

DRN: LS-L-LO-24-04-60497-C

**DSWD OPINION NO. 39 S. 2024  
MEMORANDUM**

**FOR : MS. RHODORA G. ALDAY**  
Director IV, Policy Development and Planning Bureau

**FROM : THE ASSISTANT SECRETARY FOR GENERAL  
ADMINISTRATION AND SUPPORT SERVICES GROUP  
(GASSG) AND CONCURRENT OFFICER-IN-CHARGE,  
LEGAL SERVICE**

**SUBJECT : PDPB'S REQUEST FOR TECHNICAL ASSISTANCE ON  
THE SETTLEMENT OF PAYMENT FOR THE LEAN SIX  
SIGMA GREEN BELT CERTIFICATION TRAINING**

**DATE : 2 MAY 2024**

This refers to your MEMORANDUM<sup>1</sup> requesting for our technical assistance in anticipation of the possible filing of a Petition for Money Claim before the Commission on Audit (COA), by INNOVEO Consulting ("INNOVEO") against the Department of Social Welfare and Development (DSWD) for the payment of services rendered during the Lean Six Sigma Green Belt Training on November 13-18, 2023 in the amount of Nine Hundred Thousand Pesos (Php 900,000).

Based on the documents provided<sup>2</sup>, the following facts and dates were found relevant and incontestable:

- On November 8, 2023, INNOVEO received the Notice of Award (NOA) for the Contract "Hiring of Firm for the Lean Six Sigma Green Belt Certification Workshop"<sup>3</sup>. This training was to be conducted in two (2) batches.
- On November 9, 2023, Thursday, at 6:04pm, the Legal Service received the Memorandum dated November 8, 2023 from the Administrative Service requesting for review of the draft contract with INNOVEO.
- On November 13-18, 2023, the first batch of training was conducted. This was confirmed by Mr. Louie Destacamonte during his consultation with the Legal Service on November 17, 2023.
- The Policy Development and Planning Bureau (PDPB) conducted the said training without an approved Contract and without the issuance of a Notice to Proceed (NTP).

<sup>1</sup> Attached as Annex "A"

<sup>2</sup> Relevant documents such as procurement related documents were transmitted by the PDPB to the Legal Service on 1 April 2024.

<sup>3</sup> NOA No. 2023-10-212, attached as Annex "B"

For services rendered, INNOVEO now demands from DSWD the payment of Php900,000.

**There is no legal basis to pay INNOVEO the amount of Php900,000**

Based on foregoing facts, the Legal Service respectfully submits that the **DSWD cannot be compelled to pay INNOVEO the amount of Php900,000** because of the **absence of an approved contract for that particular procurement and non-issuance of NTP**. Without a valid and signed contract, there is no basis for payment. The issuance of a Notice of Award (NOA) is not a sufficient basis, contrary to what is being claimed.

**The Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provides:**

**“37.1 Contract Award**

xxx

37.1.4 Within ten (10) days from receipt of by the winning bidder of the Notice of Award, the following conditions **should be complied before the contract may be awarded:**

xxx

c) **Signing of the contract** as provided in Section 37.2 of this IRR

xxx”

Therefore, the **signing of contract is an indispensable requirement** during the contract award stage of procurement. Furthermore, upon signing of the contract, a Notice to Proceed shall still be issued, to wit:

**“37.4 Notice to Proceed**

37.4.1 The concerned Procuring Entity shall **issue the Notice to Proceed together with a copy or copies of the approved contract** to the successful bidder within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful bidder.”

**Indubitably, the mere issuance of NOA is not enough and it cannot replace the requirement of a duly approved Contract between parties.**

**On the filing of Petition for Money Claim by INNOVEO**

The filing of a Petition for Money Claim before the COA by INNOVEO against the DSWD is an action by said service provider that DSWD has no control of. INNOVEO may do so if it believes and has a cause of action.

On the Department's part, our actions are sanctioned by no less than RA 9184 and its 2016 IRR, as well as existing Government Accounting and Auditing rules. The refusal to pay INNOVEO rests on sound legal bases. INNOVEO's services were rendered without any existing approved contract.

A Petition for Money Claim falls with the jurisdiction of the COA. Following COA rules, the DSWD shall be directed to submit its Answer to the Petition within a period of fifteen (15) calendar days from receipt of the COA's Order<sup>4</sup>.

