



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 024-2016

23 March 2016

HON. CASIMIRO A. YNARES III, M.D.
City Mayor
CITY GOVERNMENT OF ANTIPOLO (CGA)
2nd Floor, City Hall Building, M.L. Quezon St.
Brgy. San Roque, Antipolo City.

Re: Posting in the Philippine Government Electronic System (PhilGEPS)

Dear Mayor Ynares:

This refers to your letter requesting our opinion relative to the alleged violations of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

It is represented that the present CGA administration is beset with claims for payment by contractors and suppliers who have completed projects or delivered goods under contracts entered into by the City Government's previous administration. As part of its due diligence in processing these claims, the CGA discovered that the procurement of these projects and goods suffer infirmities, such as, failure to post in the PhilGEPS website, in violation of Section 21 of RA 9184 and Section 8.2.1 of the IRR of the same law. Thus, the Honorable Mayor is seeking our opinion on the following issues, thus:

1. Whether or not the CGA should authorize payment of the claims notwithstanding the lack of posting in the PhilGEPS website?
2. Whether or not the officials or employees of the present administration will incur personal liability for the release of public funds to the contractors if the CGA allows payment of the claims?

At the outset, we wish to inform the Honorable Mayor that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy opinions, respectively, on matters purely pertaining to the interpretation of the procurement law and its associated rules and regulations, which excludes actual controversies such as the conduct of the bidding process by the BAC or demands for payments by the supplier, contractor or consultants. The determination of the legality or validity of the actions and decisions of the BAC, including contracts emanating therefrom, is not within the express mandate of the GPPB. However, we find it important to discuss the relevant provisions of the procurement law, rules and regulations pertinent to a valid procurement activity. 8


It bears stressing that all procuring entities are mandated to fully use the PhilGEPS in the conduct of procurement procedures.¹ The mandatory character of PhilGEPS posting requirement is reinforced by Section 21.2.1 of the IRR which directs that, except as otherwise provided in Sections 21.2.2 and 54.2 of this IRR, and for the procurement of common-use goods and supplies, the Invitation to Bid/Request for Expression of Interest **shall** be posted continuously in the PhilGEPS website, the website of the procuring entity concerned, if available, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for seven (7) calendar days starting from the date of advertisement.²

The use of the word “shall” makes the posting of the Invitation to Bid in the PhilGEPS website mandatory, unless falling under the exceptions expressly stated in the foregoing provisions. 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.³ 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.⁴

Thus, if the posting in the PhilGEPS website is not observed, it renders the proceeding to which it relates illegal and void, or the violation of which makes the decision therein rendered invalid⁵ because Article 5 of the Civil Code of the Philippines provides that acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. RA 9184, having been enacted for the advancement of public welfare and to enhance transparency, undoubtedly contains mandatory provisions, such as the aforementioned provision.

In the case of *Gov. Luis Raymund F. Villafuerte, Jr., and the Province of Camarines Sur v. Hon. Jesse M. Robredo*,⁶ the Supreme Court, in discussing the posting requirements provided under RA 9184, had the occasion to rule that:

[T]he Constitution strongly summoned the State to adopt and implement a policy of full disclosure of all transactions involving public interest and provide the people with the right to access public information.⁷ ... R.A. No. 9184 established a system of transparency in the procurement process and in the implementation of procurement contracts in government agencies.⁸ It is the public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of the law and its implementing rules and regulations, and that all these contracts are performed strictly according to specifications.⁹

Accordingly, all procuring entities are mandated to fully use the PhilGEPS in the conduct of their procurement procedures, non-observance of which renders the proceeding to which it relates void, or the violation of which makes the decision therein rendered invalid. 

¹ Section 2 of E.O. 662 signed by President Gloria Macapagal-Arroyo on 20 September 2007.

² Section 21.2.1(b)

³ NPM 37-2012 dated 19 April 2012, citing *Baranda vs. Gustilo*, 165 SCRA 757 (1988).

⁴ *Gonzales vs. Chavez*, 205 SCRA 816 (1992).

⁵ NPM No. 170-2012 dated 28 December 2012 and NPM No. 026-2005 dated 25 April 2005.

⁶ G.R. No. 195390, December 10, 2014.

⁷ Article II, Section 28, and Article III, Section 7 of the 1987 Constitution.

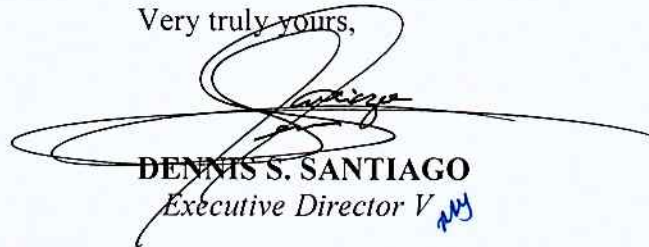
⁸ Section 3(a)

⁹ Section 3(e)

Based on the foregoing, notwithstanding violations of the procurement laws and its IRR, we wish to reiterate that the GPPB or its TSO is not in the position to give opinion on whether CGA should authorize payment of the claims before it, or whether its officials and employees will incur personal liability in case of payments of such claims, since these concerns would involve issues not within our jurisdiction.

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 V *MS*

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