

**NPM No. 121-2015**

27 November 2015

**MS. VIRGINIA B. QUIÑO**

*Bids and Awards Committee (BAC) Secretariat*

**MANOLO FORTICH, BUKIDNON**

Poblacion, Manolo Fortich,

Bukidnon 8703

**Re: Award of Contract**

Dear Ms. Quiño:

This refers to your electronic mail (e-mail) requesting our opinion on whether it is allowed to award a contract after the lapse of the three (3)-month period reckoned from the date of bid opening.

As represented, the Local Government Unit (LGU) of Manolo Fortich has a procurement project for the purchase of construction materials. The bid opening for the said project was held sometime in April 2015. However, the funds for the project, which came from the Department of Agriculture, were just recently downloaded to the LGU of Manolo Fortich. Hence, this request for opinion as you are now planning to award the contract to the Lowest Calculated [and Responsive] Bidder.

Section 38 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) explicitly mandates that the procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the Procuring Entity (PE) concerned. In the recent case of *Jacomille v. Abaya, et.al.*<sup>1</sup>, the Supreme Court explained the mandatory nature of this three (3)-month period in awarding of contract, thus:

“The court does not agree ... that the 3-month period is merely directory. The said provision contains the word “*shall*” which is mandatory in character. Such period was placed in a separate provision under Section 38, rather than compressed with Section 37, to emphasize its importance. ***There is nothing in the law which states that the 3-month period can be disregarded. Non-compliance with the period will certainly affect the validity of the bidding process... .***” (Emphasis supplied)

<sup>1</sup> GR No. 212381 promulgated on 22 April 2015.

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It is our considered view that a PE shall award the contract to the Lowest Calculated Responsive Bid within three (3) months from the opening of bids. Failure to comply with this mandatory period will affect the validity of the bidding process, including the resulting contract therefor.

On the other hand, it can be gleaned from Section 65(2)<sup>2</sup> of RA 9184 on the criminal liability of public officers that awarding of contracts beyond the prescribed period of action may be recognized for justifiable causes. Put differently, although the periods of action under RA 9184 and its IRR are mandatory in character, penal sanctions or liability may not set in against the concerned public officers when justifiable causes exist to warrant delay in the conduct of the procurement activities, provided further, that the bid, including the bid security of the bidder remains valid.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being 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*



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<sup>2</sup> SEC. 65. Offenses and Penalties. – Without prejudice to the provisions of Republic Act No. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act” 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:

...

(2) 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 the IRR.