



**LEGAL SERVICE
GENERAL ADMINISTRATION AND SUPPORT
SERVICES GROUP**
DSWD-GF-004 | REV 03 | 22 SEP 2023

DRN: LS-L-LO-24-11-13065-C

MEMORANDUM

FOR : **EDMON B. MONTEVERDE**
Director IV, Program Management Bureau (PMB)

FROM : **THE ASSISTANT SECRETARY FOR GASSG AND
CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE**

SUBJECT : **LEGAL OPINION ON THE VALIDITY OF MOA BETWEEN DSWD
AND MSSD BARMM ON THE PMB PROGRAM BUDGET
ALLOCATION**

DATE : **20 NOVEMBER 2024**

This pertains to your MEMORANDUM¹ dated 07 November 2024 requesting for review from the Legal Service (LS) of the Memorandum of Agreement (MOA) between DSWD and the Ministry of Social Services and Development (MSSD) under the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) dated 06 December 2021. Based on the information provided, the said MOA allows the downloading of the approved budget for the implementation of Social Pension for Indigent Senior Citizens (SPISC), Supplementary Feeding Program (SFP), Centenarian Act of 2016, and Recovery and Reintegration Program for Trafficked Persons (RRPTP).

Records show that the MOA was signed during the tenure of former DSWD Secretary Rolando Joselito D. Bautista, and it was based on Republic Act (R.A.) 11518 or the General Appropriations Act (GAA) of 2021. The MOA was **executed because of the need to download and transfer fund allocations** from the approved 2021 GAA budget of DSWD to MSSD-BARMM for purposes of implementation of various programs of the Program Management Bureau (PMB). Therefore, this was a case of an **Inter-Agency Transfer of Funds (IATF)**.

In your memorandum, you have raised the following issue and we quote:

"The undersigned seeks clarification on the validity of the said MOA x x x.

In this regard, we respectfully request your office's legal opinion on the continued enforceability of the MOA and any recommended actions for its implementation moving forward."

Our Opinion

On 13 December 1994, the Commission on Audit (COA) issued COA Circular No. 94-013, also known as the **Rules and Regulations in the Grant, Utilization and Liquidation of Funds Transferred to Implementing Agencies**. The said circular was issued considering that there are **projects which require inter-agency implementation**. These funds are released to the agency (*in the present case, DSWD*) which programmed the

¹ Annex A, Memorandum of Dir. Monteverde of PMB to LS



project in its Budget (referring to the GAA). In turn, **IATF are funds transferred/sub-allotted to the government agency (referring to MSSD-BARMM) which will implement the project.** The said circular is therefore issued to ensure that²:

- a) the transfer is properly taken up in the books of both agencies;
- b) the transferred funds are used only for the intended purpose; and that
- c) proper accounting and reporting is made of the utilization of the funds.

Moreover, Section 63 (a), Chapter 6 of the 2015 Government Accounting Manual (GAM) provides for the Disbursement for IATF and accounting policies for the transfer of funds, viz:

Section 63 Disbursement for Inter-Agency Transferred Funds (IATF). The following are the accounting policies for the transfer of funds:

- a. A **Memorandum of Agreement (MOA)** shall be entered into by the **Source Agency (SA)** and the **Implementing Agency (IA)** for the undertaking by the latter of the project of the former. The MOA shall provide for the requirements for project implementation and reporting³.

The aforesaid guidelines as set forth by COA, clearly states that a **MOA is required between the Source Agency (SA) and Implementing Agency (IA) under the IATF.** Applying further the above provision in the case at hand, the SA is referred hereto as DSWD while the IA is being referred to as MSSD-BARMM. Since there was an impetus for DSWD to transfer funds from the various programs under PMB such as SPISC, SFP, Centenarian and RRPTP, to ensure its effective and efficient implementation in BARMM areas, the MOA was then duly executed by the parties.

Meanwhile, in the Civil Code of the Philippines, a contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.⁴

A contract becomes enforceable after both parties consent to its terms or when one party makes an offer, and the other party accepts it.

A contract is legal and enforceable if all its elements are present: (1) consent of the contracting parties, (2) the subject matter of the contract or object, and (3) the cause of the said contract.

Referring to the subject contract under review, a MOA was signed by DSWD as represented by former Secretary Bautista, and MSSD-BARMM as represented by Minister Raissa H. Jajurie, who were the parties to the contract. The said agreement was signed in order to download and transfer funds from the approved budget of DSWD in the 2021 GAA for the purpose of implementation of DSWD programs such as SPIC, SFP, Centenarian Act and RRPTP within the territorial jurisdiction of BARMM.

