



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 014-2016

21 March 2016

MR. FLORANTE S. GERDAN
President and Chief Executive Officer (CEO)
PORO POINT MANAGEMENT CORPORATION (PPMC)
Poro Point Freeport Zone (PPFZ)
Gov. Joaquin L. Ortega Avenue
San Fernando City, La Union

Re: Period to Resolve Protest

Dear President and CEO Gerdan:

This refers to PPMC's letter requesting for an opinion on whether the Head of the Procuring Entity (HOPE) may decide beyond the seven (7) calendar day period in accordance with Section 56 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, the PPMC is a government-owned-and/or-controlled corporation (GOCC) in which its Board of Directors is composed of eleven (11) members and holds regular meetings twice a month. In this regard, the Board of Directors, as the HOPE of PPMC, has a pending protest filed before it arising from the disqualification of a bidder who participated in the procurement of security services for the PPFZ. Since the Board of Directors has already met twice for the month in which the protest was filed, it is now concerned whether it can comply with the seven (7) calendar day period to resolve the protest. It is for this reason that our opinion is sought.

At the outset, we wish to inform PPMC that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) do not have the authority to decide for and in behalf of a procuring entity. Thus, we wish to clarify that the GPPB and the GPPB-TSO cannot dictate or impose upon the procuring entity how to decide relative to its procurement activities and on matters within the purview of its authority and jurisdiction.

We note that the Implementing Rules and Regulations Part-A (IRR-A) has been superseded by the revised IRR pursuant to GPPB Resolution 03-2009, which took effect on 2 September 2009. Thus, we refer to the current provision of Section 56 of the revised IRR, which states:

Section 56. Resolution of Protests

The protests shall be resolved strictly on the basis of records of the BAC. **The Head of the Procuring Entity shall resolve the protest within seven (7) calendar days from receipt thereof.** Subject to the provisions of existing laws on the authority of Department Secretaries and the heads of agencies, branches,

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constitutional commissions, or instrumentalities of the GOP to approve contracts, the decisions of the Head of the Procuring Entity concerned shall be final up to the limit of his contract approving authority. With respect to LGUs, the decision of the local chief executive shall be final. The head of the BAC Secretariat shall furnish the GPPB a copy of the decision resolving the protest within seven (7) calendar days from receipt thereof.

As the abovementioned provision uses the word “*shall*” in determining the number of days to resolve the protest, the HOPE is therefore directed to comply and observe the mandatory seven (7) calendar day period. The word “*shall*” means ought to, must, or an obligation used to express a command or exhortation used in laws, regulations or directives to express what is mandatory.¹ In common or ordinary phraseology, the term “*shall*” is a word of command, one which has a compulsory meaning, and is generally imperative or mandatory, unless the contrary intent appears.²

All told, the HOPE has the obligation to decide and resolve the protest submitted before it within the reglementary period prescribed by law and the rules. However, despite its mandatory nature, failure to observe the seven (7) calendar day period under Section 56 does not bar or relieve the HOPE from acting on and resolving the protest at hand; this is pursuant to Section 57 of the IRR which prohibits the award of contract should there remain unresolved protests on the procurement activity at hand.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director VMD

sds


¹ NPM No. 37-2012 dated 19 April 2012, *citing* Baranda vs. Gustilo, 165 SCRA 757 (1988).

² *Gonzales vs. Chavez*, 205 SCRA 816 (1992).