

GUIDELINES FOR LEGAL ASSISTANCE AND INDEMNIFICATION OF BIDS AND AWARDS COMMITTEE (BAC) MEMBERS AND ITS SUPPORT STAFF

1. SCOPE

These guidelines shall govern the indemnification package for public officials providing services in and for the Bids and Awards Committee (BAC) pursuant to and in accordance with Section 73 of Republic Act No. 9184 (R.A. 9184), otherwise known as "Government Procurement Reform Act" and its Implementing Rules and Regulations Part A (IRR-A).

These guidelines shall apply to all branches, agencies, departments, bureaus, offices and instrumentalities of the Government, including Government-Owned and/or Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), State Universities and Colleges (SUCs), and Local Government Units (LGUs).

2. PURPOSE

These guidelines are formulated to meet the following objectives:

- 2.1 To prescribe the rules and procedures in granting legal assistance and indemnification to the Bids and Awards Committee (BAC) members and BAC Support Staff.
- 2.2 To ensure that the mandate to insulate government procurement personnel from the unnecessary loss, damage or injury arising from the lawful exercise of their functions is implemented in accordance with the provisions of R.A. 9184.
- 2.3 To establish the legal parameters for the effective implementation of the legal assistance and indemnification provided for BAC members and BAC Support Staff.

3. DEFINITION OF TERMS

- 3.1 **BAC.** Refers to the Bids and Awards Committee as defined and established in accordance with Rule V of the Implementing Rules and Regulations Part A (IRR-A) of RA 9184.
- 3.2 **BAC members.** Refer to the regular and provisional members of the BAC determined accordance with Rule V of the IRR-A.

- 3.3 **Indemnification.** Refers to the assistance or remuneration given to the members of the BAC and/or the BAC Support Staff for any loss, damage, or injury caused to them by reason of the lawful performance of their duty.
- 3.4 **Private Legal Assistance.** Refers to the services of a private lawyer or external counsel engaged by or in behalf of the members of the BAC and/or the BAC Support Staff resulting from the filing against him of any criminal or civil action or proceeding for acts made in connection with the lawful performance of his functions.
- 3.5 **Liability insurance.** Refers to the insurance policy purchased and maintained by the procuring entity in favor of a member of the BAC and/or the BAC Support Staff against any liability asserted against or incurred by the person in any such capacity or arising out of the person’s status as such.
- 3.6 **Medical Assistance.** The remuneration given by the procuring entity for any injury or disability incurred by members of the BAC and/or the BAC Support Staff in the lawful performance of their official functions and duties. For this purpose, “injury“ means any bodily impairment arising from and in the course of procurement-related activities.
- 3.7 **BAC Support Staff.** Refers to the members of the BAC Secretariat and the Technical Working Group duly designated by the procuring entity pursuant to the provisions of Rule V of the IRR-A of R.A. 9184.

4. GENERAL CONDITIONS

4.1 Free Legal Assistance

1. The procuring entity shall, to the fullest extent permitted by these guidelines, indemnify a BAC member and/or any of the BAC Support Staff who was or is a party to a pending or completed action, suit or proceeding whether civil, criminal or administrative in nature brought against him in the performance of his official functions as BAC member or as BAC Support Staff.
2. The BAC member or BAC Support Staff concerned must have engaged the services of a private lawyer or external counsel.
3. The BAC member or BAC Support Staff must have not been adjudged as guilty of gross negligence, misconduct, or grave abuse of discretion.
4. The free legal assistance shall cover actual cost of suit and attorney’s fees. The attorney representing the BAC member or BAC Support

Staff shall be entitled to a maximum of Five Thousand Pesos (Php5,000.00) per appearance which shall be paid by the procuring entity.

5. The free legal assistance shall not cover:
 - a) any action or suit initiated by a BAC member or BAC Support Staff in his personal capacity or in behalf of the procuring entity, unless such action, proceeding, or claim was authorized by the head of the procuring entity or the approving authority therein; or
 - b) any action or suit initiated by the Government against the BAC member or BAC Support Staff.
6. The BAC member or BAC Support Staff shall be entitled to actual, moral, and exemplary damages when awarded by the court. Likewise, the attorney representing the BAC member or BAC Support Staff shall be entitled to attorney’s fees awarded by the court.

