



Department of Budget and Management  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**

**NPM No. 37-2012**

19 April 2012

**MR. SAMMY A. SALE**  
*Chairman, Bids and Awards Committee*  
**PROVINCIAL GOVERNMENT OF BILIRAN**  
Province of Biliran

**Re: Posting of Notice of Award and Notice to Proceed in the PhilGEPS Website**

Dear Sir:

We refer to your letter dated 3 November 2011, which was endorsed to us by Executive Director Rosa Clemente of the PhilGEPS on 24 November 2011, seeking opinion on the Bids and Awards Committee's (BAC) failure to post the Notice of Award and Notice to Proceed in the PhilGEPS website.

Pursuant to Section 37.1.6 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 (RA 9184), "the BAC, through the Secretariat, shall post, within three (3) calendar days from its issuance, the Notice of Award in the PhilGEPS, the website of the procuring entity, if any, and any conspicuous place in the premises of the procuring entity."

Similarly, Section 37.4.2 of the IRR provides that "the procuring entity, through the BAC Secretariat, **shall** post a copy of the Notice to Proceed and the approved contract in the PhilGEPS or the website of the procuring entity, if any, within fifteen (15) calendar days from the issuance of the Notice to Proceed."

The word "shall" means ought to, must, obligation used to express a command or exhortation used in laws, regulations or directives to express what is mandatory.<sup>1</sup> In common or ordinary parlance, 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.<sup>2</sup>

From the foregoing provisions, the use of the word "shall" makes the posting of the Notice of Award, Notice to Proceed, and the approved contract in the PhilGEPS website, the website of the procuring entity, if any, and any conspicuous place in the

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<sup>1</sup> See *Baranda v. Gustilo*, 165 SCRA 757 (1988)

<sup>2</sup> See *Gonzales v. Chavez*, 205 SCRA 816 (1992)

premises of the procuring entity mandatory. Exception comes only in the posting at the procuring entity's website, when the procuring entity does not have its own website.

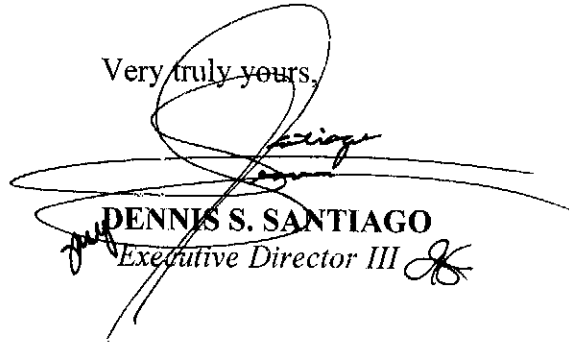
Failure to comply with the mandatory posting requirements would result to the invalidity and illegality of the procurement activities and the resulting procurement contract. This is in consonance with Article 5 of the Civil Code of the Philippines, which states that, "[a]cts executed against the provisions of mandatory or prohibitory laws shall be void except when the law itself authorizes their validity."

For these reasons, Section 37.4.2 of the IRR, being mandatory in character, should be complied with according to its letter and intent. Non-compliance with the posting requirements is a procedural failure. Thus, to proceed with the procurement under these prevailing circumstances, the procuring entity will have to deal with and operate under a void contract acquired in violation of an express provision of law.

We hope to have provided sufficient advice on the matters raised for clarification. Note that this opinion is being rendered on the basis of the facts and particular circumstances as presented.

Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director III*

CC:

**HON. GOV. GERARDO J. ESPINA, JR.**  
**GOVERNOR, PROVINCE OF BILIRAN**

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