



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
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Pasig City, Philippines 1605

NPM No. 39-2005

September 13, 2005

MS. ALMA P. ABAN
Head, Technical Working Group
AFP Retirement and Separation Benefits System
Camp General Emilio Aguinaldo,
Quezon City

Re : AFP-RSBS Relocation Survey Contract

Dear Ms. Aban:

This pertains to your letter dated 05 August 2005, requesting for opinion on the issues surrounding the implementation of your contract with F.F. Cruz & Co. Inc. It is mentioned that from the moment of its creation up to the last quarter of 2003, the AFP Retirement and Separation Benefits System (AFP-RSBS) was operating as a private entity. It was during this time, on 14 April 2003, that it entered into a Relocation Survey Contract with the aforementioned surveyor for the survey of twenty-two (22) parcels of land. After the expiration of the agreed period within which to complete the work, only seventeen (17) of the twenty-two (22) lots were surveyed.

Interestingly, on 23 August 2003, the Supreme Court declared AFP-RSBS as a government owned and/or controlled corporation.¹ And, from this eventuality springs the present dilemma. Desiring to enter into a Supplemental Contract to cover the remaining un-surveyed lots, AFP-RSBS now has to submit to the mandate of Republic Act No. 9184. The issues for resolution, as presented by AFP-RSBS, are as follows:

- 1) Can AFP-RSBS, on the basis of the provisions in the Relocation Survey Contract allowing changes or additional works to be carried out, execute a supplemental contract to cover unfinished portions of the original contract without undergoing procurement process per RA 9184?

The basic consideration upon which the instant issue is raised is the supposed need to comply with the provisions of RA 9184 in the carrying out of the survey of the

¹ People of the Phils v. Sandiganbayan, 12 August 2003.

remaining five (5) lots. It is argued that (a) the supplemental contract proposed to be entered into between AFP-RSBS and the private surveyor is but a continuance of the previous contract, (b) the surveyor therein has already gained the knowledge and information regarding the subject area of survey and the corresponding survey works required, and (c) the previous contract which was entered into during the time when AFP-RSBS is not yet covered by RA 9184. Incidentally, the contract contains provisions allowing changes in the work required or, when necessary, the carrying out of additional works for purposes of the project.

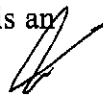
Simply put, AFP-RSBS seeks to carry out the survey of the remaining five (5) parcels of land without need to comply with provisions of RA 9184, as it intends to pursue this by way of a supplemental contract based on the provisions of the previous contract.

It bears stressing at this point that the policy of the present procurement law is to embrace within its scope all procurement activities of the government. It does not make any exemptions or exclusions other than those affected by treaties or international agreements. Thus, it may be said that not only because the justifications as advanced in the letter-query abovementioned do not find foothold in law, but because RA 9184 is clear as to its mandate to include all procurement activities within its coverage, the suggested Supplemental Contract may not be perfected sans the sanction of the present procurement law.

Moreover, while this office is wanting of authority to interpret or adjudicate on the meaning and import of contractual provisions, it may be well to consider whether the Relocation Survey Contract supposedly to cover all twenty-two (22) parcels of land remained effective even after the expiration of the agreed period within which to complete the original scope of work. Thus, if the effectivity of the contract expires with the said period, the supplemental contract, as suggested, will not have any basis in law or contract to be entered into; much less any basis to be entered into outside of the provisions of RA 9184.

On the other hand, if the original contract subsists, and therefore makes viable the argument for the supplemental contract, it may be prudent and wise to determine whether Section 6.1 of the contract sufficiently contemplates allowance for supplemental contract. Incidentally, it appears that the stipulation merely allows equitable adjustment in the event that an increase or decrease in the original work takes place, upon mutual agreement by the parties and by way of a written a variation order.

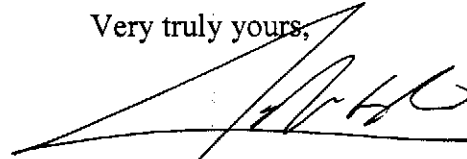
It may also be that the contemplated scope of work under the suggested supplemental contract is neither an increase nor decrease of the original work; neither is the supplemental contract the variation order contemplated under the contract stipulation. Whether the supplemental contract finds support in law or the provisions of the contract, the same issue shall be determined mainly by giving its supposed basis an honest construction according to the intent of the parties.



This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,

A handwritten signature in black ink, appearing to read 'JM Syquia', is written over a horizontal line.

JOSE MARTIN C. SYQUIA
Executive Director III