



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

NPM No. 94-2014

29 October 2014

HON. RAFAEL E. SEGUIS
Undersecretary for Administration
DEPARTMENT OF FOREIGN AFFAIRS (DFA)
2330 Roxas Blvd., Pasay City

Re: Posting Requirements of Alternative Methods of Procurement

Dear Undersecretary Seguis:

This refers to the Honorable Undersecretary's letter dated 19 February 2014, seeking guidance on whether requests for proposals, copies of awarded contracts and notices of award in favor of highly technical and confidential consultants for projects which are highly confidential should be posted at the Philippine Government Electronic Procurement System (PhilGEPS) and the DFA Websites.

Advertisement and/or Posting of Procurement Opportunities

Adhering to the basic principle of transparency and competition, Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) ensure fair and equal opportunity to all eligible persons and entities that may be interested to participate in government procurement. Alongside this position the law requires the advertising and/or posting of procurement opportunities on prescribed media in accordance with Section 21.2.1 of the revised IRR of RA 9184. Thus, in case of competitive bidding, the publication requirement consists in the advertisement of the Invitation to Bid or Request for Expression of interest in a newspaper of general nationwide circulation¹ and the posting of the same with the PhilGEPS website, the website of the procuring entity concerned, if available, and at any conspicuous place in the premises of the procuring entity.

In the case of procurement through Alternative Methods, the advertisement and posting requirements prescribed under Section 21.2.1 of the same Rules may be dispensed with pursuant to Section 54.2 of the IRR of RA 9184; except in the following modalities: (1) Shopping under Section 52.1(b); (2) Negotiated Procurement under Sections 53.1 (two-failed biddings); 53.9 (small value procurement); and 53.11 (NGO Participation).

Accordingly, applying the principle of "*expression unius est exclusio alterius*", the express enumeration of the aforementioned alternative modalities necessarily gives the Procuring Entity (PE) the option to dispense with the requirement of advertisement and/or

¹ Where Approved Budget for the Contract (ABC) is above Two Million Pesos (Php2,000,000.00), Five Million Pesos (Php5,000,000.00) and One Million Pesos (Php1,000,000.00) for procurement of Goods, Infrastructure Projects and Consulting Services, respectively, in accordance with Section 21.2.2 of the IRR of RA 9184.

posting of opportunities in the engagement of highly technical or primarily confidential consultants from the requirement of advertisement and/or posting of opportunities pursuant to Section 21.2.1 of the IRR of RA 9184.

Posting of Notice of Award and Contracts

Although the procurement opportunity for the engagement of highly technical or primarily confidential consultants is not required to be advertised or posted, the notice of award, on the other hand, is mandated to be posted in accordance with Section 54.3 of the IRR of RA 9184, thus:

In all instances of alternative methods of procurement, the BAC, through the Secretariat, shall post, for information purposes, the notice of award in the PhilGEPS website, the website of the procuring entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the procuring entity. (Emphasis supplied.)

From the foregoing provision, the use of the word “shall” makes the posting of the Notice of Award in the PhilGEPS website, website of the procuring entity, if any, and conspicuous place in the 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 website².

Posting of Contracts

Section 2.2 of the IRR of Executive Order (EO) No. 662³ requires the posting of electronic copies of contracts in the PhilGEPS, to wit:

2.2 All Procuring Entities are likewise mandated, through its BAC Secretariat, to attach an electronic copy of any proposed and concluded public sector contracts, regardless of amount involved, in the PhilGEPS.

Non-compliance with the foregoing posting obligations shall render the accountable officials liable for dereliction of duty and conduct grossly prejudicial to the best interest of the service, without prejudice to other charges, whether administrative, civil or criminal that may be filed under appropriate laws and regulations⁴.

Summary

In view of all the foregoing, it is the opinion of this Office that:

1. Advertisement and/or posting of procurement opportunity for the engagement of highly technical or primarily confidential consultants may be dispensed with pursuant to Section 54.2 of the IRR of RA 9184;
2. Posting of the Notice of Award for highly technical or primarily confidential consultants is mandatory, under Section 54.3 of the IRR of RA 9184.

² NPM No. 37-2012 dated 19 April 2012.

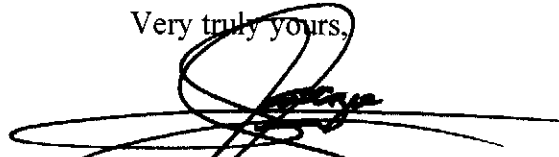
³ Enhancing Transparency Measures under Republic Act No. 9184 and Creating the Procurement Transparency Board.

⁴ Section 2.3, IRR of EO 662.

3. Posting of electronic copy of contracts in the PhilGEPS is likewise mandatory pursuant to Section 2.2 of the IRR of EO 662.

We hope that the opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situation 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

skip 



OFFICE OF THE UNDERSECRETARY FOR ADMINISTRATION

4165

19 February 2014

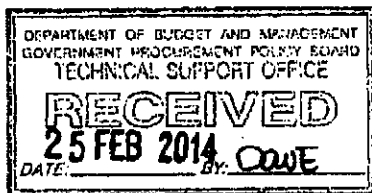
Dear Executive Director Santiago,

Further to your meeting with the representatives of the Department on 05 February 2014, may I refer to your Office for guidance on whether requests for proposals, copies of awarded contracts and notices of award in favor of highly technical and confidential consultants for projects which are highly confidential, should be posted on the Philippine Government Electronic Procurement System (PhilGEPS) and the DFA Website as required in Section 54.3 of the Revised IRR, to wit:

54.3. In all instances of alternative methods of procurement, the BAC, through the Secretariat, shall post, for information purposes, the notice of award in the PhilGEPS website, the website of the procuring entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the procuring entity.

The Department understands that the provision is intended to promote transparency in Government procurement. However, the posting of information pertaining to the procurement of the highly technical and confidential consultants will defeat the very purpose of the mode of its procurement. Also, the posting of documents related to the procurement may endanger the security and integrity of the engagement and can be prejudicial to the interest of the Government.

In this regard, the Department would appreciate receiving the appropriate guidance from the GPPB-TSO on the matter.



Very truly yours,

For the Secretary of Foreign Affairs:

RAFAEL E. SEGUIS
Undersecretary

ATTY. DENNIS S. SANTIAGO

Executive Director V

Government Procurement Policy Board – Technical Support Office
2506, Raffles Corporate Tower, F. Ortigas Jr. Road
Ortigas Center, Pasig City 1605