

NPM No. 55-2015

9 October 2015

ATTY. MA. VICTORIA CONSING-MAGCASE
Chairperson, Bids and Awards Committee
PHILIPPINE INTERNATIONAL TRADING CORPORATION (PITC)
NDC Bldg. 116 Tordesillas Street, Salcedo Village,
112 Makati City.

Re : Mode of Service in Filing Motions for Reconsideration

Dear Atty. Consing - Magcase:

This refers to your letter dated 14 September 2015, requesting our guidance on the applicability of the filing of Motion for Reconsideration (MR) through registered mail on Section 55.1 of the Implementing Rules and Regulations (IRR) of the Republic Act (RA) No. 9184, which states that:

Section 55.1 Decisions of the BAC at any stage of the procurement process may be questioned by filing a request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification...

As represented, PITC received an MR, sent through registered mail, beyond the 3-day reglementary period as provided for under Section 55.1 of the IRR of RA 9184. The movant argued that the said IRR does not specify the acceptable modes of service; therefore, it does not bar the bidders from filing an MR by registered mail. Considering that the postal office received the MR on the third day of the prescriptive period, the movant claimed that its MR was timely filed despite the date of receipt by the Bids and Awards Committee, which was beyond the prescriptive period. Further, it also contended that the Rules of Court, which provides for a registered mail as an acceptable mode of service, applies in suppletory character on matters being resolved by the BAC.

Supreme Court Rules of Procedures; Suppletory Application

At the outset, we wish to note that the Supreme Court in several cases ruled that “the provisions of the Rules of Court may be applied suppletorily to the rules of procedure of administrative bodies exercising quasi-judicial powers, unless otherwise provided by law or the rules of procedure of the administrative agency concerned. The Rules of Court, which are meant to secure to every litigant the adjective phase of due process of law, may be applied to proceedings before an administrative body with quasi-judicial powers in the absence of different and valid statutory or administrative provisions prescribing the ground rules for the investigation, hearing and adjudication of cases before it.”¹

¹ *Augusto R. Samalio v. Court of Appeals, Civil Service Commission, Department of Justice and Bureau of Immigration*, G.R. No. 140079, March 31, 2005, citing *Generoso Villanueva Transportation Co., Inc. v. Moya, et al.*, 149 Phil. 213 (1971).

Applying the foregoing jurisprudence, since the protest mechanism embodied in Section 55 of the IRR of RA 9184 is an exercise of quasi-judicial power by a procuring entity, as an administrative body; the Rules of Court shall apply suppletorily in the conduct of its proceedings.

Notably, Section 55 of the same IRR does not provide for rules on the specific mode of service for the filing of a Motion for Reconsideration. Hence, absent any statutory and administrative provisions prescribing the ground rules on the mode of service to be adopted by the movant, the Rules of Court applies suppletorily.

Mailbox Rule

Under Section 3,² Rule 13 of the Rules of Court, pleadings may be filed in court either personally or by registered mail. In the first case, the date of filing is the date of receipt; while in the second case, the date of mailing is the date of receipt.³ Thus, if the movant filed its MR by registered mail within the prescribed 3-day period under Section 55 of the IRR of RA 9184, such filing may be given due course.

Timely Redress of Grievances

On the other hand, although the filing of MR through registered mail within the prescriptive period shall be considered as seasonably filed, this may prejudice the movant in case the MR is belatedly received by the BAC for proper disposition since RA 9184 and its IRR mandate the BAC to observe a strict mandatory timeline in the conduct of every stage of the procurement process. It bears stressing that Section 38 of the IRR of RA 9184 provides for the period of action on procurement activities, which states that: “[t]he procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period determined by the procuring entity concerned...”⁴ The maximum periods and earliest possible time for action on specific procurement activities are provided for in Annex “C” of the IRR.⁵

Additionally, Section 57 of the IRR of RA 9184 states that: “[i]n no case shall any protest taken from any decision treated in this Rule stay or delay the bidding process: Provided, however, that protests must first be resolved before any award is made.” Thus, if the MR filed through registered mail is belatedly received by the BAC, and an award has already been made in favor of the winning bidder, such situation may render the filing of the MR futile and fruitless, thereby bringing about the possibility of a protracted adversarial proceedings that could have been prevented if the MR was filed within the three (3) day period identified under the IRR of RA 9184.

§

² Sec. 3. Manner of filing. – The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail. In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case.

³ *Heirs of Numeriano Miranda, Sr. vs. Pablo R. Miranda*, G.R. No. 179638, July 8, 2013.

⁴ Section 38.1 of the IRR of RA 9184.

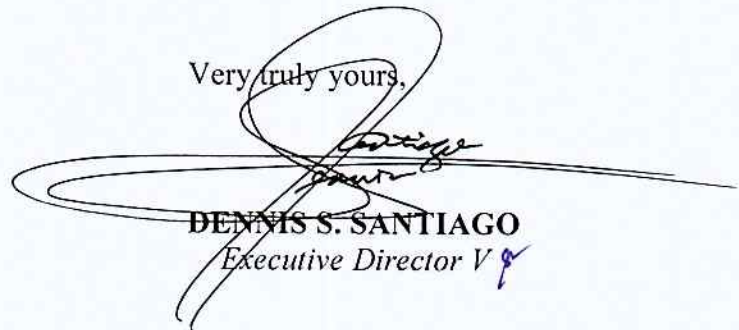
⁵ Section 38.2 of the IRR of RA 9184.

Summary

In view of the foregoing, we wish to reiterate that the filing of Motion for Reconsideration through registered mail within the 3-day reglementary period shall be considered as seasonably filed, however, this may prejudice the movant in the event the MR is belatedly received by the BAC, especially if the contract has already been awarded, since RA 9184 and its IRR mandate the BAC to observe a strict mandatory timeline in the conduct of every stage of the procurement process.

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

//sdJR