

**Advisory No. 03-2022**

**FOR : ALL PROCURING ENTITIES**

**SUBJECT : AUTHORITY OF OFFICERS-IN-CHARGE OR ACTING DIRECTORS OR ACTING CHIEF EXECUTIVE OFFICERS IN PUBLIC PROCUREMENT CONTRACTS UNDER MEMORANDUM CIRCULAR NO. 09, s. 2022**

**DATE : 28 October 2022**

In anticipation of requests for clarification on the implication of Memorandum Circular (MC) No. 9, s. 2022<sup>1</sup> issued by the Office of the President which revokes Item 4<sup>2</sup> of MC No. 3, s. 2022, we are providing this Advisory to guide all procuring entities (PEs) on the authorized signatories for the contract execution of their Procurement Projects, including any related disbursement of extraordinary funds.

Prior to the foregoing, we received queries from several PEs seeking clarification on whether the designated Officer-In-Charge (OIC) as Head of Procuring Entity (HoPE) covered under MC No. 3, s. 2022 may still sign and execute all contracts and projects, programs, and activities listed in the agency's Annual Procurement Plan (APP). Thus, we promptly coordinated with the OP on the said requirement in MC No. 3, s. 2022, as the same should be addressed by the said Office.

With the latest issuance of MC No. 9, s. 2022, the following are no longer prohibited from entering into new contracts or projects or disbursing extraordinary funds:

- a. OIC of departments, offices, agencies, instrumentalities, and bureaus covered by MC No. 3, s. 2022;
- b. OIC or Acting Directors or Acting Chief Executive Officers of government-owned and controlled corporations (GOCCs), government instrumentalities with corporate powers, government corporate entities, and government financial institutions; and
- c. OIC or Acting Directors or Acting Chief Executive Officers of free port and special economic zone authorities.

In addition, the PEs are directed to strictly comply with RA No. 9184 or the "Government Procurement Reform Act," and its 2016 revised Implementing Rules and Regulations (IRR), as well as applicable budgeting, accounting, and auditing laws and issuances; and ensure judicious

<sup>1</sup>Entitled "Revoking Item 4 of Memorandum Circular No. 3 (s. 2022), which Prohibits Certain Government Agencies and Instrumentalities from Entering into New Contracts and Disbursing Extraordinary Funds" dated 25 October 2022.

<sup>2</sup>Item 4 of MC No. 3, s. 2022 states that:

4. Except for those involved in the food, transportation and energy sectors, or except when authorized by the President in meritorious cases, the following shall not enter into new contracts or projects or disburse extraordinary funds:
  - a. OICs of departments, offices, agencies, instrumentalities and bureaus covered herein;
  - b. GOCCs, government instrumentalities with corporate powers, government corporate entities, and government financial institutions, until such time that new set of appointive directors have been appointed and chief executive officers elected in accordance with their respective charters, articles of incorporation and by-laws in relation to Republic Act 10149 or the GOCC Governance Act of 2011; and
  - c. The free port and special economic zone authorities, until such time that new sets of appointive directors have been appointed and chief executive officers elected.

use of government resources and strict observance of the ethical norms of honesty, integrity, and efficiency.

Relatedly, we reiterate our previous opinion<sup>3</sup> clarifying that an OIC of an agency may be considered as the HoPE in accordance with Section 5(t) of the IRR of Republic Act (RA) No. 9184, provided that his designation does not contain specific reservations, limitations or qualifications which may run counter to the functions or authority of a HoPE.

Accordingly, the designated OICs of departments, offices, agencies, and bureaus, as well as non-Career Executive Officials occupying Career Executive Service positions in hold-over capacities, may be considered as the HoPE, but their powers and authority depend on the nature of their respective designations.

For the information and guidance of all concerned.

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<sup>3</sup> Non-Policy Matter Opinion No. 102-2014 dated 3 November 2014.