

NPM No. 148-2015

27 November 2015



Re: Award of Contract

Dear 

This refers to your letter¹ requesting our opinion pertaining to delayed award of contract due to change of administration and the approval of the Financial Plan.

Based on the attached documents to your letter-request, EARIST BAC conducted the opening of bids on 21 October 2014 for the project entitled "Rehabilitation of Damaged School Building Caused by Typhoon Glenda at EARIST Cavite Campus (ECC)". However, on 17 November 2014, there was a verbal instruction from the designated OIC-President of EARIST to defer the project until such time that the new President has been elected. This notwithstanding, the BAC issued Resolution No. 107-2014 on 23 December 2014 recommending the award of contract to Speedex Construction and Development Corporation (SCDC). But in the copy of the said Resolution, as well as the Notice of Award, dated 29 December 2014, submitted to us, there was no approval/signature from the President of EARIST. Meanwhile, on 7 September 2015, SCDC wrote a letter to EARIST confirming its bid price as previously submitted on 21 October 2014 and providing a copy of Certification of Final Ocular Inspection to the project site. Hence, the above-mentioned request for opinion.

We wish to inform you that Section 38 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) explicitly mandates that the procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the Procuring Entity (PE) concerned. In the case of

¹ Attached in the letter are the following documents:

1. Letter from Speedex Construction and Development Corporation, dated 7 September 2015.
2. Certification of Final Ocular Inspection issued by Mr. Rodrigo Zeta on 7 September 2015.
3. EARIST BAC Resolution No. 107-2014, dated 23 December 2014.
4. Draft Notice of Award to Speedex Construction and Development Corporation, dated 29 December 2014.
5. Abstract of Bids for the Rehabilitation of Damaged School Building Caused by Typhoon Glenda at ECC.

*Jacomille v. Abaya, et.al.*², the Supreme Court explained the mandatory nature of this three (3)-month period in awarding of contract, thus:

“The court does not agree ... that the 3-month period is merely directory. The said provision contains the word “*shall*” which is mandatory in character. Such period was placed in a separate provision under Section 38, rather than compressed with Section 37, to emphasize its importance. ***There is nothing in the law which states that the 3-month period can be disregarded. Non-compliance with the period will certainly affect the validity of the bidding process...***” (Emphasis supplied)


Based on the documents forwarded to our office, the opening of bids was conducted on 21 October 2014 while the letter from the contractor was sent to EARIST BAC on 7 September 2015. Clearly, the award of contract after the letter was received on 7 September 2015 is way beyond the 3-month period reckoned from the bid opening. This runs counter to the provision of Section 38 of RA 9184, and accordingly, shall affect the validity of the bidding process.

All told, it is our considered view that a PE shall award the contract to the Lowest Calculated Responsive Bid within three (3) months from the opening of bids. Failure to comply with this mandatory period will certainly affect the validity of the bidding process.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being 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 V

 11/14/15

² GR No. 212381 promulgated on 22 April 2015.