



**TOURISM
INFRASTRUCTURE AND
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ZONE
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November 4, 2020

MEMORANDUM

FOR : ENGR. NESTOR M. DOMALANTA, SR.
Assistant Chief Operating Officer
Architecture & Engineering Services Sector

ATTENTION : ENGR. AMELITA S. CAGANDA
Manager, Planning & Evaluation Department

ENGR. RADY E. ADAME
Manager, Project Planning Division

From : The Assistant Chief Operating Officer
Assets Management Sector

SUBJECT : Proposed Addendum to the Consultancy Contract of WTA

Forwarded herewith memoranda from the Legal Department dated September 22, 2020 and October 27, 2020 relative to their comments pertaining to the following request of WTA Architecture & Design Studio:

1. Addendum for the Consultancy Services for the Formulation for the Detailed Architectural and Engineering Design for the Rehabilitation of the Banaue Hotel Youth Hostel;
2. Surety Bond; and
3. Request for Payment

Relative thereto, may we request for your comments on the legal opinion.

For your information and appropriate action.


JETRO NICOLAS F. LOZADA



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MEMORANDUM

FOR : The Assistant Chief Operating Officer
Assets Management Sector

FROM : The Manager
Legal Department

SUBJECT : Proposed Addendum to the Consultancy Contract

DATE : October 27, 2020

May we respectfully submit, for consideration, the comments pertaining to the request for Addendum for the Consultancy Contract of WTA Architecture and Design Studio (WTA), in particular, the Consultancy Contract for the Consultancy Services for the Formulation for the Detailed Architectural and Engineering Design for the Rehabilitation of the Banaue Hotel and Youth Hostel (Consultancy Contract) entered into by and between the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) and WTA.

Perusal of the documents attached, in particular, the a) Initial Project Report (unsigned); b) Memo request for Payment dated August 2019 (Unsigned); c) Memo request for Payment dated July 2020; and d) WTA Banaue Chronology of Activities, shows that the Consultancy Contract expired on November 2019.

Foremost, the Consultancy Contract is for a determinate period of time. An addendum to a contract must be made/perfected before expiration of the contract upon which the addendum is made. It is not legally possible to revive an expired contract —once a contract has expired, it no longer exists. Thus, the preparation of an addendum to a contract is subject to compliance with the fact that the contract had not yet expired. Upon the lapse of the stipulated period, no addendum may be belatedly made.

Anent the attached chronology of events, it is important to note that, with due deference to the agreement/timeline as stipulated in the Consultancy Contract, it is incumbent upon the project engineer (PE) to monitor and evaluate the progress of the project taking into consideration the increments of time for the completion of the respective deliverable/phase of the project as reflected in the Consultancy Contract during contract implementation in order to ensure timely and accurate performance of the same.

In the event that, upon assessment and determination of the PE that there are changes in areas that may deviate/affect the indicative timeline of the project as reflected in the Consultancy Contract, it is incumbent upon the PE to promptly act on matters/circumstances that could affect the schedule of the services and submittals and consequently report any corresponding changes and, when deemed necessary, recommend and take corrective actions when deviations occur, which may include, at the very least, amendment/extension of the contract.

In view of the abovementioned, the proposed addendum may not thus be given due course.

For your consideration. Thank you.

Atty. Ivy V. Asetre

TOURISM INFRASTRUCTURE & ENTERPRISE ZONE AUTHORITY	
ASSETS MANAGEMENT SECTOR	
RECEIVED BY :	Leonard
DATE :	11/03/2020
TIME :	8.15am



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MEMORANDUM

FOR : **The Assistant Chief Operating Officer**
Assets Management Sector

FROM : **The Manager**
Legal Department

SUBJECT : Proposed Addendum to the Consultancy Contract

DATE : 22 September 2020

BANAUE - WTA

This is in reference with the query propounded as regards the Consultancy Contract for the Consultancy Services for the Formulation for the Detailed Architectural and Engineering Design for the Rehabilitation of the Banaue Hotel and Youth Hostel (Consultancy Contract) entered into by and between the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) and WTA Architecture and Design Studio, and the proposed addendum to the Consultancy Contract.

As culled from the documents furnished, salient points in the proposed addendum to the Consultancy Contract now under review includes, among others, that the proposed addendum to the contract is executed on September 2018; that the Contract for Consultancy is extended until December 2021; that the consultant will submit an amended and updated bond extension; and that TIEZA covenants to pay the contractor.

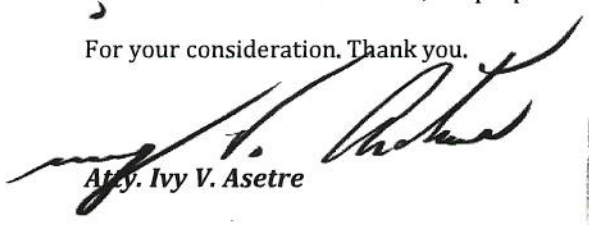
At the outset, it is important to note that the Consultancy Contract was dated November 2018. An addendum to a contract cannot be executed/perfected prior to the contract upon which the addendum is based. Anent the provision in the proposed addendum that states that the Contract for Consultancy is extended until December 2021, it is important to note that the Consultancy Contract expired on November 2019. Thus, the extension must have been perfected before the expiration of the Consultancy Contract it is seeking to extend. In a similar manner that the provision in the proposed addendum stipulating that the consultant will submit an amended and updated bond/extension presupposes that the contract/bond sought to be extended had not yet expired.

It is likewise vital to resolve the reasons for the failure to satisfactorily complete the project within the specified contract time as provided for in the Consultancy Contract and the steps that the end user department/sector has taken to protect the interest of TIEZA. If there is a valid ground for extension, was there an imprimatur given consequent to a valid request for extension? Otherwise, if there exists no valid ground and no fault is attributable to TIEZA, liquidated damages, among others, should have been imposed due to the failure of the contractor to deliver any or all of the deliverables within the period specified in the contract.

Further, as regards the stipulation in the proposed addendum that TIEZA covenants to pay the contractor, RA 9184 states that all consultancy contracts shall be fixed price contracts and that any extension of contract time, if valid, shall not involve any additional cost.

In view of the abovementioned, the proposed addendum may not thus be given due course.

For your consideration. Thank you.


Atty. Ivy V. Asetre

TOURISM INFRASTRUCTURE & ENTERPRISE ZONE AUTHORITY	
ASSETS MANAGEMENT SECTOR	
RECEIVED BY :	<i>hamed</i>
DATE :	<i>11/03/20</i>
TIME :	<i>8:48am</i>