

NPM No. 128-2017

29 December 2017

MR. ROMEO A. ONG, MD, MHA
Medical Center Chief II
ZAMBOANGA CITY MEDICAL CENTER
Dr. Evangelista St., Sta. Catalina,
7000 Zamboanga City

Re: Lapsed Budget -

Dear Mr. Ong:

This refers to your letter asking for our opinion on whether it is allowed, for rebidding purposes, to use the same funds that were supposed to be utilized by the end of 2016, but were actually obligated in a project whose contract was subsequently terminated.

It is represented that since the winning bidder failed to deliver and the contract was terminated, Zamboanga City Medical Center intends to rebid the project using the same funds, by way of change of creditor, asserting that these funds have already been obligated in the previous awarded contract. Hence, this request for opinion.

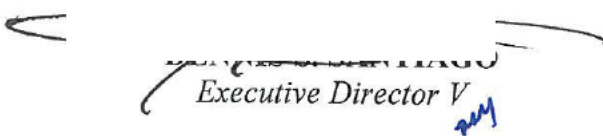
It is important to note that in cases where the contract has been terminated for failure of the winning bidder to deliver, the Procuring Entity (PE) may consider re-bidding the project through another competitive bidding under Section 10 of Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR); or the PE may directly negotiate a contract with a technically, legally and financially capable supplier, contractor or consultant by way of “[t]ake-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities”. through Negotiated Procurement under the Take-Over of Contracts modality sanctioned by Section 53.3 of the 2016 revised IRR, and Annex “H” thereof, through the *Consolidated Guidelines for the Alternative Methods of Procurement*.¹

On the other hand, please be informed that matters pertaining to budget utilization, expenditure and validity are not covered by RA 9184 and its 2016 IRR. Thus, insofar as validity period for the use of the government funds or approved budget for the contracts, we respectfully suggest that the matter be referred to the Department of Budget and Management for a more definitive opinion, as it is the appropriate government agency with the authority to make determinations and/or clarifications regarding the budget, its utilization and period of validity.

¹ Negotiated Procurement under the Take-Over of Contracts modality sanctioned by Section 53.3 of the 2016 revised IRR, and Annex “H” thereof, through the *Consolidated Guidelines for the Alternative Methods of Procurement*.

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.)


Executive Director V

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