4.2 ***Liability Insurance***

1. The procuring entity shall have the responsibility to procure and maintain adequate liability insurance for and in behalf of its BAC members or BAC Support Staff.
2. The liability insurance policy shall cover only those liabilities asserted against the public official and incurred by him in his capacity as such BAC members or BAC Support Staff as the case may be.
3. The insurer shall pay for the loss arising from the claim or suit made against the BAC members or BAC Support Staff during the policy period wherein they serve in such capacity.
4. For purposes of this issuance, the term “loss” shall include judgments, expenses for settlement or compromise, as well as all reasonable fees and other expenses incurred by such persons in connection with any administrative, civil, or criminal action, suit or proceeding to which they may be or have been made a party by reason of the lawful performance of their official functions and duties in such capacity.
5. Provided further, that, such BAC members or BAC Support Staff shall not be adjudged in such action or proceeding to be guilty of gross negligence, misconduct, or grave abuse of discretion or guilty of any other complaint or charges.

6. In the event of settlement or compromise, indemnification shall be confined only to matters covered by the settlement, and to which the procuring entity had been advised by counsel that the person to be indemnified have not committed gross negligence, misconduct, or grave abuse of discretion in the performance of their duties and functions.
7. The procurement of liability insurance shall be subject to the setting of schedule of premium by the GPPB.

4.3 Medical Assistance

1. Medical assistance shall be provided to BAC members and BAC Support Staff for Injuries/disabilities incurred in the lawful performance of their official functions and duties.
2. The claimant(s) shall be entitled to indemnification for any injury or disability resulting from the performance of their official functions as defined by law and without any contributory negligence on their part. Provided further, that they exercised due diligence to prevent harm or injury to themselves.
3. The claimant or his/her relatives must notify the head of the procuring entity within seven (7) calendar days from the occurrence of the injury or disability.
4. The medical assistance herein provided shall consist of indemnification for medicines, laboratory and hospitalization expenses, provided that the amount claimed shall not exceed the actual amount incurred, substantiated by receipts and other supporting documents.
5. Indemnification shall only be made upon presentation of the proof of payment in connection with the injury or disability suffered.
6. The medical assistance granted herein shall be granted to the claimant as a matter of right and subject to the conditions mandated by law.

5. PROCEDURE FOR GRANTING LEGAL ASSISTANCE AND INDEMNIFICATION OF BAC MEMBERS

- 5.1 The claimant(s) shall file their respective claim(s) for legal assistance, liability insurance, or medical assistance as the case may be, with the head of the

procuring entity; and shall secure the approval of the latter on the terms and conditions of the engagement of counsel.

- 5.2 The head of the procuring entity shall be given at least fifteen (15) to thirty (30) calendar days to examine, review, verify and validate the authenticity of the documents presented by the claimant.
- 5.3 Upon finding that all the requirements have been duly complied with and that all the necessary documents submitted are genuine, it shall then order the processing of the claims and the subsequent release of funds for the approved claims.
- 5.4 Any expenses incurred in advance by the claimant arising from the performance of his official functions in such capacity shall be subject to reimbursement upon submission of the necessary documents and approval thereof by the head of the procuring entity.
- 5.5 If the BAC member or its support staff is found to be not guilty for gross negligence, misconduct, or grave abuse of discretion, he shall liquidate his cash advances by presenting receipts of payment and other necessary documents mentioned in Item 5.2. On the other hand, if the BAC member or its support staff is found to be guilty for gross negligence, misconduct, or grave abuse of discretion, he shall pay the cash advances made through salary deductions or reimbursement.

6. FUNDING SOURCE

The funds to be used for the grant of the free legal assistance, liability insurance or medical assistance shall be taken from the agency’s annual appropriation.

Protest fees, proceeds from the sale of bidding documents, and any other additional funds derived from other income-generating activities of the agency may be used to augment the funding source provided in this section.

7. AMENDMENTS

In the implementation of these guidelines, the GPPB may introduce modifications thereto through the amendment of its specific provisions as the need arises.



8. EFFECTIVITY

These guidelines or any amendments thereof shall take effect within fifteen (15) days after publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.