



Republic of the Philippines
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
Visayas Avenue, Diliman, Quezon City
Tel. No.: (02) 8249-3367 | (02) 8248-3367

MEMORANDUM

15 JUN 2022

FOR/TO : All Regional Executive Directors
All PENROs
All CENROs

All Bureau Directors

All Heads of Attached Agencies

FROM : The Assistant Secretary for Administration and Legislative Affairs

SUBJECT : **COA MEMORANDUM DATED 14 OCTOBER 2021 RE CLARIFICATION ON THE CORRECT INTERPRETATION OF “PERFECTED CONTRACT” AND “EXECUTION OF A CONTRACT” UNDER COA CIRCULAR NO. 2009-001 DATED 12 FEBRUARY 2009**

This is to furnish you copy of the legal opinion provided for by the Commission on Audit (COA) Cluster 8 - Agriculture and Environment, National Government Sector through its unnumbered Memorandum dated 14 October 2021 regarding the clarification on the correct interpretation of “perfected contract” and “execution of a contract” under COA Circular No. 2009-001 dated 12 February 2009, highlighting the summarized conclusion as follows:

In conclusion, since the Notice to Proceed (NTP) must accompany the contract to be submitted to the auditor; it is but logical that the contract must be submitted within the five (5) WD from the receipt of the NTP by the winning bidder and not from the date of the issuance of the NTP. This is because the terms and conditions of the approved contract shall be effective only from the receipt thereof by the winning bidder.

Finally, the Purchase Order (PO), irrespective of amount, shall be submitted to the resident auditor within five (5) WD from receipt and approval thereof by the winning bidder. A PO will constitute an accepted offer that will give rise to a perfected contract when the winning bidder received the same and agreed to its terms and conditions, and the bidders acted upon it.

For your reference and information.


DR. JOAN A. LAGUNDA, MNSA



Republic of the Philippines
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
Visayas Avenue, Diliman, Quezon City
Tel. No.: (02) 8249-3367 | (02) 8248-3367

MARITES A. ODTOJAN
Supervising Auditor
DENR 1 Audit Group
Commission on Audit

ATTENTION : **MS. VIOLY Q. MOLINA**
Audit Team Leader
DENR-CO

Dear Auditor Odtojan:

This has reference to the Audit Query Memorandum (AQM) No. 2021-01 dated 20 September 2021, requiring the Administrative Service to submit reasons of delayed submission of the contracts/POs within the five (5) working days from their execution pursuant to COA Circular No. 2009-001 dated 12 February 2009, received on 23 September 2021.

We have attached herewith the matrix showing the number of days incurred in the submission reckoned from the date of receipt of Notice to Proceed by the winning bidder which give rise to a "perfected contract" and prompt the winning bidder to execute the contract.

Based on the matrix, a number of POs/Contracts were submitted late to your honorable office due to late receipt of the complete documents from the end-user units. As such, we commit to strengthen our monitoring strategies and ensure compliance with the aforementioned COA Circulars through issuance of memorandum/policies.

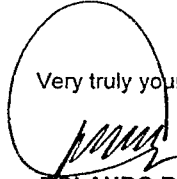
Further, it was observed in your provided matrix that the reckoning period of the prescribed five (5) working days is the preparation date of the PO/Contract. Our submission is reckoned from the date of receipt of Notice to Proceed since as enumerated in Section 9 of the COA Circular No. 2012-001, among the basic requirements for all types of procurement are the Approved PO/contract supported by required documents under COA Circular No. 2009-001, one of these supporting documents is the Notice to Proceed, indicating the date of receipt by the supplier/contractor.

With this, may we request clarification on the correct interpretation of term "**perfected contract**" specified in the COA Circular No. 2009-001, to wit:

*"Section 1.1. Under Commission on Audit Circular Nos. 76-34 and 87-278, the audited agencies are required to furnish the Auditor with a copy of **perfected contracts and purchase orders within five (5) working days** upon approval together with the supporting documents for review...xxx..."*

For information and consideration, please.

