

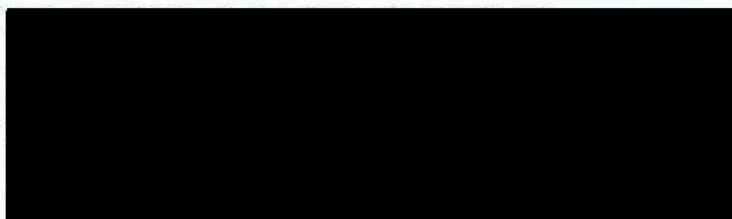


Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 96-2015

13 October 2015



Re: Deadline for Submission and Opening of Bids

Dear 

This refers to your letter requesting for legal guidance on whether the Procuring Entity (PE) may revert to its original schedule of submission and opening of bids, although it is less than the prescribed period provided in the rules, in order to fast track its procurement.

It is represented that the DBM Regional Office VIII issued a bid supplement for the change in the schedules of its procurement of a Supply and Delivery of Personal Protective Equipment. Accordingly, the Bids and Awards Committee (BAC) conducted its pre-bid conference based on the new schedule which is 27 July 2015. However, the BAC would now want to revert to its original schedule of bid submission and opening which is on 5 August 2015. However, it is aware that it can no longer do so since it would fall short of the prescribed 12 calendar day period to set the bid opening from the conduct of the pre-bid conference. Also, the BAC is aware that it may no longer issue a Supplemental/Bid Bulletin since it would be issued less than the prescribed seven (7) calendar days before the deadline for the submission and receipt of bids. Hence, this request.

As we have discussed in a previous opinion¹, Republic Act (RA) No. 9184 having been enacted for the advancement of public welfare, undoubtedly contains mandatory provisions. Failure to follow such rules generally renders the proceeding to which it relates illegal and void, or the violation of which makes the decision rendered therein invalid.

Thus, for the conduct of pre-bid conference, Section 22.2 of the IRR of RA 9184 provides:

The pre-bid conference shall be held **at least twelve (12) calendar days before the deadline for the submission and receipt of bids**. If the procuring entity determines that, by reason of the method, nature, or complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer period for the preparation of bids is

¹ NPM No. 026-2005 dated 25 April 2005

necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids.

On the other hand, Section 22.5.2. reads:

Supplemental/Bid Bulletins may be issued upon the procuring entity's initiative for purposes of clarifying or modifying any provision of the Bidding Documents **at least seven (7) calendar days before the deadline for the submission and receipt of bids.** Any modification to the Bidding Documents shall be identified as an amendment.

The word "shall" connotes command and compulsion. It is a basic legal construction that where words of command such as "shall," "must," or "ought" are employed, they are generally and ordinarily regarded as mandatory. Thus, as Section 22.2 and 22.5.1 of the IRR of RA 9184 used the word "shall", a mandatory duty is imposed, which the procuring entity ought to enforce.² Acts which are executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.³

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

(sgd.)

DEINIS S. SANTIAGO
Executive Director V

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² Mirasol v. CA, G.R. No. 128448 dated 1 February 2001.

³ Article 5, Republic Act No. 386, otherwise known as "An Act to Ordain and Institute the Civil Code of the Philippines".