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DEPARTMENT OF BUDGET AND MANAGEMENT –
PROCUREMENT SERVICE (DBM-PS)
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Re: Mandatory Nature of Periods

Dear Atty. Recto:

This refers to your electronic mail requesting for an opinion on the legal implications of DBM-PS taking over a procurement project from the Department of Transportation (DoTR) and continuing with the proceedings despite the lapse of the three (3) month period provided for under Section 38¹ of Republic Act (RA) No. 9184 and its 2016 revised Implementing Rules and Regulations (IRR).

It is represented that the DOTr conducted the opening of the bids for its Sanglely Airport Development Project (Public Bidding No. 16-164-3) on 27 February 2017. DOTr's Technical Working Group (TWG) already issued its recommendation to DOTR-Bids and Awards Committee (BAC) declaring one of the bidders to have offered the Lowest Calculated Bid (LCB). At this juncture, DOTR tapped the services of DBM-PS, which referred the project on 23 May 2017 and transmitted to DBM-PS' Procurement Division (4) on 25 May 2017.

You mentioned that after conducting the bid evaluation of the bidder with the LCB, as recommended by the DOTr-TWG, DBM-PS took over the bidding process, and subsequently issued the Notice of LCB on 22 June 2017. You also stated that from the time of the opening of the bids up to the time of the issuance of the Notice of LCB, almost four (4) months have already lapsed. Hence, this query.

At the outset, we would like to clarify that the Government Procurement Policy Board and its Technical Support Office render policy and non-policy opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We have no authority to dictate on the PE and its Procurement Agent on how to decide or resolve issues relative to procurement activities covered by their agreement. 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, its Procurement Agent, and the relevant Bids and Awards Committee (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 query presented.

¹ Sec. 38. 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. Without prejudice to the provisions of the preceding section, the different procurement activities shall be completed within reasonable periods to be specified in the IRR

It will be noted that RA 9184 having been enacted for the advancement of public welfare undoubtedly contains mandatory provisions. Failure to follow such rules generally renders the proceeding to which it relates illegal and void, or the violation of which makes the decision rendered therein invalid.

We wish to stress that the period for procurement activities under Section 38 of RA 9184 and its 2016 revised IRR is instructive. Hence, 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.

The mandatory nature of the periods under RA 9184 was likewise recognized by the Honorable Supreme Court in the case of *Jacomille v. Abaya, et al.*², where it was held that “[t]he different periods provided by RA 9184 within which certain stages of the procurement process must be completed is not merely directory but mandatory.” In *Jacomille*, the petitioner contends that the public respondents failed to comply with the periods provided by law, specifically the 3-month period from the opening of the bids up to the award of the contract under Section 38 of RA 9184. Thus, the high tribunal explained that the said provision contains the word “shall” which is mandatory in character and non-compliance with the prescribed period will affect the validity of the bidding process.

Nonetheless, Section 65.1(b) of RA 9184 and its 2016 Revised IRR provide that awarding of contracts beyond the prescribed period of action may be recognized for justifiable causes. In this regard, we explained in our earlier opinion³ that although the periods of action under RA 9184 and its IRR are mandatory in character, penal sanctions or liability will not set in against the concerned public officers provided that valid and reasonable, and justifiable causes exist to warrant a delay in the awarding of contract. Thus, we opined that the Procuring Entity may still award the contract even beyond the three-month period, provided that the failure was due to justifiable causes, and provided further, that the bid security of the bidder remains valid.

Based on the foregoing, should the Procuring Entity decide to extend the periods on procurement, it must show and provide compelling, sufficient, valid, reasonable, and justifiable cause for such extension. Such valid justification, however, will only free officials from penal liability, and may not be applicable against the administrative and civil aspects of the case pursuant to existing laws, rules and regulations.

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.

(sgd.)

DENNIS S. SANTIAGO
Executive Director

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² G.R. No. 212381, 22 April 2015.

³ NPM 010-2012 dated January 16, 2012.