications merit the approval of the extension on the ground that it is crucial in the exercise of due diligence in determining and recommending an award.

Under Section 34.8² of the IRR of RA 9184, the post-qualification process must be completed within seven (7) calendar days, unless extended by the Head of the Procuring Entity, but the aggregate period of which should not exceed thirty (30) calendar days. Moreover, Section 38.1 further requires that the procurement process from the opening of the bids up to the award of the contract shall not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned. The use of the word "shall" makes the completion of the process mandatory within the specified period.

This notwithstanding and, as discussed in a prior opinion³, it is implicit in Section 65.1(b)⁴ of the IRR of RA 9184 that the post-qualification process beyond the prescribed

¹ Mass Production and Supply and Delivery of Science and Mathematics Equipment to 544 Public Secondary Schools, RSHSs and ESEP Schools, with an ABC of Php 642,876,068.37.

² "Section 34.8. The post-qualification process shall be completed in not more than seven (7) calendar days from the determination of the Lowest Calculated Bid/Highest Rate Bid. In exceptional cases, the post-qualification period may be extended by the Head of the Procuring Entity, but in no case shall the aggregate period exceed thirty (30) calendar days."

³ NPM 152-2012 dated 12 December 2012.

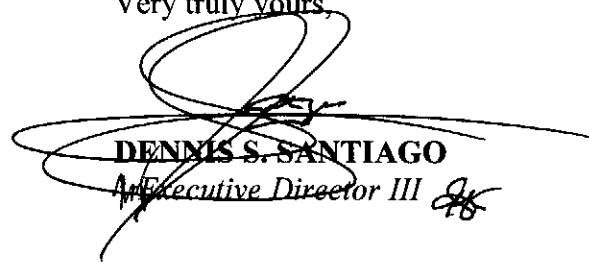
⁴ "Section 65.1. Without prejudice to the provisions of R.A. 3019 and other penal laws, public officers who commit any of the following acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years:

period of action may be recognized for justifiable causes, such that, although the period of action required under the rules are mandatory in character, penal sanctions or liability will not set in against the concerned public officers provided that, valid, reasonable, and justifiable causes exist to warrant a delay in the process. However, we wish to stress that it is the PE's responsibility and accountability to determine the existence of justifiable causes that led to the delay.

In this wise, we wish to clarify that extension of mandatory periods under the IRR of RA 9184, including the allowable extensions recognized by the law and rules, is proscribed. Should the PE decides to extend the same, it must show and provide compelling, sufficient, valid, reasonable, and justifiable cause for such extension. Elsewise put, the burden lies upon the PE to provide credible and legal bases to justify the extension. Such valid justification, however, will only free officials from penal sanction or liability, but not from applicable administrative and civil sanctions or liabilities under existing laws, rules and regulations.

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 III

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(b) Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in this IRR. x x x"