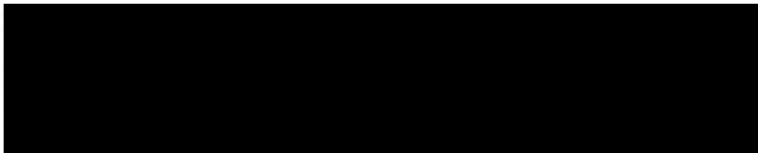


NPM No. 118-2016

6 December 2016



Re: Notice to Proceed

Dear [REDACTED]:

This refers to your electronic mail (e-mail) inquiring if there is any violation committed if the date of the Notice to Proceed (NTP) is earlier than the date of the contract.

As represented, the NTP is dated 23 July 2016 but the contract was approved on 1 August 2016. However, the NTP was actually issued or released to the contractor only on 5 August 2016. As further represented, your Accounting Division refuses to process the 15% mobilization voucher because of the dates indicated in the two (2) documents. It was reasoned out that the NTP was dated earlier than the contract because it was prepared one day after the contractor has received the Notice of Award (NOA) on 22 July 2016. The early preparation of the NTP was in anticipation of the week-long absence of the Head of the Procuring Entity (HOPE) due to an official travel in Manila. Hence, this inquiry.

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 opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since this office has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity and the Bids and Awards Committee, 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.

Contract signing and approval is a legal requirement prescribed in RA 9184 and its IRR, in that, even if the NOA was duly issued, communicated to and received by the winning bidder, the contract although deemed perfected, cannot be legally enforceable without complying with such legal requirement.¹ The contract needs to be signed and approved to reduce the agreement of the parties into writing and to lay down all the terms and conditions

¹ NPM No. 10-2012 dated 16 January 2012.

of the contract. On the other hand, the issuance of NTP, another requirement to legally enforce a procurement contract, marks the actual consummation of a project as it provides for the commencement period for the project.

Section 37 of Republic Act (RA) No. 9184 mandates procuring entities to issue the NTP to the winning bidder not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. To facilitate issuance of NTP, Section 37.4.1 of the revised Implementing Rules and Regulations (IRR) of RA 9184 provides that a procuring entity shall issue the NTP together with a copy of the approved contract to the successful bidder within three (3) calendar days² from the date of approval of the contract by the appropriate government approving authority; however, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000,000) and below, the maximum period is two (2) calendar days. It also provides that the contract effectivity date shall be provided in the NTP by the procuring entity, which date shall not be later than seven (7) calendar days from its issuance.

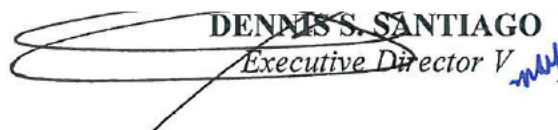
The foregoing provisions of Section 37 of RA 9184 and its IRR set the fundamental requirement that the prior approval of contract always precedes the issuance of NTP. Logically, an NTP shall be issued to implement terms and conditions of a contract only if such contract embodying the terms and conditions called by the NTP to be executed has already been signed and approved. Thus, an NTP, being an accessory document to the principal Contract, cannot be issued without first having the Contract it seeks to implement signed and approved by the appropriate approving authority in accordance with Section 37 of RA 9184 and its IRR, lest the NTP has no leg to stand on.

Per your representation, the NTP, although dated 23 July 2016, was actually issued on 5 August 2016 subsequent to the approval of the contract on 1 August 2016.

In this regard, although the date of the NTP is different from the date of its issuance, it is incumbent upon the procuring entity to ensure that no NTP shall be issued unless the contract it seeks to execute is already signed and approved by the appropriate approving authority in accordance with Section 37 of RA 9184 and its IRR.

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.

Very truly yours
(sgd.)


DENNIS S. SANTIAGO
Executive Director

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² Increased to seven (7) calendar days in the 2016 Revised IRR of RA 9184, which took effect on 28 October 2016.