Very truly yours,


ROLANDO R. CASTRO
Director, Administrative Service

cc: OSEC
USEC-LAHRLA
ASEC-AHA
FMS
MANAGEMENT DIVISION



Republic of the Philippines
COMMISSION ON AUDIT
Office of the Audit Team Leader
Department of Environment and Natural Resources
Central Office
Visayas Avenue, Diliman, Quezon City

October 28, 2021

Director ROLANDO R. CASTRO
Administrative Service
Department of Environment and Natural Resources
Visayas Avenue, Diliman, Quezon City

Attention: **Engr. GIBERT C. MONDROY**
Chief, Property and Supply Management Division

*Ms. Diane
For reference
Perusa!
Madr*
10/28/21

Dear **Dir. Castro**:

In connection with your letter received by this office on September 27, 2021 re: request for clarification on the correct interpretation of term "perfected contract" pursuant to COA Circular No. 2009-001 dated February 12, 2009, we are forwarding herewith a copy of the Unnumbered Memorandum dated October 14, 2021 of the Cluster 8 - Agriculture and Environment, National Government Sector, this Commission, for your information and appropriate action.

Thank you very much.

Very truly yours,

[Signature]
VIOLY Q. MOLINA
Audit Team Leader

Copy furnished:

MARITES A. ODTOJAN
Supervising Auditor
DENR 1 & 2



Republic of the Philippines
COMMISSION ON AUDIT
Commonwealth Avenue, Quezon City, Philippines

NATIONAL GOVERNMENT SECTOR
Cluster 8 – Agriculture and Environment

MEMORANDUM

TO : VIOLY Q. MOLINA
Audit Team Leader
DENR Central Office

THRU : *M. A. Odtojan*
MARITES A. ODTOJAN
Supervising Auditor
DENR Audit Group

SUBJECT : Clarification on the correct interpretation of “perfected contracts” and “execution of a contract” under COA Circular No. 2009-001¹ dated February 12, 2009

DATE : October 14, 2021

FACTS

On September 20, 2021, the DENR CO Audit Team issued Audit Query Memorandum (AQM) inquiring from the DENR management the reason for the delay in the submission of the contracts and Purchase Orders (POs), pursuant to Items 3.1.1 and 3.2.1 of COA Circular No. 2009-001, which read:

- 3.1.1 Within five (5) working days from the execution of a contract by the government or any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations and their subsidiaries, a copy of said contract and each of all the documents forming part thereof by reference or incorporation shall be furnished to the Auditor of the agency concerned. In case of agencies audited on an engagement basis, submission of a copy of the contract and its supporting documents shall be to the Auditor of the mother agency or parent company, as the case may be.
- 3.2.1 A copy of any purchase order irrespective of amount, and each and every supporting document, shall, within five (5) working days from issuance thereof, be submitted to the Auditor concerned. Within the same period, the Auditor shall review and point out to management defects and/or deficiencies, if any, in the same manner provided in the second and third sentences of item 3.1.4 hereof (Emphasis supplied)

¹ Restatement with amendment of COA Circular 87-278 and COA Memorandum 2005-027 re: submission of copy of government contracts, purchase orders and their supporting documents to the Commission on Audit.

On September 27, 2021, the DENR, through its Administrative Service Director, acknowledged the late submission of the contracts and POs to the auditor but reasoned out that it is due to late receipt of the complete documents from the end-user units. It further commented that the reckoning period for the submission of the contracts to the auditor is five (5) working days (WD) counted from the receipt of the Notice to Proceed (NTP), indicating the date of receipt by the supplier/contractor. Furthermore, it wants clarification on the proper interpretation of "perfected contract" used in Item 1.1 of COA Circular No. 2009-001, which provides, to wit:

[U]nder Commission on Audit Circular Nos. 76-34 and 87-278, the audited agencies are required to furnish the Auditor with a copy of perfected contracts and purchase orders within five (5) working days upon approval together with the supporting documents for review. (Emphasis supplied)

In its Memorandum to this Office dated September 30, 2021, which we received on October 1, 2021, thru an email, the DENR CO Audit Team sought our opinion as to the correct reckoning period of the submission of the contracts to the auditor. The audit team pointed out that the five (5)-day period for the submission of the contracts to the auditor should be counted from the date of the contract or date of notarization.

ISSUE

When should the agency submit the contracts/POs to the auditor?

