

NPM No. 011-2019

28 May 2019

HON. ADRIAN FERDINAND S. SUGAY
Undersecretary
Department of Justice (DOJ)
Padre Faura Street
Ermita, Manila 1000

Re: Procurement Timelines

Dear Undersecretary Sugay:

This refers to your letter¹ seeking our guidance on whether the execution of the contract and the issuance of the notice to proceed may continue despite the lapse of more than one hundred forty three days (143) from the date of the publication of the Invitation to Bid on 21 November 2018 up to 12 April 2019, the date when the contract was forwarded to the Head of the Procuring Entity (HoPE) for signature.

As represented, the following timeline was observed in the DOJ project for the procurement of a signal jamming system and security solution for the Bureau of Corrections:

Procurement Activity	Date
Advertisement/Posting of Invitation to Bid	21 November 2018
Bid Opening	13 December 2018
Recommendation of the BAC	19 December 2018
Approval of Resolution/ Issuance of Notice of Award	26 February 2019
Contract forwarded to the HoPE for signature	12 April 2019

It was further represented that in light of the highly technical nature of the procurement, the DOJ awaited the expert opinion and recommendations from the Department of Information and Communications Technology² before issuing the Notice of Award.

At the outset, allow us to note that the Supreme Court in the case of *Reynaldo M. Jacomille v. Hon. Joseph Emilio A. Abaya, et al.*,³ held that "[t]he different periods provided by Republic Act No. 9184 within which certain stages of the procurement process must be completed is not merely directory but mandatory."

On the other hand, Section 65 (2) of RA No. 9184 and Section 65.1(b) of its 2016 revised Implementing Rules and Regulations (IRR) provide that awarding of contracts beyond the prescribed period of action may be recognized for justifiable causes. Accordingly, as explained in an earlier opinion,⁴ while the periods of action under RA No. 9184 and its revised IRR are mandatory in character, compliance therewith may be dispensed with under justifiable circumstances. It is important, however, for the procuring entity to explain the circumstances that would justify award of the contract beyond the

¹ Dated 16 April 2019.

² Communicated to the DOJ on 11 January 2019.

³ G.R. No. 212381, April 22, 2015.

⁴ NPM 010-2012 dated 16 January 2012.

prescribed period under the law, and ensure that the bid security remains valid until the award of the contract.

Thus, the determination on whether to award or proceed with the contract is a decision to be made by the HoPE, guided by the foregoing elucidation. The Government Procurement Policy Board and its Technical Support Office cannot supplant the same through the issuance of an opinion, as doing so would encroach upon or interfere with the exercise of authority exclusively assigned by the law to the HoPE.

The above opinion was made on the basis of the particular facts presented and circumstances availing, and may not, therefore, be applicable given a different set of facts and circumstances.

We hope to have sufficiently clarified the matter at hand.

Very truly yours,



ROWENA CANDICE M. RUIZ
Executive Director V

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