



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
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Pasig City, Philippines 1605

NPM No. 50-2009

23 September 2009

MS. CRESCENSICA L. ESCUREL
Audit Team Leader, Lung Center of the Philippines
COMMISSION ON AUDIT
Commonwealth Avenue, Quezon City

Re : **Negotiated Procurement**

Dear Ms. Escurel:

We respond to your letter dated 11 September 2009 seeking guidance on the propriety of the contract entered into through negotiated procurement by the Lung Center of the Philippines (LCP) for the expansion and improvement of the constructed 4th Floor Doctor's Offices Phase 2 amounting to P23,363,423.93.

As represented in your letter, the contract subject of your audit functions was awarded through negotiated procurement on the conditions provided under Section 53 (d) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184, i.e. where the subject contract is adjacent or contiguous to an on-going infrastructure project.

It is further represented that, while the original contract's scope of works covered only the construction of the fourth floor of Doctor's Office at the LCP main building, the subject contract encompasses not only the improvement and expansion of said fourth floor Doctor's Offices, but also extends to various construction works at the second floor of the LCP main building, as well as to the second floor of the T-block building.

Anent the above, you posit that the LCP management is of the view that the subject contract is adjacent and contiguous to the original infrastructure project since it is situated in only one complex building which consists of both the main and the T-block buildings. However, it is your opinion that the scope of works located at the second floor either of the LCP main building or the T-block building cannot be considered as adjacent and contiguous because these terms shall be considered synonymous and shall mean that the projects concerned shall be in actual physical contact with each other, citing Section 54.2 (e) (*sic*) of IRR-A.

At the outset, we wish to inform you that the Government Procurement Policy Board is primarily a policy-making body, and has no jurisdiction to rule over actual controversies with regard to the conduct of bidding and other procurement processes inasmuch as it has no quasi-judicial functions. As such, it cannot ascertain the existence of facts, validate claims, representations or arguments of various parties.

Corollary thereto, our office cannot interfere in the functions and actions of the Bids and Awards Committee (BAC) which has the mandate and prerogative to determine, among others, whether resorting to any of the alternative methods of procurement under highly exceptional cases sanctioned by law is justified, *provided* that the conditions therein are complied with and the approval of the Head of the Procuring Entity is secured; and, *provided, further*, that the BAC undertakes the same with judiciousness and due adherence to the principles of transparency, efficiency, economy, competition, and accountability.

Nevertheless, and pursuant to our thrust to monitor and improve compliance by government agencies with the provisions of R.A. 9184 and its IRR, we hereby propound the following, for your guidance:

Section 53 (d) of IRR-A mandates that Negotiated Procurement where the subject contract is adjacent or contiguous to an on-going infrastructure project, may be resorted to provided that the following conditions exist:

- (i) the original contract is the result of competitive bidding;
- (ii) the subject contract to be negotiated has similar or related scopes of work;
- (iii) it is within the contracting capacity of the contractor;
- (iv) the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost;
- (v) the amount involved does not exceed the amount of the ongoing project;
- (vi) the contractor has no negative slippage; and
- (vii) negotiations for the procurement are undertaken before the expiry of the original contract.


Further, please note that the above is without prejudice to existing provisions against splitting of contracts, and in relevant Commission on Audit circulars and issuances on the matter. Specifically, Section 54.1 of the IRR-A provides, thus:

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

Lastly, we concur insofar as stating that the terms "adjacent" and "contiguous" shall be considered synonymous and shall mean that the projects are in actual physical contact with each other, pursuant to Section 54.2 (f) of IRR-A.

