

NPM No. 131-2015

27 November 2015

MGEN. JOSE ANGEL A. HONRADO

General Manager

MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA)

MIAA Administration Building, MIA Road, Pasay City

Re: Additional Payment for Extension of Contract for Consulting Services

Dear General Manager Honrado:

This refers to your letter, requesting for opinion relative to the extension of contract for consulting services and additional payment thereto.

As represented, the contract for the construction supervision services for the Taxiway November Extension Project commenced on 10 November 2014, and should have been completed on 7 July 2015. TCGI Engineers (TCGI), MIAA's consultant, is requesting compensation for the extended construction supervision services since the project has already been delayed for eighty-one (81) calendar days resulting from unfavorable weather condition, variation order (additional works), airport closure, among others. The unworkable days due to inclement weather accounted for seventy-nine (79) calendar days, while the airport closure such as the Papal Visit and other foreign dignitaries contributed to thirty-six (36) calendar days of work stoppage. Since TCGI is claiming that the causes of delay are beyond its control, it is requesting payment for extended services to ensure that the quality of their continued services will not be compromised.

Section 2 of Annex "F" of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 expressly provides that all consultancy contracts shall be fixed price contracts and any extension of contract time shall not involve any additional cost. Based on this provision, an extension of time may be granted for contracts involving consulting services, provided that it should not entail additional cost to the Procuring Entity to cover such extension. Moreover, we note that Section 2 of Annex "F" is clear and does not provide any exceptions to the fixed price contract concept. Hence, following the principle of *verba legis* or plain meaning rule, where a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without any attempt to interpret¹.

We wish to inform MIAA that a Procuring Entity shall, by written notice of suspension to the consultant, suspend the Consultant's work if the latter would fail to perform any of its obligations due to force majeure or other circumstances beyond the control of either party (e.g.

¹ NPM No. 157-2012 dated 21 December 2012.

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suspension of civil works being supervised by the consultant)². In such cases, the elapsed time between the effective order suspending operation and the order to resume work shall be considered in the adjustment/extension of contract time³. However, please note that force majeure does not include ordinary unfavorable weather conditions and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Consultant⁴.

Accordingly, MIAA may grant time extension for TCGI to completely render the services required and stipulated under its contract. However, the time extension should not entail additional cost to MIAA as this is not sanctioned under Section 2 of Annex "F" of the IRR of RA 9184.

We hope this opinion issued by 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

11/5/2017

² Clause 26.1, General Conditions of Contract (GCC), Philippine Bidding Documents (PBDs) for Consulting Services.

³ Manual of Procedures for the Procurement of Consulting Services, page 98.

⁴ Clause 25.1, GCC, PBDs for Consulting Services.