

NPM No. 24-2015

7 October 2015



Re: Bidding Out Construction by Phase

Dear [REDACTED]

This refers to your letter seeking our opinion on whether it is possible to bid out the first phase of the construction of a Drainage System notwithstanding the absence of the Final Master Plan, as stipulated in the Contract between the City Government of Cabadbaran and Genson Surveying and Engineering Consultants. The said Contract pertains to the Consultancy Services for the preparation of the Comprehensive Master Plan and Detailed Engineering Design of Cabadbaran City's Drainage System.

Construction by Phase

It bears stressing that Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR) do not preclude procuring entities from adopting construction of an infrastructure project by phases. In fact, in the case of infrastructure projects, the procuring entity through the Annual Procurement Plan (APP) may "consider the appropriate timing/phasing of related project activities, such as, engineering design and acquisition of right of way, to reduce/lower project costs."¹ The decision to procure the construction of an infrastructure project into several phases is a management prerogative that may be validly exercised based on considerations, such as topographical condition, environmental impact, weather, project feasibility and viability, right-of-way issues, economy, efficiency, including acceptable business or industry practices, among others.

For procurement purposes, to bid out the project by phases, the scope of each phase must cover a complete stand-alone infrastructure facility which is safe, strong, and functional to the end-user. Thus, prior to the finalization of the Master Plan, the procuring entity (PE) must avoid procurement by phase if such phase as completed cannot stand alone or is unsafe, unstable, or non-functional to the end-user. This is to ensure the implementation and accomplishment of each phase is useful, and the project shall be ultimately completed based on the Master Plan.

It must be emphasized, however, that a Master Plan is a long-term planning document that defines a realistic plan for implementation and describes the development schedule.

¹ Section 7.1, IRR of RA 9184.

Simply put, the Master Plan contains the key elements that embody the overall development concept and the specific construction recommendations. In this regard, the PE should ensure that the phase it will bid out *sans* the Master Plan is functional and capable of being utilized even without the construction of the remaining phases in the event the Master Plan is not completed. Otherwise, prudence dictates that the PE should await for the completion of the final Master Plan.

Splitting of Contracts

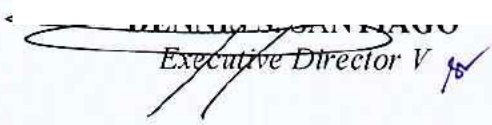
On the other hand, although phasing is recognized, RA 9184 and its IRR prohibit the act of splitting government contracts, *ie.* dividing or breaking up contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirement of RA 9184 and its IRR, particularly the need for public bidding.²

Summary

All told, we opine that phasing of construction projects is allowed as long as each contractual phase covers a complete stand-alone infrastructure facility which is safe, strong, functional and useful to the end-user. Provided, further, that all the phases shall be procured through public bidding without circumventing any rules and requirements provided by RA 9184 and its IRR, specifically on splitting of contracts.

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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² Section 54.1, IRR of RA 9184.