

**NPM No. 04-2009**

13 January 2009

**MS. ZENaida V. DELA CRUZ**  
*Chairperson, Bids and Awards Committee*  
MUNICIPALITY OF SAN JOSE  
PROVINCE OF OCCIDENTAL MINDORO

**Re : Posting Requirement in the Procuring Entity's Website**

Dear Ms. Dela Cruz:

We respond to your letter dated 26 September 2008 requesting for clarification on the following queries relative to the procurement of the Municipality of San Jose of four (4) units of Multi-Cab Vehicles, to wit:

- a) Whether the posting made in three (3) conspicuous places in the municipality on 30 June and 18 July 2008 satisfies the requirement of the law even if the Instructions to Bidders (ITB) was not posted electronically considering that the municipality does not have its own website?
- b) Is there a need to re-advertise the Invitation to Apply for Eligibility and to Bid (IAEB) by electronic means? How?

Pertinent to the above request for clarification are Sections 21.2.1, 21.2.3 and 21.3.4 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184) and which are quoted herein as follows:

**Section 21.2.1**

Except as otherwise provided in Sections 21.2.3 and 21.2.4 of this IRR-A and for the procurement of common-use goods and supplies, the Invitation to Apply for Eligibility and to Bid shall be:

- a) Advertised at least once in one (1) newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement;
- b) **Posted continuously in the website of the procuring entity concerned, if available**, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, and the **G-EPS** for seven (7) calendar days starting on date of advertisement, if applicable; and

- c) **Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned for seven (7) calendar days, if applicable, as certified by the head of the BAC Secretariat of the procuring entity concerned. (Emphasis supplied.)**

### **Section 21.2.3**

For contracts to be bid with an ABC costing two million pesos (P2,000,000.00) and below for the procurement of goods, and five million pesos (P5,000,000.00) and below for the procurement of infrastructure projects, the **Invitation to Apply for Eligibility and to Bid shall be posted at least in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, the G-EPS, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above.** For projects/contracts for consulting services with an ABC costing one million pesos (P1,000,000.00) and below and/or those whose duration is four (4) months or less, **the Invitation to Apply for Eligibility and to Bid shall be posted at least in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, the G-EPS, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. (Emphasis supplied)**

### **Section 21.2.4**

For alternative methods of procurement as provided for in Rule XVI of this IRR-A, advertisement in a newspaper as required in this Section may be dispensed with: *Provided, however,* That **posting shall be made in the website of the procuring entity concerned, if available, the G-EPS, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. (Emphasis supplied)**

It is clear from the foregoing that posting of the IAEB at the Philippine Government Electronic Procurement System (PhilGEPS) is mandatory whether the procurement is being conducted by way of competitive bidding or through any of the alternative methods allowed under Article XVI of the IRR-A of R.A. 9184. Additionally, posting at PhilGEPS is not dependent on the value of the contract/project being procured or on the procuring entity's communication and technology capabilities. The same rule applies insofar as posting at any conspicuous place reserved for procurement activities in the premises of the procuring entity is concerned. Hence, even if the procuring entity does not have its own website, posting at the PhilGEPS and in conspicuous place in the premises is still mandatory.

In the same vein, posting at the procuring entity's website and/or the website of its service provider is mandatory. Exception comes in only when the procuring entity does not

yet have its own website. The same rule applies insofar as posting in the website of the procuring entity's service provider is concerned. Hence, procuring entities are strongly encouraged to secure their own website or at least a service provider, in compliance with existing laws on the matter.

Anent the above, it is clear that posting of the IAEB in three (3) conspicuous places is not sufficient whether procurement is done thru public bidding or via any of the alternative methods of procurement. To reiterate, posting shall be made in the website of the procuring entity concerned, if available, the PhilGEPS, and at conspicuous places in the premises of the procuring entity concerned.

In the absence or non-availability of the procuring entity's own website, the procuring entity may resort to any of the following:

- a) Call the PhilGEPS division at (02) 900-5231 to 39, and ask for assistance for posting of their bid opportunity;
- b) Fax a copy of the procuring entity's IAEB and request PhilGEPS to post said IAEB in their behalf;
- c) Go to internet shops or cafes to post the IAEB at the PhilGEPS;
- d) Ask their central office to post the IAEB in their behalf;
- e) Arrange to use the facilities of other LGUs or national government offices, such as the DBM Regional Office.

In addition to the mandatory postings enunciated above, we wish to inform you that under the Procurement Manual for Local Government Units-Volume II<sup>1</sup>, Local Government Units (LGUs) may still continue the old practice under the Local Government Code of posting the IAEB in at least three (3) publicly accessible and conspicuous places and sending by mail or otherwise to prospective bidders in the locality and nearby areas.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
**RUBY U. ALVAREZ**  
*Executive Director III*

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<sup>1</sup> Procurement Manual for Local Government Units approved and adopted by the GPPB, through Resolution No. 30-2007, on 29 November 2007 and took effect on 1 February 2008.



