

NPM No. 030-2017

20 December 2017

MR. IAN A. BRIONES, CES/CEO VI
First Senior Vice-President
PHILIPPINE EXPORT-IMPORT CREDIT AGENCY
17th Flr. Citibank Tower, Citibank Plaza,
Valero St. Makati City

Re: Legal Assistance and Indemnification Package

Dear Mr. Briones:

This refers to your letter inquiring whether a Bids and Awards Committee (BAC) member or support staff may be allowed to avail of the free legal assistance benefit from the Procuring Entity (PE) if the said action, suit or proceeding was filed or initiated by the government before any court or government institution, such as, the Office of the Ombudsman or the *Sandiganbayan*.

Free Legal Assistance -

Under Section 4.1 of the *Guidelines on Legal Assistance and Indemnification of Bids and Awards Committee and its Support Staff*¹ (Guidelines) issued by the GPPB, the procuring entity shall indemnify a BAC member and/or any 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. Additionally, to be entitled to the legal indemnification, the BAC member and/or any of the BAC Support Staff “[m]ust have engaged the services of a private lawyer or external counsel”² and “[m]ust have not been adjudged as guilty of gross negligence, misconduct, or grave abuse of discretion.”³

The free legal assistance shall cover actual cost of suit and attorney’s fees while it is pending or the party can be reimbursed for the legal expenses incurred, provided the reimbursement or free legal assistance complies with the rest of the general conditions and procedures found in Section 4 and 5 of the Guidelines.⁴

Accordingly, BAC members or its Support Staff shall be entitled to free legal assistance for civil, criminal or administrative actions or complaints initiated or filed against them by a bidder(s) or an interested private party complainant. The entitlement to free legal assistance shall apply even if the case eventually advances to criminal prosecution and is prosecuted in the name of the “State” or the “People of the Philippines” where the case is

¹ Issued through GPPB Resolution 021-2005, dated 07 October 2005, and published in the Official Gazette on 09 January 2006.

² Paragraph 4.1(2), Guidelines on Legal Assistance and Indemnification of BAC Members and its Support Staff.

³ *Id.*, Paragraph 4.1(3).

⁴ NPM No. 044-2011 dated 29 December 2011.

being actively handled by the Office of the Prosecutor under the Department of Justice or the Office of the Special Prosecutor under the Office of the Ombudsman before courts of competent jurisdiction or the *Sandiganbayan*, respectively.

Inapplicability of Free Legal Assistance -

It bears stressing, however, that under the Guidelines⁵, free legal assistance shall not cover the following:

(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 members or BAC Support Staff.** (Emphasis supplied)

Thus, when the action or complaint is initiated by the Government, that is, by the agency where the BAC member or its Support Staff is employed or renders service; or by any other competent government agency, through its authorized representative, the BAC member or its Support Staff shall not be entitled to free legal assistance pursuant to the above-quoted provision of the Guidelines.

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.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director *V*

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⁵ *Id.*, Paragraph 4.1(5).