That is, the elements of a legal contract such as consent of the contracting parties, object and cause of the contract are attendant in the MOA subject of review, **thus making it a valid contract between the two parties involved (DSWD and MSSD).**

To further understand the content of the contract intrinsically, it is imperative to review the important provisions as well as the terms and conditions therein.

² Article 1, RATIONALE, COA Circular No. 94-013

³ Section 63 (a), GAM Volume 1

⁴ Article 1305, Civil Code of the Philippines

The Salient Features relevant to the validity and enforceability of the MOA dated 06 December 2021 are as follows ⁵:

ARTICLE 1
TITLE AND SCOPE

1.1 This agreement shall be referred to as the MSSD and DSWD – PMB Agreement;

1.2 The scope of this Agreement shall be the implementation of SPISC, SFP, Centenarian Act, and RRPTP in BARMM. x x x

ARTICLE 2
RESPONSIBILITIES

x x x

2.2 The MSSD shall;

2.2.5 Obligate and disburse the funds until December 31, 2021 based on Section 62 of the General Provisions of the 2021 GAA, unless otherwise provided by law; or based on a similar provision of the applicable GAA.

From the above provisions, we can deduce that the actual parties in this MOA were MSSD of BARMM and DSWD covering the identified programs under PMB. We also note that Section 2.2, Article 2 of the MOA specifically provides the responsibilities and timelines for the obligation and disbursement of funds which was until 31 December 2021, based on the General Provisions of the 2021 GAA. However, we also noticed that Item 2.2.5 above also has an exception to the general rule, that while it made reference to the 2021 GAA, the last two phrases implied that it can be superseded by another law or a similar provision of the applicable GAA.

2.2.5 x x x unless otherwise provided by law; or based on a similar provision of the applicable GAA.

Given the explicit provision of the contract, it seems that the MOA is not necessarily confined to the 2021 GAA and it may possibly go beyond it, such as, when there would be a Continuing Appropriation or an enactment of a new GAA.

We also call the attention of your office on the following provisions of the contract:

ARTICLE 4
TERMINATION

4.1 **Either of the Parties may terminate this Agreement, in whole or in any part, at any time on its convenience if the existence of the agreement that is determined to cause the initiative to be financially or technically impractical and/or unnecessary, which may be caused by fortuitous event/s or changes in the law and national government policies and/or that may greatly affect the implementation or purpose of the programs;**

4.2 **This Agreement may be terminated by any Party pursuant to the immediately preceding Section by serving a Notice of Termination at**

⁵ Annex B - MOA between DSWD and MSSD-BARMM

least thirty (30) days before the date of the intended effectivity of the termination.

ARTICLE 8 EFFECTIVITY

8.1 This Agreement shall commence and be effective at the time of its signing and **shall continue in full force until terminated, amended, revoked, or superseded by a new agreement between the Parties, without prejudice to items 8.2 and 9.1.**

8.2 This agreement shall become effective for only one (1) year or until December 31 of each year, **without prejudice to its automatic renewal, as provided in the subsequent article.**

8.3 Within forty-five (45) days prior to its termination date, **the parties shall undertake a review of the implementation of the agreement for the current year and they shall either recommend the termination hereof or its renewal.** No further action(s) by the PARTIES shall be required in case the renewal was mutually agreed upon.

A reading of the foregoing provisions in the MOA would reveal that while the effectivity of the contract was based on the 2021 GAA, it also implies a certain flexibility as it can also apply to the succeeding GAAs. This interpretation is likewise supported by the automatic renewal clause found in Article 9 of the MOA.

A closer look at Section 8.2 of Article 9 of the MOA connotes the intention of the agreement to be effective for only one (1) year although it has a disclaimer for automatic renewal. On the other hand, the succeeding Section 8.3 provides a requirement for both parties, 45 days prior to termination date, to undertake a review of the implementation for the current year in which they are to recommend the termination or renewal of the agreement. In this case, the MOA had already lapsed or ended 31 December 2022, after a period of 1 year. Records reveal that there were no activities undertaken or documents prepared for contract renewal. Note that the renewal of the MOA should be mutually agreed upon by both parties based on the set criteria.

May we direct you to the Automatic Renewal clause in the MOA which reads, thus:

ARTICLE 9 AUTOMATIC RENEWAL

9.1 This agreement shall be **automatically renewed for another period of (one (1) year immediately following its expiration in case the PARTIES did not expressly terminate this agreement.** *Provided*, that the funds for that particular financial year shall be governed as follows:

- a. The implementation of the programs contemplated hereunder shall be executed and completed in accordance with the periods for release, obligation and disbursement of funds contemplated under the General Provisions of the GAA for Fiscal Year (FY) 2021 and the implementing National Budget Circular/s (NBC) issued by the Department of Budget and Management (DBM).
- b. **For the succeeding GAAs**, so long as the foregoing agreement is still in effect, or not otherwise terminated by the Parties, and this Article unchanged, **the instant Agreement shall continue to**

govern the implementation of herein programs and the periods of release, obligation and disbursement of funds shall conform with the General Provisions of the prevailing GAA against which the funds transferred are charged.

