

DSWD OPINION NO. 64 S. 2024

DRN: LS-L-LO-24-07-38017-C

**MEMORANDUM**

**FOR** : **LEO L. QUINTILLA**  
Director V, Special Assistant to the Secretary and  
Officer – in – Charge  
Disaster Response Management Group and National  
Resource and Logistics Management Bureau (DRMG and  
NRLMB)

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

**SUBJECT** : **LEGAL GUIDANCE ON THE FEASIBILITY OF  
CONFIRMATION OF EXTENSION OF CONTRACT FOR  
PURCHASE ORDER (PO) NO. 2023-10-0810**

**DATE** : **20 AUGUST 2024**

This is in reference to your 26 July 2024 Memorandum<sup>1</sup> seeking for legal guidance on the feasibility of the Confirmation of Extension of Contract for the Purchase Order (PO) No. 2023-10-0810 dated 28 October 2023, with contract price amounting to Sixty Two Million Seven Hundred Ninety Eight Thousand Nine Hundred Ninety Two Pesos and 74/100 (Php62, 798,992.74), in order to proceed with the processing of payment and waiver of the incurred Liquidated Damages (LD).

In its Memorandum, the NRLMB stated that:

*“The contract awarded to Maunlad commenced on 01 November 2023 and is supposed to conclude on 31 December 2023. However, their production had extended due to the challenges faced in the Warehouse and the declaration of Holidays during those times. In view of the above, the supplier requested for an extension of timeline to finish the production, unfortunately, the extension of timeline for production was requested beyond the supposed date of completion.”*

**Background**

A Memorandum of Agreement (MOA) was executed by the Department of Social Welfare and Development (DSWD) and Office of the President (OP) for the implementation of a project that would support and ensure the continuity of possible disaster response operations by augmenting the supply inventory of the DSWD.

<sup>1</sup> Annex A – Memorandum from the SAS Dir. Quintilla dated 26 July 2024

Maunlad Rice Mill Corporation (Service Provider) was contracted by the Department for the Emergency Procurement of Hiring Vacuum Packing Service Provider to vacuum-pack a total of Two Million Eight Hundred Eighty-Three Thousand and Three Hundred Thirty-Three (2,883,333) rice packs until 31 December 2023.<sup>2</sup>

Based on records, on 04 June 2024<sup>3</sup>, the Head of Procuring Entity (HoPE) approved the extension of the Service Provider's contract until 31 January 2024 with waiver of Liquidated Damages due to the challenges faced in the Warehouse. However, the Service Provider only completed One Million Nine Hundred Forty – Six Thousand and Two (1,946,002) vacuum-packed rice packs or only 67.49% as of 05 January 2024<sup>4</sup>. The non-completion of the contractual obligations of the Service Provider was attributed to holidays and inadequate space and storage of warehouse,<sup>5</sup> lack of warehouse equipment (e.g. lack of forklift trucks/operations and pallets), subsequent fumigation and no production of vacuum rice packs at NROC due to restacking and palletizing of GOSMAI rice.<sup>6</sup>

On 04 April 2024, the Chief Administrator Officer and Concurrent Director V, NRLMB and SAS for DRMGM issued a Certification<sup>7</sup> stating *“that Maunlad Rice Mill Corporation has satisfactorily completed on 08 February 2024 the Two Million, Eight-Hundred Eighty-Three Thousand, Three-Hundred Thirty-Three (2,883,333) packs of vacuum rice pack as stipulated in the Purchase Order No. 2023-10-0810”*

Acting on the request of NRLMB for confirmation of the contract extension with the Service Provider until 08 February 2024, the Administrative Service (AS) issued a Memorandum<sup>8</sup> addressed to the Undersecretary for Disaster Response Management Group (DRMG) as the HoPE for the approval of the second extension of the contract. The NRLMB recommended for the approval of the extension, hence, the “Approved” option was checked but the HoPE's signature is lacking.

### **Comment**

The confirmation of the extension of PO No. 2023-10-0810 made after the lapse or expiration of the agreed delivery date on 31 December 2023 and its authorized extension on 31 January 2024, is not legally feasible because it is contrary to Republic Act (RA) No. 9184 or the Government Procurement Reform Act (GPRA).

Government Procurement Policy Board (GPPB) Non-Policy Matter (NPM) No. 107-2013<sup>9</sup> citing GPPB Resolution No. 23-2007, discussed that an ongoing contract may be extended provided that the following conditions are met:

#### *“4.0 General Conditions for Extension*

<sup>2</sup> Kindly refer to Annex A

<sup>3</sup> Annex B – Memorandum for the Undersecretary dated 04 June 2024

<sup>4</sup> Annex C – Memorandum from Special Assistance to the Secretary for DRMG and Concurrent Director V, NRLMB dated 04 January 2024

<sup>5</sup> Annex D – Letter from the President of Maunlad Rice Mill Corporation dated 27 May 2024

<sup>6</sup> Annex E – Memorandum of Administrative Service to the Undersecretary of DRMG dated 10 July 2024

<sup>7</sup> Annex F – Certificate of Completion dated 04 April 2024

<sup>8</sup> Memorandum of Administrative Service to the Undersecretary of DRMG dated 10 July 2024

