

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

NPM No. 119-2014

10 November 2014

HON. MA. REGINA BAUTISTA-MARTIN

Administrator

SUGAR REGULATORY ADMINISTRATION (SRA)

Sugar Center Bldg., North Ave., Diliman, Quezon City

Re: Contract Termination and Rebidding

Dear Administrator Martin:

This is refers to your letter seeking our opinion on whether the SRA could validly terminate its contract with VERSATECH Construction Company, Inc. (Versatech) for the SRA Bacolod Housing Project that was implemented in 2004.

It is represented that after the initial implementation of the Project, Versatech stopped working due to right of way issues. SRA eventually resolved the right of way issue and secure the access road title in its name. SRA then issued a notice to resume work to Versatech, but the latter failed to resume work. Instead, Versatech billed SRA for the estimated performance of about 12% of the project, but was unable to submit the requirements for payment. After the SRA has conducted an investigation, it was discovered that: (1) Versatech's PCAB license has already expired; (2) it failed to file its reportorial requirements before the Securities and Exchange Commission (SEC); and (3) its office can no longer be found in the given address, although its President is still holding office in the same place but under a different business name. For these reasons, SRA decided to rescind its contract with Versatech asserting that it no longer possesses the capacity to continue with the Project. It is in this context that you seek our opinion on the following issues:

1. Whether the SRA can validly rebid the project; and
2. What will be SRA's liability to Versatech in view of its partial performance *vis-à-vis* its failure to submit the required documents such as its PCAB license, among others, for the liquidation of its claim.

Contract Termination and Rebidding

Under the Guidelines on Termination of Contracts¹ (Guidelines), contracts for the procurement of goods, infrastructure projects, and consulting services may be terminated by the Procuring Entity (PE) on the following grounds: (1) default of the supplier, contractor, or

¹ GPPB Resolution 019-2004 dated 22 December 2004, and published in the Official Gazette on 16 May 2005, as amended by GPPB Resolution 03-2011 dated 28 January 2011, published in the Manila Times of 6 April 2011.

consultant; (2) convenience; (3) insolvency of the supplier, contractor, or consultant; or (4) unlawful acts of the supplier, contractor, or consultant. Since the procuring entity is in the best position to determine the propriety of rescinding or terminating the contract based on the grounds provided in the Guidelines and Section 68 of RA 9184, it has the full responsibility and accountability over such decision.

Once a contract has been validly and lawfully terminated pursuant to the Guidelines, but the procuring entity still intends to complete the project, it may conduct another procurement activity to select the contractor that will deliver and perform the project requirements. The selection shall be in accordance with RA 9184 and its associated IRR, and may be conducted using competitive bidding or any of the applicable alternative methods of procurement.

Liability on partial performance

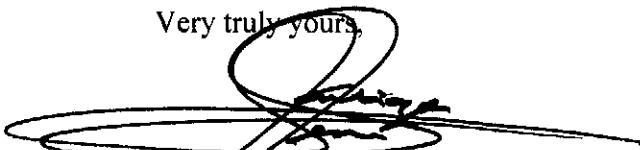
In terms of payment, Section 5 of the Contract Implementation Guidelines for the Procurement of Infrastructure Projects, Annex "E" of the IRR of RA 9184, provides for the progress payment requirement where the contractor has to submit a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts claimed by the contractor up to the end of the month to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities; and, (b) adjustments made for approved variation orders executed.

If the contract is terminated because of a fundamental breach by the contractor, the procuring entity's representative shall issue a Certificate for the value of the work done and materials ordered less advance payments received up to the date of the issuance of the Certificate, less the percentage to apply to the value of the work not completed, as indicated in the Special Conditions of the Contract, provided that additional liquidated damages shall not apply. If the total amount due to the procuring entity exceeds any payment due to the contractor, the difference shall be a debt payable to the procuring entity.²

Based on the foregoing, it is clear that contractors are entitled to payment for works actually accomplished and they need to submit an SWA and request for progress payment. In a previous opinion,³ we stressed that there should be no concern on whether the contractor may be paid for services rendered since progress billings should have been submitted earlier so that the contractor may be paid for that portion of work or services completed.

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

² Clause 46.1, Section II, Instructions to Bidders, Philippine Bidding Documents for Infrastructure Projects, 4th Edition.

³ NPM No. 93-2012 dated 30 July 2012.