

NPM No. 27-2008

19 September 2008

REYNALDO R. VILLAFUERTE*Vice-President/Head***LAND BANK OF THE PHILIPPINES**LANDBANK Plaza, 1598 M.H. Del Pilar
cor. Dr. J. Quintos Streets, Malate, 1004 Manila**Re : Posting Requirement**

Dear Sir:

We respond to your letter dated 27 August 2008 seeking for an opinion on whether the posting of the Invitation to Apply for Eligibility and to Bid (IAEB) with the Philippine Government Electronic Procurement System (PhilGEPS or G-EPS) pursuant to Section 21.2 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184) is necessary where the government agency concerned does not have sufficient information and communications technology, such as a website. As represented in your letter, you mentioned that this would lessen legal and operational risks related to financing of procurement projects of government-owned and controlled corporations (GOCCs), local government units (LGUs) and government agencies.

At the outset, it must be stressed 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 PHILGEPS is not dependent on the value of the contract/project being procured or on the procuring entity's communication and technology capabilities.

Hence, regardless of the amount of the approved budget for the contract (ABC) or non-availability of the procuring entity's website, posting of the IAEB at the PhilGEPS is mandatory. This is clear from the wordings of Section 21.2.1 (b) of IRR-A, to wit:

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:

xxx xxx xxx

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 xxx (Emphasis supplied)

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)

Likewise, we wish to stress that it is a well-established rule in statutory construction that when the law is clear and free from doubt or ambiguity, there is no room for construction or interpretation. It must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed.

In the alternative, we wish to inform you that in the absence of the capability of the procuring entity to post at their own website, 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, we wish to inform you that the mandatory posting of the IAEB at the PhilGEPS is in line with the basic principles of transparency, efficiency and competition under R.A. 9184 and its IRR-A, which ensure fair and equal opportunity to all eligible persons and entities that may be interested to participate in government procurement, generates greater trust in government undertakings, and promotes adaptation to improvements in information and communication technology.

As a final note, please be advised that the mandatory posting of the IAEB and notices of award at the PhilGEPS by the National Government Agencies, GOCCs, Government Financial Institutions (GFIs), State Universities and Colleges (SUCs) and LGUs is reiterated by Executive Order (E.O.) No. 662, series of 2007, as amended by E.O. 662-A. Said E.O. stresses that all procurement opportunities, results thereof and other related information shall be posted in the PhilGEPS. It further provides that non-compliance with 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 regulations.

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



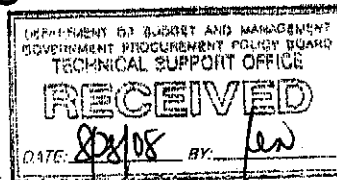
LAND BANK OF THE PHILIPPINES

Official Depository Bank of the Republic of the Philippines

Banking Legal Services Department

August 27, 2008

**GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SERVICE OFFICE**
Unit 2506 Raffles Corporate Center
Emeral Avenue, Ortigas Center
Pasig City



*Emmie,
They can always go to
an internet cafe or call PhilGEPS
Pl. handle. Sign in my behalf.
18/28/08*

Attention: **ATTY. RUBY U. ALVAREZ**
Executive Director

Dear Atty. Alvarez:

In an effort to lessen legal and operational risks related to financing of procurement projects of government-owned and controlled corporations, local government units (LGUs) and other government agencies, may we solicit your opinion on whether the posting with the Philippine Government Electronic Procurement System (PhilGEPS) of the Invitation to Apply for Eligibility and to Bid pursuant to Section 21.2 of the Implementing Rules and Regulations of Republic Act No. 9184 is necessary where the government agency concerned does not have sufficient information and communications technology capabilities such as a website.

Your usual prompt response shall be highly appreciated.

Thank you.

Very truly yours,


REYNAULD R. VILLAFUERTE
VP/Head

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