Ms. Finalize! See file.

# TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

1/12/09

**NPM No. \_\_-2009**

5 January 2009

**ZENAIDA V. DELA CRUZ**  
*Chairperson, Bids and Awards Committee*  
MUNICIPALITY OF SAN JOSE  
PROVINCE OF OCCIDENTAL MINDORO

**Re : Posting Requirement in the Procuring Entity's Website**

Dear Ms. Dela Cruz:

We respond to your letter dated 26 September 2008 requesting for clarification on the following queries relative to the procurement of the Municipality of San Jose of four (4) units of Multi-Cab Vehicles, to wit:

- a) Is the advertisement made in three (3) conspicuous places in the municipality on 30 June and 18 July 2008 satisfy the requirement of the law for the Bids and Awards Committee (BAC) to recommend other alternative mode of procurement even if the Instructions to Bidders (ITB) were not posted electronically considering that the municipality does not have its own website?
- b) Is there a need to re-advertise the Invitation to Apply for Eligibility and to Bid (IAEB) by electronic means? If yes, how considering the municipality does not have its own website?

In order to properly guide us with the above-mentioned clarifications, let us all consider Section 21.2.1 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184) and it read as follows:

Except as otherwise provided in Sections 21.2.3 and 21.2.4 of this IRR-A and for the procurement of common-use goods and supplies, the Invitation to Apply for Eligibility and to Bid shall be:

- a) Advertised at least **once in one (1) newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement;**
- b) Posted continuously in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, and the **G-EPS for seven (7) calendar days starting on date of advertisement, if applicable; and**

- c) Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned for **seven (7) calendar days, if applicable**, as certified by the head of the BAC Secretariat of the procuring entity concerned.

Section 21.2.3 is also clear on the posting requirement, to wit:

**Section 21.2.3.** For contracts to be bid with an ABC costing two million pesos (P2,000,000.00) and below for the procurement of goods, and five million pesos (P5,000,000.00) and below for the procurement of infrastructure projects, the **Invitation to Apply for Eligibility and to Bid shall be posted at least in** the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, ~~the G-EPS~~, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. For projects/contracts for consulting services with an ABC costing one million pesos (P1,000,000.00) and below and/or those whose duration is four (4) months or less, **the Invitation to Apply for Eligibility and to Bid shall be posted at least in** the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, ~~the G-EPS~~, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. (Emphasis supplied)

Section 21.2.4 is likewise emphatic on the posting requirement in the case of alternative methods of procurement, to wit:

**Section 21.2.4.** For alternative methods of procurement as provided for in Rule XVI of this IRR-A, advertisement in a newspaper as required in this Section may be dispensed with: *Provided, however, That posting shall be made in* the website of the procuring entity concerned, if available, the ~~G-EPS~~, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. (Emphasis supplied)

It is clear from the above-mentioned wordings that posting of the IAEB at the PhilGEPS is mandatory whether the procurement is being conducted by way of competitive bidding or through any of the alternative methods allowed under Article XVI of the IRR-A of R.A. 9184. Additionally, it must be noted that posting at the Philippine Government Electronic Procurement System (PhilGEPS) is not dependent on the value of the contract/project being procured or on the procuring entity's communication and technology capabilities.

On the other hand, posting at the procuring entity's website is not mandatory. It is only when the procuring entity has its own website that posting of the IAEB becomes compulsory.

Hence, regardless of the amount of the Approved Budget for the Contract (ABC) or mode of procurement or non-availability of the procuring entity's website, posting of the IAEB at the PhilGEPS, conspicuous places and at the procuring entity's own website is mandatory, except when the procuring entity has no available website yet.

From the foregoing, posting of the IAEB in three (3) conspicuous places is not sufficient. In case of alternative methods of procurement, posting shall be made in the website of the procuring entity concerned, if available, the PhilGEPS, and at conspicuous places in the premises of the procuring entity concerned.

It may be stressed, however, that, procuring entities may resort to alternative methods in highly exceptional cases, provided there is a prior recommendation from the BAC and approval from the head of the procuring entity (HOPE); provided further, that the conditions under Sections 49-54 of R. A. 9184 and its IRR-A are complied with.<sup>1</sup>

In the absence of the capability of the procuring entity to post at their own website, probably of the non-availability of such, procuring entities may do either of the following:

- a) Call the PhilGEPS division and ask for some assistance from among its personnel at contact numbers (02) 900-5231 to 39 in order that the bid opportunity will be posted;
- b) Fax a copy of the procuring entity's IAEB and request PhilGEPS to post said IAEB in their behalf;
- c) Go to internet shops or cafes to post the IAEB at the PhilGEPS; or
- d) Ask their central office to post the IAEB in their behalf.

