

NPM No. 029-2005

June 03, 2005

MS. LORNA D. DE LEON
Chairman
Bids and Awards Committee
Insurance Commission
Department of Finance
1071 United Nations Avenue

**Re : Compliance with the posting requirement of
procurements undertaken through the Alternative
Methods**

Dear Ms. De Leon:

This refers to your letter dated 05 May 2005, addressed to Atty. Salvador Malana III¹ of this office, which we received on 17 May 2005. In said letter, it is mentioned that our opinion in the GPPB-TSO letter dated 20 December 2004,² was not accorded weight by some of your accounting staff. This predicament, it appears, results in inconvenience and/or delays in your processes. Also, question is raised on whether or not the requirement for the posting of advertisement at the Government Electronic Procurement System (G-EPS) applies in the case of hiring of primarily confidential consultants through Negotiated Procurement under Section 53 (f) of the Implementing Rules and Regulations Part A (IRR-A) of R.A. 9184 (R.A. 9184).

It might be well to state that the GPPB-TSO has already rendered its opinion on the legal import and/or implication of the Insurance Commission's contemplated Negotiated Procurement of individual consultants under paragraph (f) of Section 53 of IRR-A.³ This renders a re-consideration of the same unnecessary because, otherwise, a re-visit of the same would only result to a repetition of our previous position. Moreover, the concern strictly involves the internal administrative and procedural policy of the Insurance Commission relative to the implementation of a given policy. In other words, this office cannot pass upon the question involving a personnel's

¹ Head, Legal and Policy Group, GPPB-TSO

² Addressed to Ms. Lenelita Magno-Mortel, Chief of Staff, Office of the Insurance Commission

³ GPPB-TSO Letter, dated 20 December 2004 anent the propriety of hiring consultants under paragraph (f), IRR-A of R.A. 9184 without need of drawing up a list of three (3) consultants.

compliance or non-compliance with laws, rules and policy guidance issued by the GPPB.

The principal issue raised is whether or not the Insurance Commission should have posted at the Government Electronic Procurement System (G-EPS) an advertisement for the hiring of consultants under paragraph (f) of Section 53 of the IRR-A.

Posting at the G-EPS Website of Procurements Conducted through Alternative Methods

Adhering to the basic principle of transparency and competition, R.A. 9184 and its IRR-A ensure fair and equal opportunity to all eligible persons and entities that may be interested to participate in government procurement. It is in this view that the law requires the advertising and/or posting of procurement opportunities on prescribed media. Thus, in case of competitive bidding, the publication requirement consists in the advertisement of the Invitation to Apply for Eligibility and to Bid (IAEB) and the posting of the same with the G-EPS at any conspicuous place, or if available, in the website of the procuring entity. On the other hand, in the case of procurement through the Alternative Methods, the IRR-A dispenses with the requirement of advertisement in a newspaper. Witness Section 21.2.4 of the IRR-A which is focal in our present discourse:

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.

A cursory reading of the foregoing provision would lead us to infer that the same applies to all cases of procurement through any of the alternative methods prescribed in Rule XVI of the IRR-A where the element of competitive bidding is attendant. Notably, the said provision refers to the advertisement and posting of the IAEB. Hence, the provision has specific application only in cases where IAEBs are necessary. Needlessly, alternative methods which are undertaken without the element of competitive bidding do not fall within the purview of this provision.

However, for purposes of transparency, in cases of Alternative Methods not requiring competition, the notices of awards including relevant information as to the identity of the awardees, the amount of the contract, a general statement of the nature and scope of work, to the extent not covered by confidentiality of information reasonable in the case, and other relevant information, should be posted at the G-EPS. Thus, Section 8.2.1 of the IRR-A of R.A. 9184 provides:

The G-EPS shall have a centralized electronic bulletin board for posting procurement opportunities, notices, awards and reasons for award. All

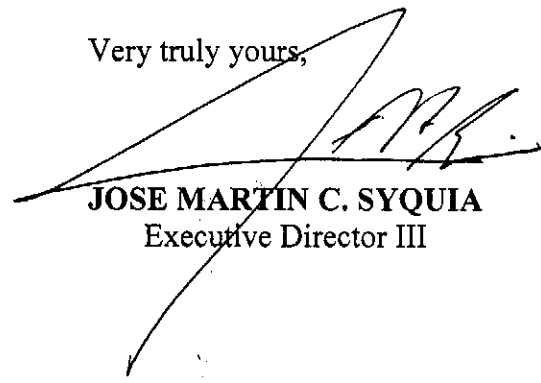


procuring entities are required to post all procurement opportunities, results of bidding and related information in the G-EPS bulletin board.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J.M.C. SYQUIA', is written over the typed name and title. The signature is stylized and somewhat cursive.

JOSE MARTIN C. SYQUIA
Executive Director III

RESPONSE SHEET FOR PHONE OPINIONS

PhO No. _____

Date Received: 5/17/15 Date Called: _____

Requesting Entity: Insurance Commission

Contact Person / Number: 5238461-70 404/1664

Issue(s) / Request(s): _____

Whether or not the requirement for the posting of advertisements in the GERS for the hiring of primarily confidential staff, in reference to Section 53 (f) of the IRR-A of RA 9184 may be dispensed with.

Response: Section 21.2.4 of the aforementioned act states that "For alternative methods of procurement as provided 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 GERS" This office is of the opinion, that the posting requirement is an indispensable part in the bidding process under RA9184. However, taking into account the confidential nature of the services to be procured, the requirement then for GERS posting of advertisements for the hiring of primarily confidential staff may be dispensed however, for purposes of transparency, it is then suggested that the bidder award or the confidential staff hired by an agency after contract award be posted at the GERS. So much so that the transparency requirement under the Act be deemed complied with.

Remarks: still needs written opinion

Assigned to: Oyetha