

**NPM No. 004-2018**

30 January 2018

**MR. RASSET RASONABE**  
<ras143set@yahoo.com>

**Re: Expired Security Service Contract -**

Dear Mr. Razonabe:

This refers to your electronic mail (e-mail) requesting for guidance on how to address expired security service contract.

It is represented that a security agency continues to provide services even after its contract has expired. A BAC Resolution was executed for the failure of bidding and the one (1) year period allowed for contract extension has already expired. Hence, the following queries are posed:

1. What is the remedy if a contract is already expired and the service provider still renders services;
2. Can the resolution be attached to support the payment; and
3. What are you going to do before proceeding to pay the service provider?

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy matter opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We have no authority to dictate to the Procuring Entity how to decide or resolve issues relative to its procurement activities. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, except courts of competent jurisdiction, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity (HoPE) and the BAC, since these duties and responsibilities fall solely within the ambit of their authority and discretion. In this regard, we shall limit our discussion on the interpretation of relevant procurement rules and regulations pertinent to the issues presented.

For purposes of averting hiatus in support services essential, indispensable, or necessary in the operation of the procuring entity, the procurement law, rules and regulation allow for extension of contracts for general support services<sup>1</sup>. The extension of contracts for general support services is covered by the revised Guidelines on the Extension of Contracts for

(sgd.)

<sup>1</sup> Item 2.0 of the Revised Guidelines on the Extension of Contracts for General Support Services

General Support Services<sup>2</sup> (Guidelines). The Guidelines provide for several conditions in order for the Procuring Entity to validly extend an ongoing contract that is about to expire, *to wit*:

Procuring entities may extend the duration or effectivity of an ongoing contract about to expire, under the following conditions:

1. No contract extension shall exceed one (1) year;
2. The original contract subject of the extension was awarded in accordance with the provisions of RA 9184 and its IRR;
3. The procuring entity concerned has substantially undertaken the procurement activities required prior to award of the new contract under RA 9184 and its IRR;
4. The aforesaid contract extension is undertaken due to circumstances beyond its control and the procuring entity concerned cannot award a new contract within a month after the expiration of the term of the original contract;
5. The contemplated extension is merely an emergency measure to maintain status quo in the operation of the procuring entity and to avoid interruption of service;
6. The current service provider has not violated any of the provisions of the original contract; and
7. The terms and conditions of the original contract shall not be changed or modified, except when changes or modifications will redound to the advantage of the government at no additional cost to the procuring entity.

Absent any other disqualification provided under the procurement law, rules and regulations, extension of the contract for general support services, if done in accordance with the Guidelines, shall be valid. A valid extension contract, therefore, maybe used to support payment of services of the security agency.

Extension of contracts allowed under the Guidelines, however, contemplate a situation where the Procuring Entity intends to extend the duration and effectivity of an ongoing contract which is about to expire. Based on the information provided in your letter, the contract between the government agency and the security agency already expired. It was not clear from your letter whether the service contract was extended or not.

In case the service contract was extended, such extension must be in accordance with the referenced Guidelines which provides for a maximum of one (1) year extension period. Any extension of contract that shall pass the one (1) year maximum period is not in accord with the existing Guidelines, hence, invalid. It was represented that the one (1) year period of extension of contract already expired, hence, services rendered after the expiration is not supported by a valid contract.

Considering that the security agency provided services outside a valid contract, the determination of the legality or validity of the action and decision of the Bids and Awards Committee (BAC), in relation to payment of services rendered without a valid contract, is not within the express mandate of the GPPB. We would like to reiterate that GPPB's mandate is

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<sup>2</sup> Issued through GPPB Resolution No. 023-2007 dated 28 September 2007

limited only to the interpretation and application of the procurement law, rules and regulations and other related issuances.

Any payment made for services rendered may be subject of an Audit for lack of a valid contract to support the payment. Nonetheless, the security agency may file a money claim in the proper forum to receive payment for services rendered outside a valid contract under the principle of *quantum meruit*.

Thus, “[T]o avoid unjust enrichment to a party resulting out of a substantially performed contract, the principle of quantum meruit may be used to determine his compensation in the absence of a written agreement for that purpose. The principle of quantum meruit justifies the payment of the reasonable value of the services rendered by him.”<sup>3</sup>

In *F. F. Maacop Construction Co., Inc., v. Court of Appeals and the Manila International Airport Authority*<sup>4</sup>, the Supreme Court held that the contractor was entitled to payment based on *quantum meruit* for the construction it made, which arose from a *quasi-contractual* relation created between the parties and cited the following reasons, thus:

First, the instant *quasi-contract* is neither fraudulent nor *mala in se*. Second, the project was already covered by a specific appropriation. Third, as in private contracts, the facts show that an implied obligation to pay would be imposed upon the government. Fourth, the property or benefit is not *ultra vires*, i.e. they can be the proper subject of an express contract and are within the contractual powers of the public body. Fifth, the case falls within the exemption from the mandatory procedure of public bidding which is dispensed with on the ground of public necessity, or when time is of the essence, and considering that the subject project was contiguous to an on going project performed by petitioner and there is no proof of any unsatisfactory performance or negative slippage. Sixth, the contractor substantially complied (95% complete) in good faith with its obligation and no intentional departure from the specifications were alleged. Seventh, petitioner's claim is clearly supported by equity. Private respondent is reaping benefits from the scallop fence and wire placed by petitioner. Eighth, there is no proof of any collusion among the parties involved. **Finally, the payment is limited to the actual cost chargeable against funds authorized and certified for the purpose.** All these circumstances, taken together, negate fraud and collusion. (Emphasis supplied)

Striking the argument of the Office of the Solicitor General, the Supreme Court further stressed that: “[Q]uantum meruit allows recovery of the reasonable value regardless of any agreement as to value. It entitles the party to "as much as he reasonably deserves," as distinguished from *quantum valebant* or to "as much as what is reasonably *worth*."

All told, the BAC should have made sure that prior to the expiration of the contract with the security agency, an extension contract should have been entered into by the parties, in accordance with the Guidelines. Nonetheless, payment cannot be made outright for services rendered without a valid contract. Such may be subject of a money claim on the basis of *quantum meruit*. (sgd.)

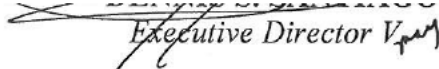
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<sup>3</sup> International Hotel Corporation v. Francisco B. Joaquin, Jr. and Rafael Suarez, G.R. No. 158361, dated April 10, 2013

<sup>4</sup> G.R. No. 122196, dated January 15, 1997.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours  
(sgd.)

  
Executive Director V. [unclear]

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