In addition, <sup>to the relevant bidding requirement</sup> we wish to inform you that under the Procurement Manual for Local Government Units<sup>2</sup>, Volume II thereof, Local Government Units (LGUs) may still continue its old practice under the Local Government Code of posting the IAEB in at least three (3) publicly accessible and conspicuous places and sending by mail or otherwise to prospective bidders in the locality and nearby areas. ?

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

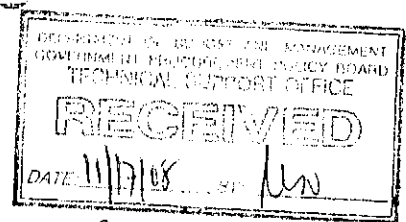
**RUBY U. ALVAREZ**  
*Executive Director III*

<sup>1</sup> Sections 48.1 and 48.2, IRR-A, R. A. 9184.

<sup>2</sup> Procurement Manual for Local Government Units approved and adopted by the GPPB, through Resolution No. 30-2007, on 29 November 2007 and it became effective on 1 February 2008.



Republic of the Philippines  
 Province of Occidental Mindoro  
 Municipality of San Jose  
 0000000



**BIDS & AWARDS COMMITTEE**

*Handwritten signature and notes:*  
 Pls. review on discrepancy  
 11/28/08

26 September 2008

**GOVERNMENT PROCUREMENT POLICY BOARD**

Technical Services Division  
 Unit 2506, Raffles Corporate Center,  
 F. Ortigas Jr. Road, Ortigas Center,  
 Pasig City 1106

Dear Sir/Madam:

Greetings!

*Handwritten notes:*  
 19157  
 KT

*Handwritten notes:*  
 Ennie,  
 Pls. handle. Sign in  
 my behalf.  
 11/28/08

This pertains to the intended procurement by this municipality of (4) units of Multi-Cab Vehicles. The facts of which in chronological order are as follows:

- 1.) On July 16, 2008 – In a BAC meeting purposely held for the opening of bids (if any was received), the head of the Secretariat reported that on June 30, 2008, the Invitation to Bid for the above procurement was posted on the GPPB Website and on three (3) conspicuous places in the municipality, yet not even a single bidder responded thereto. Thus, banking on the report of the Secretariat, the BAC declared a failure of bidding, and therewith directed the Secretariat to advertise/post anew the invitation to Bid at the GPPB Website and on three (3) conspicuous places in the municipality.
- 2.) On August 11, 2008, another BAC meeting was held purposely to determine the outcome of the Invitation to Bid posted and to open bids (if any was received in response thereto). No bidder ever responded to the said invitation.
- 3.) On September 17, it has come to the knowledge of the BAC Chair as reported by the BAC Secretary that both posting of Invitation to Bid that should have been made electronically thru the GPPB website never were effected since the LGU (Procuring Entity) does not have its own website which is a requirement for posting with the GPPB.

At this instance, the BAC is not quite sure on whether or not it can declare the bidding to have failed for the second time and therefore cannot recommend any alternative mode of procurement until confident enough to have satisfied the requirement of law. Thus we are requesting for your expert professional opinion as the BAC is now in quandary as it can not decide on what action to take; hence this following query:


*Handwritten notes:*  
 Bryan,  
 Pls. draft reply.  
 I've checked with GEPs. It would appear per the attached IAEs of the Mun. of San Jose posted at the GEPs last 11/15/08 that, even if it's true that they don't have a website, they were still able to make a posting with the GEPs.  
 11/28/08

- a. Is the advertisement made in the three (3) conspicuous places in the Municipality on June 30 and July 18, 2008 satisfy the requirement of the law for the BAC to recommend other alternative mode of procurement even if the ITB were not posted electronically given the above mentioned reason?
- b. Is there a need to re-advertise our invitation to bid by electronic means? But how? The municipality does not have its own website.

Looking forward to hear from you the soonest your expert opinion, comment, or ruling on this matter.

Very truly yours,

**THE BIDS AND AWARDS COMMITTEE:**



**ZENAIDA V. DELA CRUZ**  
Chairperson

**EMMANUEL P. AGUILAR**  
Member



**LUCENA C. ANCHETA**  
Member




**NOEL N. GUERRERO**  
Member



**CARLOS L. BAUTISTA**  
Vice Chairman



**LILIA T. DYECHO**  
Member



**PABLO I. ALVARO**  
Member