



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

NPM No. 101-2012

13 August 2012

MR. ELADIO D. PERFECTO
 G.H. Del Pilar corner M.L. Quezon St.
 Catarman, Northern Samar

REGISTRY RECEIPT

Post Office _____

Letter/Package No. _____

Re: Authority of the Sangguniang Panlalawigan to impose additional requirements for infrastructure projects undertaken by the National Government.

Dear Mr. Perfecto:

We respond to your letter dated 26 March 2012, requesting for opinion whether a Local Government Unit (LGU), through its Sangguniang Panlalawigan, may impose an additional requirement as part of the technical documents to be submitted by the contractor in a public bidding for infrastructure projects undertaken by the National Government, through the Department of Public Works and Highways (DPWH).

As represented, the Sangguniang Panlalawigan of the Province of Northern Samar enacted SP Ordinance No. 18 series of 2011 requiring all bidders to submit a Certification issued by the Northern Samar Provincial Mining Regulatory Board (NSPMRB) to the effect that the minerals to be utilized in such projects or constructions shall come from a legal source or from a source accredited by the PMRB regardless of origin. SP Ordinance No. 18 also provides that *this Certification shall form part of the technical documents to be submitted by the bidder in accordance with Section 25.2(b) of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.*

Hence, the following issues have been submitted: (1) whether the Sangguniang Panlalawigan can impose an additional requirement for bidders before the latter can participate in public bidding; (2) granting that it has such power, may the Sangguniang Panlalawigan validly impose additional requirements for bidding even if the procuring entity is the National Government; and, (3) whether SP Ordinance No. 18 is a valid enactment.

At the outset, we wish to emphasize that Local Government Units (LGUs), like the Province of Northern Samar, exercise police power through their respective legislative bodies; in this case, the Sangguniang Panlalawigan or the Provincial Council. Specifically, the Sanggunian can enact ordinances, approve resolutions and appropriate funds for the general welfare of the province and its inhabitants under Section 468 of the Local Government Code¹, as amended.² Hence, even though it is a National Government project, the LGU where the project is located may nevertheless set rules through ordinances, by virtue of its valid exercise of police power, for the general welfare of the province.

¹ RA 7160, approved on 10 October 1991.

² Social Justice Society, et. al. vs. Hon. Lito Atienza, Jr., G.R. No. 156052, February 13, 2008.

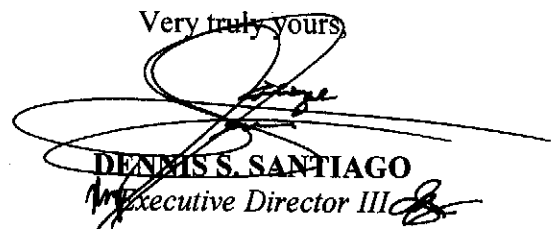
However, for an ordinance to be valid, it must conform with the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy and (6) must not be unreasonable.³

In line with the foregoing, we express our view that the ordinance is inconsistent with the provisions of Republic Act (RA) 9184, otherwise known as the Government Procurement Reform Act (GPRA), and its revised Implementing Rules and Regulations (IRR). We note that the issuance of SP Ordinance No. 18 in accordance with Section 25.2(b) of the IRR is not the same as the submission of additional permits or licenses upon post-qualification, as permitted under Section 34.2 of the IRR. Rather, it is an imposition of an additional technical document to be submitted along with mandatory eligibility requirements under Section 23.1 of the IRR. In a previous opinion⁴ on the matter, we opined that procuring entities are proscribed from requiring additional eligibility requirements apart from those provided in the IRR. The list of minimum eligibility requirements under the IRR has been streamlined or simplified, such that only those requirements enumerated in Sections 23, 24, and 25 of the IRR are necessary for purposes of determining bidder's eligibility. The rationale afforded by the GPPB is to allow greater participation, enhance competition among prospective bidders, and reduce transaction costs. If the Sangguniang Panlalawigan shall impose such additional requirement of a Certification based on Section 25.2(b), it is in effect amending the provisions of the IRR, an act beyond its jurisdictional authority and legislative power to perform.

However, as regards SP Ordinance No. 18, Series of 2011, suffice it to say that its legality and validity is best left to the sound determination and discretion of a court of competent jurisdiction upon filing of an action questioning its propriety and regularity.

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

Very truly yours,




DENNIS S. SANTIAGO
Executive Director III

Copy furnished:

BIDS AND AWARDS COMMITTEE
Province of Northern Samar
Provincial Capitol, 6400 Catarman, Northern Samar

TANGGAPAN NG SANGGUNIANG PANLALAWIGAN
Province of Northern Samar
Provincial Capitol, 6400 Catarman, Northern Samar

//LSD5 

³ *Ibid.*

⁴ NPM 21-2012, dated 16 February 2012, citing NPM 10-2010, dated 14 April 2010 and NPM 65-2009, dated 17 December 2009