<sup>9</sup> Government Procurement Policy Board (GPPB) Non-Policy Matter (NPM) No. 107-2013 with subject: Negotiated Procurement (Emergency Cases); Contract Extension for General Support Services

**Procuring entities may extend the duration or effectivity of an ongoing contract about to expire, under the following conditions:**

- a. No contract extension shall exceed one (1) year.
- b. The original contract subject of the extension was awarded in accordance with the provisions of RA 9184 and its IRR.
- c. The procuring entity has substantially undertaken the procurement activities required prior to award of the new contract under RA 9184 and its IRR.
- d. The contract extension is undertaken due to circumstances beyond its control and the procuring entity concerned cannot award a new contract within a month after the expiration of the term of the original contract.
- e. The contemplated extension is merely an emergency measure to maintain status quo in the operations of the procuring entity and to avoid interruption of service.
- f. The current service provider has not violated any of the provisions of the original contract.
- g. The terms and conditions of the original contract shall not be changed or modified, except when changes or modifications will redound to the advantage of the government at no additional cost to the procuring entity." (underscoring supplied)

Section 5 of the said GPPB Resolution also provides that the contract extensions shall be subject to the prior approval of the HoPE upon recommendation of the Bids and Awards Committee (BAC). If the proposed contract extension exceeds six (6) months, the HoPE is required to inform the GPPB in writing of its intent to extend beyond 6 months.<sup>10</sup>

The extension of contracts is generally allowed under the Procurement guidelines, provided that the conditions are duly satisfied and that the ongoing contract has not yet expired. As cited in the NPM No. 04 – 2018 with subject "Expired Security Service Contract" stated that "Extension of contracts allowed under the Guidelines, however, contemplate a situation where the Procuring Entity intends to extend the duration and effectivity of an ongoing contract which is about to expire."

In this case, P.O. No. 2023-10-0810 served as the contract<sup>11</sup> between this Department and Maunlad Rice Mill Corporation. The original delivery date agreed upon was on 31 December 2023, and an extension was granted to Maunlad to make a full delivery by 31 January 2024 and liquidated damages were waived then.

**Full delivery was completed only on 08 February 2024**, or eight (8) days after the lapse of the extension period on 31 January 2024. Evidently, there was no further

<sup>10</sup> Section 5, GPPB Resolution No. 23-2007 dated 28 September 2007

<sup>11</sup> NPM No. 099-2016, 14 November 2016:

"The contract may be embodied in the form of a P.O. being issued by the PE. xxx

xxx.

Thus, PO, by itself, is an offer to buy, and a meeting of minds thereon takes place when the vendor receives the PO, agrees to its terms and acts upon it, which will constitute an accepted offer that will give rise to a perfected contract."

agreement to deliver beyond 31 January 2024, otherwise, NRLMB would not have requested for a “confirmation of the extension of the aforesaid PO”.

Records show that NRLMB sent its Memorandum to the Director IV of the Procurement Management Division (PMD) and recommended for the extension of the said contract, three (3) months **after** the authorized extension until 31 January 2024 had already expired. Furthermore, the Request for Confirmation of Extension of Contract was dated only on 10 July 2024.

Considering that the time of the full delivery by Maunlad Rice Mill Corporation was made after the contract had already lapsed, we are of the considered view that the confirmation of extension of PO No. 2023-10-0810 dated 28 October 2023 is not legally tenable. When the PO expired, there was no longer any contract to speak of.

Liquidated Damages may be imposed against the Service Provider pursuant to GPRA

Liquidated damages are damages agreed upon by the parties to a contract, to be paid in case of breach thereof.<sup>12</sup> Section 68 of the 2016 Revised Implementing Rules and Regulations of GPRA provides that liquidated damages may be imposed to Service Provider for the cost of the unperformed portion of the contract:

*“Section 68. Liquidated Damages*

*All contracts executed in accordance with the Act and this IRR shall contain a provision on liquidated damages which shall be payable by the contractor in case of breach thereof. **For the procurement of Goods, Infrastructure Projects and Consulting Services, the amount of the liquidated damages shall be at least equal to one-tenth of one percent (0.001) of the cost of the unperformed portion for every day of delay. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the Procuring Entity may rescind or terminate the contract, without prejudice to other courses of action and remedies available under the circumstances.**” (emphasis supplied)*

Corollary to this, NPM No. 001-2018 with subject: Liquidated Damages, expounded that liquidated damages can still be imposed after the expiry/completion date or after the target completion date so long as the contractor refuses or fails to satisfactorily complete the work within specified contract time.

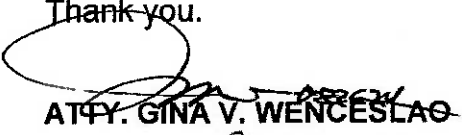
The completion of the contract made without a valid extension consequently results to the incurrance of Liquidated Damages. Since the Confirmation of Extension of Contract Purchase Order No. 2023-10-0810 until 08 February 2022 is not legally tenable, it cannot be used to waive the incurred Liquidated Damages.

<sup>12</sup> Article 2226 of the New Civil Code of the Philippines

Lastly, please be informed that the foregoing legal opinion, 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.

For your consideration.

Thank you.

  
ATTY. GINA V. WENCESLAO

MCMUG/MMBP/ESQE10065

Approved by:

  
ATTY. EDWARD JUSTINE R. ORDEN  
Undersecretary for GASSG 8.2