We trust that this sufficiently addresses your concern. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

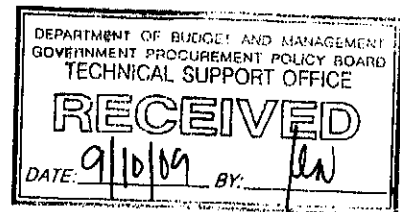


Republic of the
COMMISSION ON AUDIT
 Commonwealth Avenue, Quezon City, Philippines

OFFICE OF THE AUDITOR

September 8, 2009

Atty. Ruby U. Alvarez
 Executive Director III
 Technical Support Office
 Government Procurement Policy Board



Madam:

This pertains to our audit of the Contract dated August 24, 2009 entered into by and between the Lung Center of the Philippines (LCP) and the VIC Construction on the expansion and improvement of the constructed 4th Floor Doctor's Offices Phase 2 amounting to ₱23,363,423.93.

Relative thereto, may we respectfully request your kind opinion on the propriety of the award of the subject project thru negotiated contract pursuant to Section 54.2 (e) of the IRR-A, R.A. 9184, to guide us in our audit of said contract.

Accordingly, the abovementioned construction project was awarded thru a negotiated procurement on the conditions provided under Section 53 (d) of the IRR-A of R.A.9184 which is quoted hereunder:

"Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: Provided, however, That (i) the original contract is the result of Competitive Bidding; (ii) the subject contract to be negotiated has similar or related scopes of work; ...;(v) the amount involved doe not exceed the amount of the on-going project..."

To facilitate our request, may we provide you with the following information prior to the execution of the subject contract:

1. The original contract for the construction of the fourth floor Doctor's Offices, located at the fourth floor Spine area of the LCP main building, was subject of competitive bidding conducted on August 27, 2008 and was executed on October 15, 2008 in the amount of ₱23,693,820.27;
2. The procurement activities for the subject negotiated contract commenced on March 27, 2009 as shown in their Invitation to Apply for Eligibility and to Bid;
3. On May 18, 2009, a Certificate of Completion and Acceptance for the original contract was issued by the LCP;

Ennie,
 Pls. handle. Sign in
 my behalf.
 Rf 9/4/09

4. On August 24, 2009, the subject negotiated contract was executed.

Review of the subject negotiated contract revealed that the total contract amount for both the original and negotiated contract covered the following scope of works:

Location	Scope of Works	Original Contract	Negotiated Contract
Spine area at the <u>fourth floor of LCP main building</u>	Architectural, electrical and plumbing works including general requirements of site preparation/clearing, scaffolding, etc.	₱23,693,820.27	₱5,246,313.01
MICU veranda area at the spine area of the <u>second floor of the LCP main building</u>	Construction of additional working area for nurses	-	4,775,220.92
Dormitory at the <u>second floor of the T-block building</u>	Replacement of corroded long span pre-painted roofing sheets at the dormitory	-	10,225,740.00
Both side of the operating hallways at the spine area of the <u>second floor of LCP main building</u>	Replacement of jalousy windows to aluminum analog frame sliding windows	-	3,116,150.00
Total		₱23,693,820.27	₱23,363,423.93

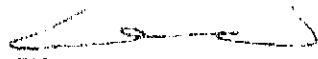
Also, please be informed that the so-called "T-block" building, a two storey "T" shaped building, is attached or connected to the LCP main building. The LCP management informed that subject contract is adjacent and contiguous since it is located in only one complex building, that is, the LCP main building and T-block building.

However, we believe that the scope of works located at the second floor either LCP main building or T-block building can not be considered as adjacent and contiguous to the on-going project. Pursuant to Section 54.2 (e) of the same IRR-A on terms and conditions for the use of alternative methods, the terms "adjacent" and "contiguous" shall be considered synonymous and shall mean that the projects concerned shall be in actual physical contact with each other.

Notwithstanding our views on the foregoing issue, may we reiterate our request for advisory opinion on the issue whether the scope of works under negotiated contract, particularly those scope of works located at the second floor can be covered by Section 53 (d) of R.A. 9184 that is, the works are adjacent and contiguous to the original contract which was on-going at the time the negotiated/subject contract was initiated.

Thank you.

Very truly yours,


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