OUR LEGAL OPINION

We agree with the position of the DENR. The more reasonable interpretation of Item 3.1.1 of COA Circular No. 2009-001 is that the procuring entity (PE) shall submit copy of the contract and its supporting documents to the resident auditor within five (5) WD counted from the receipt of the NTP by the winning bidder because Section 3.1.2 of the same COA Circular mandates that the NTP must accompany the contract to be submitted to the auditor, to wit:

[T]he copies of documents required to be submitted shall include but not limited to the following:

- a. Invitation to Apply for Eligibility and to Bid;
- b. Letter of Intent;
- c. Eligibility Documents and Eligibility Data Sheet;
- d. Eligibility Requirements;
- e. Results of Eligibility Check/Screening;
- f. Bidding Documents (Sec. 17.1, IRR-A, RA 9184);
- g. Minutes of Pre-bid Conference, if applicable;
- h. Agenda and/or Supplemental Bid Bulletins, if any;
- i. Bidders Technical and Financial Proposals;
- j. Minutes of Bid Opening;
- k. Abstract of Bids;
- l. Post Qualification Report of Technical Working Group;
- m. BAC Resolution declaring winning bidder;

- n. Notice of Post Qualification;
- o. BAC Resolution recommending approval;
- p. Notice of Award;
- q. Contract Agreement;
- r. Performance Security;
- s. Program of Work and Detailed Estimates;
- t. Certificate of Availability of Funds, Obligation Request;
- u. Notice to Proceed
- v. Such other documents peculiar to the contract and/or to the mode of procurement and considered necessary in the auditorial review and in the technical evaluation thereof.

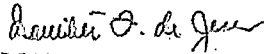
Although, the word “execution”, as used in Item 3.1.1 of COA Circular No. 2009-001, means the signing of a contract, this cannot be considered as the reckoning point of the period for submission of the contract to the auditor. The reason behind this is because the NTP together with the approved contract shall only be issued by the PE within seven (7) calendar days (CD) from the date of approval of the contract by the appropriate government approving authority (Section 37.4.1² of the 2016 Revised Implementing Rules and Regulations of Republic Act (RA) No. 9184). Under Section 37.2 of the 2016 RIRR of RA 9184, the winning bidder and PE shall enter into contract within 10 CD from receipt of the Notice of Award (NOA) by the winning bidder. The higher authority is provided a maximum of 20 days from receipt of the request to approve or disapprove the contract (Section 37.3, 2016 RIRR of RA No. 9184). In other words, the issuance of an NTP presupposes the existence of an approved contract, if required.

On the other hand, “perfected contract” under Item 1.1 of COA Circular No. 2009-001 is when the NOA was duly issued, communicated to, and received by the winning bidder. In ordinary contracts, perfection occurs when all the parties thereto agree upon the essential elements thereof. However, the phrase “perfected contract” is qualified by the phrase “upon approval together with the supporting documents for review”. Thus, the intent of COA Circular No. 2009-001 based on its rationale in Item 1.1, is that the contract that must be submitted to the auditor must be already approved by approving authority, if required; and must be accompanied by the supporting documents, which include the NTP.

In conclusion, since the NTP must accompany the contract to be submitted to the auditor, it is but logical that the contract must be submitted **within five (5) WD from the receipt of the NTP by the winning bidder**, which may take place within a period of more than 32 days [20 days (receipt of NOA with 20 days maximum to approve or reject the contract) + 7 CD (issuance of NTP) + 5 WD (submission from receipt of NTP)] from the execution of the contract, and not from the date of the issuance of the NTP. This is because the terms and conditions of the approved contract shall be effective only from the receipt thereof by the winning bidder. It would be pointless for the auditor to undertake review and evaluation if the contract is not yet effective. ✓

² 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.

Finally, the PO, irrespective of amount, shall be submitted to the resident auditor within five (5) WD from receipt and approval thereof by the winning bidder. Again, it would be pointless for the auditor to undertake review and evaluation if the contract is not yet effective. A Purchase Order will constitute an accepted offer that will give rise to a perfected contract when the winning bidder received the same and agreed to its terms and conditions, and the bidder acted upon it.³


MARIBETH F. DE JESUS
Director IV

NGSR
MFDJ/CSR/BCAI.

³ 2016-11-15, NPM No. 099-2016 issued by the Government Procurement Policy Board (GPPB).