



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
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Pasig City, Philippines 1605

NPM No. 33-2005

July 26, 2005

MR. ROMEO T. MELAD
Depot Supervisor
Regional Office X, DBM
Zone 1 National Highway, Bulua,
Cagayan de Oro City

Re : Splitting of Procurement Contracts

Dear Mr. Melad:

This has reference to your letter dated 24 June 2005, requesting for clarification anent the proper interpretation of a provision of Republic Act No. 9184. At focus in said letter is the concept of Splitting of Procurement Contracts understood and applied in view of the implication of the issuance of Special Allotment Release Orders (SAROs) covering procurement projects. The specific issue raised for our consideration is as follows:

Whether or not the listing of six (6) different projects – advertised with separate and different programs of work and with individual Approved Budget for the Contracts (ABCs) – in a single SARO constitute Splitting of Contracts.

The SARO subject of the above-mentioned letter-query itemizes and covers six (6) projects having different programs of work and indicating individual ABCs. While this is the situation in the instant case, said SARO indicates a collective total amount of eight million pesos (P8,000,000.00) as budget for the said projects. Thus, from this springs the question as to the treatment of the projects covered by the SARO: Are the six (6) projects covered therein to be considered singular such that to implement the same separately would result to a splitting of contracts?

Splitting of Government Contracts

Splitting of Government Contracts, as a concept, is defined in the Implementing Rules and Regulations Part-A of R.A. 9184, and therein categorically prohibited. Witness Section 54.1 thereof, reproduced herein as follows:

- 54.1. Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of Government Contracts into smaller quantities and amount, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirement of law and this IRR-A, especially the necessity of public bidding and the requirements for the alternative methods of procurement.

The concept of splitting of government (procurement) contracts as defined above pre-supposes singularity of a procurement project but which, by any act of the procuring entity or its personnel, was divided or broken into smaller quantities and/or amount, or was divided into artificial implementation phases or stages. To be within the legal contemplation of the concept, said act must have been done for the purpose of circumventing or evading legal and procedural requirements.

The project by its nature must have been considered as one project and therefore must have been captured in a single Procurement Project Management Plan so that to divide it into smaller quantities or phases would be unreasonable. In this case, the splitting is practically reduced to an artificial scheme to make multiple awards without clear advantage for the government and to side-step existing rules and provisions of law.

Contrary to this concept, in the instant case, where multiple projects with different and separate programs of work and individual ABCs are, perhaps by force of events or chance, contained in a single SARO, the same is not automatically a case of splitting of contracts. By fact alone of all six (6) projects embodied in one SARO does not translate the implementation of said projects to a splitting of government contracts as prohibited under the law.

As this office is without power to determine the factual considerations of the instant case and ascertain whether the projects are of the same nature and should have been contained in a single PPMP or otherwise considered as one project, we shall defer to categorically rule on the issue of whether there is, in this case, a splitting of contracts. Nonetheless, we state, as our considered view, that the bare fact of multiple projects contained in a single SARO is not conclusive as to compliance or non-compliance to the rule against splitting of government contracts. SARO is a device or facility which has bearing on the budgetary aspect of the project but not squarely on the mode and procedures of its procurement.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III