The DSWD, through the Legal Service, shall prepare and file the Answer. Therefore, your office and concerned staff as the end-user, and other concerned offices/bureaus/services/units will be requested to provide statements and submit relevant documents and other supporting documents to accurately draft the Answer to the Petition.

Meanwhile, may we stress that it is the primary policy of the COA that government funds and property should be fully protected and conserved, and that **irregular<sup>5</sup>, unnecessary, excessive, extravagant or unconscionable (IUEEU)** expenditures or uses of such funds and property should be prevented.

Therefore, if there would be a finding by COA that the claims by INNOVEO are considered as either **irregular, unnecessary, excessive, extravagant or unconscionable**, the DSWD may not be obliged to officially pay Innoveo. For unauthorized services rendered, however, COA may hold officials or employees **personally liable** for the claims. This is pursuant to **Section 16 of the 2009 Rules and Regulations on Settlement of Accounts**, as prescribed in **COA Circular No. 2009-006, on who are liable for audit disallowances**, which provides:

*Section 16.1. The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:*

*16.1.1 Public officers who are custodians of government funds shall be liable for their failure to ensure that such funds are safely guarded loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.*

<sup>4</sup> Pursuant to Item 4.d of the COA Circular No. 2023-005 dated 10 July 2023.

<sup>5</sup> The term "irregular expenditure" signifies an expenditure incurred **without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws**. Irregular expenditures are incurred if funds are disbursed without conforming with prescribe usages and rules of discipline. There is no observance of an established pattern, course, and mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violets appropriate rules of procedure is, likewise, irregular. Accessed from [https://www.coa.gov.ph/wp-content/uploads/ABC-Help/Various Transaction/new%202.htm](https://www.coa.gov.ph/wp-content/uploads/ABC-Help/Various%20Transaction/new%202.htm) on April 26, 2024

16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.

16.1.3 Public officers who approve or authorize expenditures shall be held liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

The possible personal liability of officials and/or employees for unlawful expenditures is also indicated in Section 103, Chapter 5, Title I of the Government Auditing Code of the Philippines, which has been repeatedly cited in various Supreme Court Decisions, such as *The Law Firm of Laguesma Magsalin Consulta and Gastardo vs. COA*<sup>6</sup>; *Naomi K. Torreta et al. vs. COA*<sup>7</sup>; and *Teresita P. De Guzman et al. vs. COA*<sup>8</sup>, thus:

*Section 103. General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations shall be a **personal liability of the official or employee found to be directly responsible therefor.** (Emphasis Supplied)*

This provision was substantially reiterated in the Administrative Code of 1987, thus:

*Section 52. General liability for Unlawful Expenditures. Expenditures of government funds or uses of government property in violation of law or regulations shall be a **personal liability of the official or employee found to be directly responsible therefor.** (Emphasis Supplied)*

Further, in the case of *Mario M. Madera, et al. vs. COA, et al.*<sup>9</sup>, the Supreme Court pronounced that the liability for unlawful expenditures is civil and that the liability is inseparably linked with the administrative law sphere. Thus, the civil liability provided under these provisions in the Administrative Code of 1987 is hinged on the fact that the public officers performed his official duties with bad faith, malice, or gross negligence.

We hope that we have satisfactorily addressed your concerns. Should you need further questions and/or clarifications regarding this matter, your office may request the Legal Service for a meeting or focus group discussion to discuss them with you.

Please be informed that the foregoing legal review is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

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<sup>6</sup> G.R. No. 185544, 13 January 2015.


<sup>7</sup> G.R. No. 242925, 10 November 2020.

<sup>8</sup> G.R. No. 245274, 13 October 2020.

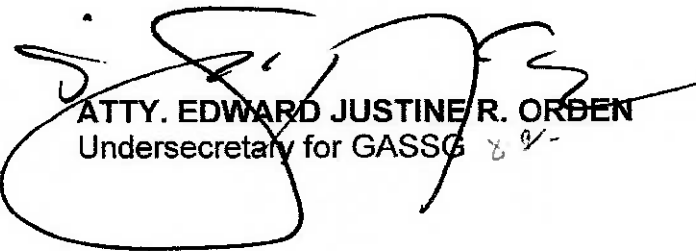
<sup>9</sup> G.R. No. 244128, 8 September 2020.

Lastly, kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

For your guidance. Thank you.

  
**ATTY. GINA V. WENCESLAO**  
MCMUG/JAV/RTV/10066  
OSDL 2/

Approved by:

  
**ATTY. EDWARD JUSTINE R. ORDEN**  
Undersecretary for GASSG