

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

NPM No. 70-2012

7 June 2012

HON. JOSE G. ARDALES
Municipal Mayor
MUNICIPALITY OF VICTORIA
Province of Northern Samar

Re: Request for Exemption from the Requirement of Posting in the PhilGEPS

Dear Mayor Ardales:

We respond to your letter dated 23 May 2012 requesting the Government Procurement Policy Board (GPPB) to exempt the Municipality of Victoria, Northern Samar, from the posting requirement in the Philippine Government Electronic Procurement System (PhilGEPS) website as provided under Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

It is represented that the Municipality of Victoria conducted a public bidding for the improvement of the Victoria Farm to Market Road (Project) under Department of Agriculture's Infrastructure for Rural Reproductivity Enhancement Sector (DA-InFRES) Project Extension. It is also represented that although the Municipality of Victoria has been strictly observing the usual process of public bidding, it was not able to comply with the posting requirement in the PhilGEPS website for the Project because it was not able to retrieve the PhilGEPS username and password used by its previous administration. It is likewise represented that all the attempts to communicate by electronic mail and written correspondences made with the PhilGEPS failed. Hence, the Municipality decided to post their Invitation to Bid in a newspaper, without posting it in the PhilGEPS website. It is further represented that when the Municipality submitted the Bid Evaluation Report (BER), the DA-InFRES Office Region 8 did not concur with the same due to the lack of posting in the PhilGEPS website. It is in this context that you are requesting the GPPB for an exemption from the posting requirement in the PhilGEPS website.

At the outset, we wish to inform you that it is beyond the power of the GPPB to grant exemptions from RA 9184 and its IRR as it does not have the power to legislate nor determine the coverage of the law. At most, the GPPB may only render contemporaneous interpretations and constructions of the provisions of the law pursuant to its quasi-legislative fiat, and issue rules and regulations pursuant to its rule-making power.¹

Please be advised that all procuring entities are mandated to fully use the PhilGEPS in the conduct of procurement procedures. In this connection, all procuring entities *shall* register with the PhilGEPS and shall undertake measures to ensure their access to an on-line network to

¹ NPM 08-2012 dated 6 January 2012.

facilitate the open, speedy and efficient on-line transmission, conveyance and use of electronic data messages or electronic documents.²

The mandatory character of PhilGEPS posting requirement is further emphasized in 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.

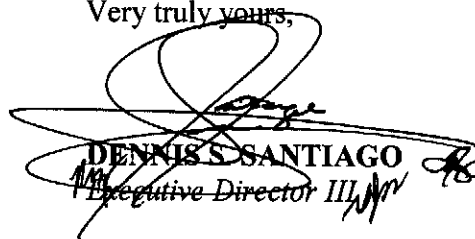
The use of the word “shall” makes the registration and the posting of the Invitation to Bid in the PhilGEPS website mandatory, unless falling under the exceptions expressly stated in the foregoing provisions. The word “shall” means ought to, must, obligation used to express a command or exhortation used in laws, regulations or directives to express what is mandatory.³ 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.⁴

The PhilGEPS is tasked to accommodate the concerns of procuring entities in the use of the PhilGEPS website, and may easily be reached for assistance at telephone number 5849619 local 801 to 814, or email at philgepsbuyer@gmail.com.

Based on the foregoing, we regret to inform you that the GPPB or this office cannot grant your request for exemption from the required posting at the PhilGEPS website.

We hope that our advice provided sufficient guidance on the matter. Please 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

Copy furnished:

MS. ROSA MARIA M. CLEMENTE

Executive Director III

PhilGEPS

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² Section 8, IRR of RA 9184.

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

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