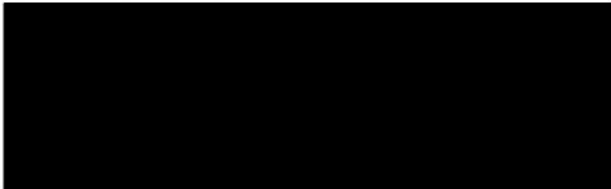


NPM No. 086-2016

15 November 2016



Re : Contract and Purchase Order

Dear [Redacted]:

This refers to your request for opinion on whether a Contract document or a Purchase Order (PO) is necessary after the issuance of a Notice of Award (NOA) for the procurement of the Supply and Delivery of Foreign Goods with a contract amount of PhP 100 Million under the Rehabilitation Project.

Effect of a Duly Received NOA

In general, contracts undergo three distinct stages, *to wit*: negotiation; perfection or birth; and, consummation.¹ The receipt by the winning bidder of the NOA is the initial step that leads to the execution of the contract and the issuance of the Notice to Proceed (NTP). The effect of an unqualified acceptance of the offer or proposal of the bidder is to perfect a contract, upon notice of the award to the bidder.² As held by the Supreme Court in *Insular Life v. Asset Builders Corporation*³, the written NOA, which constituted the acceptance of the proposal, is a condition *sine qua non* to the perfection of the contract.

The Honorable Court opined that being consensual, a contract is perfected by mere consent. From the meeting of the offer and acceptance upon the object and the cause that would constitute the contract, consent arises. However, "the offer must be certain" and "the acceptance seasonable and absolute; if qualified, the acceptance would merely constitute a counter-offer."⁴ Accordingly, in ordinary contracts, a duly communicated and received NOA brings about the perfection of contract through the meeting of the minds of the offeror and the offeree.

Nature of Government Contracts

Government procurement contracts are regarded as Special Contracts due to the particular and specific requirements as to forms and solemnities that need be complied with

¹ *Sargasso vs. PPA*, G.R. No. 170530, 5 July 2010

² *City of Cebu vs. Heirs of Rubi*, G.R. No. 128579, 29 April 1999

³ GR 147410, 5 February 2004

⁴ *Insular Life vs. Asset Builders Corporation*, GR 147410, 5 February 2004

prior to its execution. Section 37.1.4 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provides that the award of contract is subject to compliance with the conditions enumerated therein; the issuance of the NOA and its receipt by the winning bidder must be accompanied by the actual execution and signing of the contract, including the posting of the performance security, among others. Hence, even if the NOA was duly issued, communicated to and received by the winning bidder, the latter must comply with all the requirements provided for under the procurement law and its associated rules for the contract to become legally enforceable.

Contract/Purchase Order

However, for procurements that are considerably small and are generally simple/routinary, these are usually embodied in the form of a PO being issued by the PE. Jurisprudence provides that a PO, by itself, is an offer to buy, and a meeting of minds thereon “takes place when the vendor receive[s] the PO, agree[s] to its terms and act[s] upon it.”⁵

Thus, a PO will constitute an accepted offer that will give rise to a perfected contract of sale when the winning bidder received the same and agreed to its terms and conditions.

Summary

In view of all the foregoing, we wish to stress the following:

- a. The receipt by the winning bidder of the NOA is the initial step that leads to the execution of the contract and the issuance of the NTP. Hence, the issuance of the NOA and its receipt by the winning bidder must be accompanied by the actual execution and signing of the Contract, including the posting of the performance security, among others, for the contract to be perfected and legally enforceable in accordance with RA 9184 and its associated IRR.
- b. A Purchase Order, by itself, is an offer to buy, and a meeting of minds thereon “takes place when the vendor receive[s] the PO, agree[s] to its terms and act[s] upon it.” Thus, a PO will constitute an accepted offer that will give rise to a perfected contract of sale when the winning bidder received the same and agreed to its terms and conditions.
- c. As a rule, the winning bidder shall formally enter into contract with the procuring entity within ten (10) calendar days from receipt of the Notice of Award. In the case of government-owned and/or controlled corporations, the concerned Board shall take action on the said recommendation within thirty (30) calendar days from receipt thereof. Moreover, the PE shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. Further, the different periods provided by RA 9184 within which certain stages of the procurement process must be completed is not merely directory but mandatory.

⁵ *Raza Appliance Center v. Villaraza*, 202 Phil. 903, (1982)

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.

(sgd.)

~~DENNIS S. SANTIAGO~~
Executive Director V

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