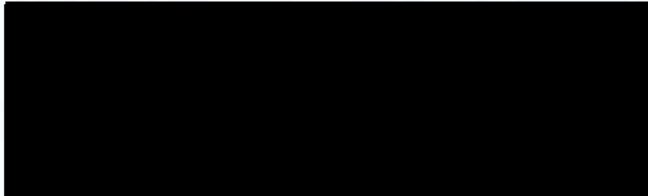


NPM No. 81-2015

13 October 2015



Re: Performance Fee

Dear [REDACTED]:

This refers to your letter seeking guidance on whether a government-procured Fund manager may be entitled to a Performance Fee.

The Philippine Health Insurance Corporation (PhilHealth) is procuring five (5) external local fund managers to manage a portion of its Investment Reserve Fund. In this regard, you are inquiring whether PhilHealth may provide for an adjustment in their annual management fee as incentive for good performance.

Section 61 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) provides that for the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to any price adjustment. In addition, Section 2 of Annex "F" of the IRR of RA 9184 provides that all consultancy contracts shall be fixed price contracts. Hence, Section 42.4 of the IRR expressly states that no incentive bonus, in whatever form or for whatever purpose, shall be allowed. Additionally, Clause 55.6 of the General Conditions of the Contract of the Philippine Bidding Documents for the Procurement of Consulting Services emphasizes that no additional payment for variation order, if any, shall be allowed for the consultancy contract.

Based from the foregoing, we are of the considered view that the procurement at issue, which is in the nature of consulting services, is subject to the established principle that all consultancy contracts shall be fixed price contracts, and therefore, not subject to price adjustment. The adjustment in the annual management fee in question, which is intended to reward the good performance of the engaged fund manager, is a form of incentive bonus prohibited under Section 42.4 of the IRR of RA 9184.

In sum, a provision for performance fee or any form of price adjustment in contracts for consulting services is not allowed.

A handwritten signature in black ink, appearing to be a stylized 'S' or similar mark.

We hope this opinion issued by 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.)

DENNIS S. SANTIAGO
Executive Director V

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