



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

NPM No. 134-2012

19 October 2012

ENGR. NOLI D. ARMADA
Department Manager III
HOME DEVELOPMENT MUTUAL FUND (HDMF)
-KIDAPAWAN BRANCH OFFICE
3rd Floor Eva's Bldg., Quezon Boulevard,
Kidapawan City

Re: Prescriptive Period for Procurement Process


Dear Engr. Armada:

We respond to your letter dated 4 April, 2012 seeking clarification on the effect of conducting bidding activities beyond the three (3) month prescriptive period embodied in Section 38 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, a bid opening was conducted on 11 November 2011, at the HDMF Kidapawan Branch. By 8 December 2011, all bidding documents together with the Notice of Award were forwarded to the HDMF Office of the Vice President – Southern Mindanao Group (HDMF OVP-SMG). The documents were returned for revisions and were resubmitted on 21 December 2011. However, no Notice of Award (NOA) was ever issued to the winning bidder within the three (3) month period prescribed under Section 38 of the revised IRR of RA 9184.

We wish to inform you that pursuant to Section 38 of the IRR, the procurement process should not exceed three (3) months from the opening of bids up to the award of the contract or a shorter period which is to be determined by the Procuring Entity (PE) concerned.¹

As we have discussed in a previous opinion², RA 9184 contains mandatory provisions enacted for the advancement of public welfare. Failure to comply with these rules would render the proceedings to which it relates illegal and void.³ The provisions of RA 9184 are mandatory provisions, and as such, acts executed against these mandatory provisions shall be void, except when the law itself authorizes their validity, pursuant to Article 5⁴ of the New Civil Code.⁵

Thus, the failure to conduct the procurement process within the three (3) month period from the opening of bids up to the award of the contract, or a shorter period, shall render the procurement proceedings to which it relates illegal and void. 

¹The procurement process from 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 concerned.

²NPM No. 026-2005, dated 25 April 2005.

³NPM No. 10-2012, dated 16 January 2012.

⁴ Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes its validity.

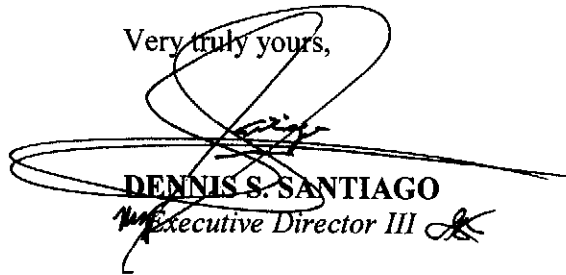
⁵Supra Note 3.

However, it is worthy to note that, in Section 65.1(b)⁶ of RA 9184, awarding of contracts beyond the prescribed period of action may be recognized for justifiable causes such that although the periods of action under RA 9184 and its IRR are mandatory in character, penal sanctions will not set in against the concerned public officers provided that valid, reasonable and justifiable causes exist to warrant a delay in the contract execution.⁷

In view of the foregoing, we are of the view that the non-issuance of the Notice of Award within the three (3) month period prescribed under Section 38⁸ of the IRR of RA 9184, as a general rule, will render the procurement proceedings illegal and void. However, as earlier stated, the Notice of Award and the awarding of the contract may be made beyond the prescriptive period so long as there are legal, valid, reasonable and justifiable causes to allow the same beyond the prescribed periods.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable to a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

11/24/16

⁶Without prejudice to the provisions of RA 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:

xxx

(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.

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⁷Supra note 3.

⁸Supra note 1.