

NPM No. 150-2015

27 November 2015

MR. MICHAEL M. BACARISAS
BAC Secretariat
MACTAN-CEBU INTERNATIONAL AIRPORT AIRPORT (MCIAA)
Airport Road, Lapu-Lapu City, 6016

Re: Period of Action on Procurement Activities

Dear Mr. Bacarisas:

This refers to your letter inquiring whether a procuring entity is mandated to resort to the earliest allowable time in the conduct of its procurement.

As represented, the Mactan-Cebu International Airport Authority-Bids and Awards Committee (MCIAA-BAC) opted to use the earliest possible time for the submission and receipt of bids as provided for under Annex "C"¹ of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, relative to the procurement of the "Design and Build of Operations Buildings" with an ABC of Two Hundred Million Pesos (PhP 200 Million) due primarily to urgency. For this reason, one of the prospective bidders expressed its strong opposition stating that the MCIAA-BAC cannot use the earliest possible time because:

1. it is only allowed in case of infrastructure projects with an available feasibility and/or engineering designs.
2. such use could be interpreted to "favoring a certain contractor or designer, *vis-à-vis*, the program of work as against the time allotted for the submission of the design which is only twelve (12) days".

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) only render policy and non-policy matter opinions, respectively, on issues purely relating to the interpretation and application of the procurement laws, rules, and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from courts having actual jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the BAC, since these duties and responsibilities fall solely within the ambit of its authority and discretion as sanctioned by law.² Thus, we shall limit our discussion on the interpretation of the procurement law and its associated issuances.

¹ Annex "C" or Period of Action on Procurement Activities

² Non-Policy Matter (NPM) No. 46-2013 dated 11 June 2013

Sections 38.1 and 38.2 of the IRR of RA 9184 mandate, among others, 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 concerned. On the other hand, Section 25.4 of revised IRR provides for the maximum periods to be observed from the last day of posting up to the submission and receipt of bids. Additionally, Annex "C" of the IRR of RA 9184 provided for the maximum periods and the earliest possible time for action on specific procurement activities. Clearly, the rules allow the procuring entity concerned to adopt a shorter period or the maximum period provided for under the IRR relative to its procurement activity.

However, prudence and related issuances dictate that in setting the timelines, procuring entity is duty-bound to take into consideration the details of the project, the relevant provision of the revised IRR, the "Guidelines for the Procurement and Implementation of Contracts for Design and Build of Infrastructure Projects" (Annex "G"), including the period in securing the required eligibility documents under Sections 9.1 and 9.2 of the said Guidelines, and should ensure that competition, fairness, and transparency are well observed in its procurement process.

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,


for **DENNIS S. SANTIAGO**
Executive Director V

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