



REPUBLIC OF THE PHILIPPINES
Department of Budget and Management
Malacañang, Manila

GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

TSO NPM No. 03-2003

March 10, 2003

MR. RAFAEL A. RODRIGUEZ
Vice President for Development
University of the Philippines (UP)
Diliman, Quezon City 1101

RE : G- EPS Posting Requirement under the GPRA

Dear Mr. Rodriguez:

This refers to your letter dated February 28, 2003, which was referred to our office on March 4, 2003, raising the following issue

Whether or not, under Republic Act No. 9184 ("R.A. 9184"), posting of Invitations to Bid at the Government Electronic Procurement System ("G-EPS") is discretionary.

R.A. 9184, otherwise known as the Government Procurement Reform Act, was signed by President Gloria Macapagal Arroyo on **January 10, 2003**, and was published in two newspapers of general circulation, namely, Manila Times and Malaya, on **January 11, 2003**. Pursuant to Section 78 thereof, it took effect on **January 26, 2003**.

It must be noted, however, that although there are self-executing provisions in R.A. 9184, the entire law cannot be fully implemented until its Implementing Rules and Regulations

("IRR") are approved by the President and published in accordance with its provisions. For this reason, the Government Procurement Policy Board ("GPPB"), during its first meeting held on March 5, 2003, agreed that the procedures embodied in Executive Order No. 40, series of 2001 ("E.O. 40"), and its IRR shall still apply until the IRR of R.A. 9184 is effective, provided that they are not in direct conflict with the clear and expressed self-executing provisions of R.A. 9184. In this regard, in so far as the posting requirements are concerned, it is our opinion that government agencies, including State Universities and Colleges ("SUCs"), such as the University of the Philippines ("UP"), are required to post their Invitations to Apply for Eligibility and to Bid at the G- EPS, as mandated by Section 14.2.1. of the IRR of E.O. 40, to wit:

14.2.1. Except as otherwise provided in Sections 14.2.2 and 14.2.3 of these IRR, **the Invitation to Apply for Eligibility and to Bid shall be:**

- a) xxx xxx xxx;
- b) Posted continuously in the website of the agency concerned, if available, the website of the agency's service provider for its electronic bidding system (EBS), if any, as provided in Section 38.5.4 of these IRR, and **the EPS** during the two-week period stated above; xxx xxx xxx (Emphasis supplied)

Additionally, in line with the concept of transparency and competitiveness, and in order to ensure the widest possible dissemination of the Invitation to Apply for Eligibility and to Bid, it is our opinion that Section 21 of R.A. 9184 is couched on mandatory terms as far as posting in the G-EPS is concerned. In particular, Section 21 provides:

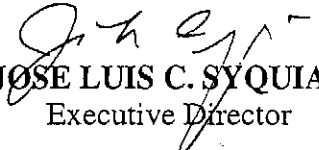
SEC. 21. Advertising and Contents of the Invitation to Bid. - In line with the principle of transparency and competitiveness, all Invitations to Bid for contracts under competitive bidding **shall** be advertised by the Procuring Entity in **such manner and for such length of time as may be necessary under the circumstances**, in order to ensure the widest possible dissemination thereof, such as, but not limited to, posting in the Procuring Entity's premises, in newspapers of general circulation, the G-EPS and the website of the Procuring Entity, if available. **The details and mechanics of implementation shall be provided in the IRR to be promulgated under this Act.** (Emphasis supplied)

The use of the word "shall" in the above quoted provision spells out clearly the mandatory character of the posting of the Invitation to Apply for Eligibility and to Bid at the G-EPS. If at all, the discretion lies not on the G-EPS posting requirement, but on the manner by which it shall be posted and the duration for such posting. In fact, this provision expressly states that the details for its implementation shall be provided in the IRR, thereby clearly showing that it is not a self-executing provision.

In view of the foregoing, we believe that posting of the Invitation to Apply for Eligibility and to Bid at the G-EPS is mandatory under R.A. 9184. Moreover, considering that Section 21 of the law, covering the posting requirement, is not a self-executing provision, it is further our opinion that the relevant provisions of E.O. 40 and its IRR should be applied in this regard, until the IRR of R.A. 9184 is effective.

We trust that this clarifies matters.

Very truly yours,


JOSE LUIS C. SYQUIA
Executive Director

