

GOVERNMENT PROCUREMENT POLICY BOARD (GPPB) – TECHNICAL SUPPORT OFFICE (TSO)
 Index of Opinions (Policy and Non-Policy Matters)

Government Procurement Policy Board (GPPB) – Technical Support Office (TSO)
CALENDAR YEAR – 2003

For the Month of March

NON-POLICY MATTERS

Name of Agency	Date Received by GPPB-TSO	Date Released by GPPB- TSO	Issues/ Concerns/ Queries	Brief Conclusion of the Reply of GPPB-TSO
1. DBM Regional Office VI	02/18/03	03/07/03 (TSO NPM No. 01-2003)	<p>Re: Applicable Law for Current Procurements Prior to Issuance of the IRR of R.A. 9184:</p> <ul style="list-style-type: none"> • Whether or not government agencies may utilize R.A. 9184 in the conduct of its procurement. 	<p>Considering that the IRR of the GPRA has not yet been approved, it may not yet be fully implemented. For this reason, we believe that the procedures embodied in E.O. 40 and its IRR shall still apply in the procurement being conducted by government agencies until the IRR of the GPRA has been finally approved. Thus, pending the approval of the IRR of the GPRA, DA RFU6 may still apply the procedures embodied in E.O. 40 and its IRR in the conduct of its procurement, provided that they are not in direct conflict with the clear and expressed provisions of the GPRA.</p>

2. Bangko Sentral ng Pilipinas (BSP)	02/27/03	03/07/03 (TSO NPM No. 02-2003)	<p>Re: Status of Pending Projects and the PBAC in Light of R.A. 9184:</p> <ul style="list-style-type: none"> • Since the new law expressly repealed P.D. 1594, what happens to the projects in the pipeline, can the procurement proceeding pending the issuance of the new IRR? 	<p>Although there are self-executing provisions in the GPRA, the same cannot be fully implemented unless and until the IRR therefor has been finally approved by the President and published in accordance with the GPRA. Pending such approval, it is our opinion that BSP may still utilize the procedures embodied in E.O. 40 and its IRR in the conduct of its ongoing procurement projects, provided that they do not directly conflict with the clear and expressed provisions of the GPRA.</p>
			<ul style="list-style-type: none"> • Is the PBAC or other bidding committees ipso facto abolished in view of the repeal of P.D. 1594 and E.O. 40 and other previous laws/regulations? 	<p>Even prior to the effectivity of the GPRA, the existence of the PBAC has already been rendered obsolete by virtue of the pertinent provisions of E.O. 40 and its IRR. Section 7 of E.O. 40 clearly provides that “[E]ach agency shall establish a single Bids and Awards Committee (“BAC”) for its procurement.” Considering that the IRR of the GPRA has not yet been approved, until such approval, it is our opinion that the existing BACs of agencies should be maintained,</p>
				<p>particularly with respect to its membership, duties and functions.</p>
3. University of the Philippines – Diliman, Quezon City	02/28/03	03/10/03 (TSO NPM No.)	<p>Re: G-EPS Posting Requirement Under the GPRA:</p>	<p>In view of the foregoing, we believe that posting</p>

		03-2003)	<ul style="list-style-type: none"> Whether or not, under Republic Act No. 9184 (R.A. 9184), posting of Invitations to Bid at the Government Electronic Procurement System (G-EPS) is discretionary. 	of the Invitation to Apply for Eligibility and to Bid at the G-EPS is mandatory under R.A. 9184. Moreover, considering that Section 21 of the law, covering the posting requirement, is not a self-executing provision, it is further our opinion that the relevant provisions of E.O. 40 and its IRR should be applied in this regard, until the IRR of R.A. 9184 is effective.
4. Philippine International Convention Center (PICC)	03/14/03	03/18/03 (TSO NPM No. 04-2003)	<p>Re: Applicable Procurement Procedure Pending Approval of the IRR of R.A. 9184:</p> <ul style="list-style-type: none"> Applicability of Executive Order No. 40, series of 2001 ("E.O. 40"), and its Implementing Rules and Regulations ("IRR"), pending the approval of the IRR of Republic Act No. 9184 ("R.A. 9184"), otherwise known as the Government Procurement Reform Act. 	Although there are self-executing provisions in the GPRA, the same cannot be fully implemented unless and until the IRR therefor has been finally approved by the President and published in accordance with the GPRA. Pending such approval, it is our opinion that BSP may still utilize the procedures embodied in E.O. 40 and its IRR in the conduct of its ongoing procurement projects, provided that they do not directly conflict with the clear and expressed provisions of the GPRA.
5. National Power Corporation (NPC)	02/21/03	03/18/03 (TSO NPM No. 05-2003)	<p>Re: Additional Oil-based Fuel Requirements of NPC its IPPS and SPUG Power Barges for CY 2003</p> <ul style="list-style-type: none"> Whether or not, an Agency may waive the NFCC requirement as provided for 	Since the submission and completeness of the NFCC is imperative and vital for the prospective bidder's eligibility, it cannot be waived. However, in the interest of public service, economy and efficiency, an agency may adopt the alternative

			under the IRR of E.O. 40.	methods of procurement provided in Section 35 of the IRR of E.O. 40, whenever justified by extraordinary circumstances provided therefore.
6. Philippine Coconut Authority (PHILCOA)	02/24/03	03/20/03 (TSO NPM No. 06-2003)	Re: Advertisement Requirement under Executive Order No. 40, Series of 2001 (E.O.40), and its Implementing Rules and Regulation (IRR)	
			<ul style="list-style-type: none"> Whether or not, under current procurement laws, rules and regulations, the Pre-qualifications Bids and Awards Committee (PBAC) still exists. 	Under E.O. 40 and its IRR, PHILCOA would have to reconstitute all existing PBACs into BAC. Furthermore, it is noteworthy to inform PHILCOA that the existence of the BAC in lieu of the PBAC, has been maintained in R.A. 9184.

			<ul style="list-style-type: none"> • Whether or not, publication of the Invitation to Bid in two (2) newspapers of general circulation on three (3) different dates, constitutes substantial compliance with the requirements of Executive Order No. 40, series of 2001 (E.O. 40), and its Implementing Rules and Regulations (IRR). 	<p>Aside from the newspaper advertisement requirement for public biddings involving goods costing more than two million pesos (Php. 2,000,000.00), there is a need to post the Invitation to Apply for Eligibility and to Bid at the website of the concerned agency, if any, the EPS, and at conspicuous places in the premises of the said agency.</p> <p>Therefore, although the posting by PHILCOA of its Invitation to Bid in TODAY and MALAYA may be considered as substantially complying with the relevant provisions of E.O. 40 and its IRR, the posting requirement in the PHILCOA website, if any, and the EPS, would have to be complied with.</p>
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