Article 9 states that the MOA is automatically renewed for another period of 1 year immediately following its expiration **in case the PARTIES did not expressly terminate this agreement.** Mindful of the contractual provision in Section 9.1, while there is an automatic renewal clause, it goes not without a condition. First, is that the renewal along with the obligation and disbursement of funds must be based on the 2021 GAA. Second, for succeeding GAA, it must be in conformity with the provisions of the prevailing GAA. Hence, the MOA dated 06 December 2021 ended after 1 year that it was not terminated or renewed.

Further, the MOA made reference to the succeeding GAAs after 2021. Looking into the previous GAA enactments of Fiscal Year (FY) 2023 and the current FY 2024, it states that:

GAA 2023 - DSWD⁶

Special Provision (s)

x x x

8. Allocation for the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). The DSWD and DBM shall ensure the **direct release of various DSWD program funds allocated for BARMM, particularly to its Ministry of Social Welfare and Development**, through the Office of the Chief Minister, with detailed amounts per province, in accordance with existing budgeting, accounting and auditing rules and regulations. The Governors in the covered BARMM provinces shall be furnished copies of said allocation/ release of funds.

x x x

GAA 2024 - DSWD⁷

Special Provisions

10. Allocation for the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). The DSWD and DBM shall ensure the **direct release of the following DSWD program funds allocated for BARMM**, particularly to its Ministry of Social Welfare and Development, through the office of the Chief Minister, with a detailed amount per province, in accordance with existing budgeting, accounting and auditing rules and regulations:

1. Pantawid Pamilyang Pilipino Program (Administrative Cost)
2. Sustainable Livelihood Program
3. **Supplementary Feeding Program**
4. **Social Pension for Indigent Senior Citizens; and**
5. **Implementation of R.A. No. 10868 (Centenarians Act of 2016)**

⁶ Section 8, 2023 GAA – DSWD Special Provision (s)

⁷ Section 10, 2024 GAA – DSWD

The Governors in the covered BARMM provinces shall be furnished copies of said allocation/ release of funds. The office of the Chief Minister shall submit to the DBM and the DSWD, either in printed form or by way of electronic document, quarterly reports on the utilization of funds, including actual beneficiaries served per province in BARMM. The Minister of Social Welfare and Development and its web administrator of his/her equivalent shall be responsible for ensuring that said quarterly reports are likewise posted on the BARMM website

The last two GAAs in 2023 and 2024 under the special provisions in the GAA of DSWD, have apparently changed the modality of fund allocation from IFT to direct release for the specific DSWD - PMB programs to be implemented in BARMM areas. **It now provides for a direct release of funds to BARMM through MSSD.** Particulary for FY 2024, **except for RRPTP, all PMB programs enumerated in the MOA namely, the Supplementary Feeding Program, Social Pension and Centenarians Act are now through direct release of DBM to BARMM,** in which the mode of IATF for these programs are no longer needed.

Certainly, given that there is already a direct release provision in the GAA and applying this to the 2021 MOA between DSWD and BARMM, the latter no longer serves its purpose for IATF from the SA (DSWD) to the IA (MSSD-BARMM). By operation of law, the rationale of the MOA, for which it was established and agreed upon, now ceased to exist.


In view of the foregoing, if the direct release provision for BARMM remains to be included in the GAA of year 2025 and succeeding years for the identified PMB programs, this level opines that a MOA between DSWD and MSSD for inter-agency transfer of funds is no longer necessary because there would be no more inter-agency transfer of funds.

Consequently, should there be a PMB program not included in the direct release provision in the GAA, LS recommends the Bureau to draft a new MOA for the transfer of that particular fund allocation to BARMM incorporating the terms and conditions based from the FY 2025 GAA, COA and Bureau of Treasury (BTr) rules, applicable timelines and effectivity, and more importantly the recent updates in the implementation guidelines of the subject PMB program for fund transfer.

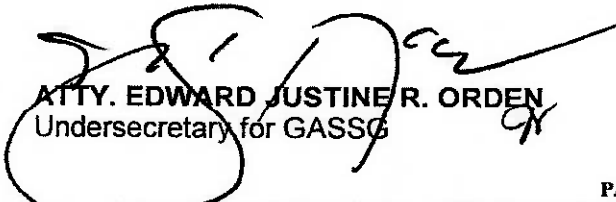
Lastly, please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

For your consideration

Thank you.


ATTY. GINA V. WENCESLAO
MCMUG/JDVC/10065

Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG