NPM No. 090-2016

15 November 2016

DR. ROLANDO C. ENTOMA
OIC – Vice President for Administration
PALOMPON INSTITUTE OF TECHNOLOGY
Evangelista Street, Palompon, Leyte

Re: SUC VP for Administration as BAC Chairperson

Dear Dr. Entoma:

This refers to your electronic mail dated 2 November 2016, which we received on even date, inquiring on whether a faculty member with an academic rank of Associate Professor II can be the Bids and Awards Committee (BAC) Chairperson.

As represented, a faculty member with an academic rank of Associate Professor II was designated as Vice President for Administration at the Palompon Institute of Technology (PIT.) In this regard, you are now inquiring whether the aforementioned faculty member is qualified to be the BAC Chairperson of the PIT.

Section 11.2.2 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provides that the Head of the Procuring Entity (HOPE) shall designate a Chairperson as a Regular Member of the BAC for State Universities and Colleges (SUCs), who is at least at least a third (3rd) ranking permanent official of the Procuring Entity (PE). In addition, the members of the BAC, including the Chairperson, must be persons of unquestionable integrity and procurement proficiency per Section 11.2.1 of the 2016 revised IRR.

In a previous opinion[1], we have clarified that only officers occupying either second or third ranking permanent positions may be designated as BAC Chairperson while any officer holding a lower rank cannot be designated as such. Relatedly, compliance with the ranking requirement under Section 11.2.2 of the IRR of RA 9184 for BAC composition and membership is based on the term "permanent", which is defined as referring to a *plantilla* position within the PE concerned.[2] It does not qualify whether plantilla position is contractual, regular, or appointed, but rather the concern specifically refers to whether the position exists within the organizational structure of the procuring entity.[3]

[1] NPM No. 24-2011, dated 22 October 2011.
[2] NPM No. 95-2013, dated 20 December 2013.
[3] NPM No. 33-2011 dated 28 December 2011 citing NPM No. 24-2009 dated 22 May 2009.

Please note, however, that Section 11.2.5 of the IRR of RA 9184 prohibits the designation of the HOPE and/or the approving authority as BAC Chairperson. The prohibition is intended to avoid any conflict of interest between the person who undertakes the procurement and recommends the award of the contract and the one who approves said transaction.[4] Otherwise stated, it prevents a situation that the subject procurement is deprived of checks and balances as one of the persons conducting the bid evaluation and post-qualification, may have that degree of proclivity towards the recommended action of the BAC; thus, the subsequent award of contract may no longer enjoy the cold neutrality of an impartial HOPE"[5].

In this regard, it is our considered view that a faculty member with an academic rank of Associate Professor II who was designated as the Vice President for Administration may be appointed as BAC Chairperson, provided that the position of Vice President for Administration to which he has been designated is at least 3rd ranking permanent position in the University and such faculty member possesses all the qualifications and none of the disqualifications under existing laws, rules and regulations, i.e., the faculty member ranked Associate Professor II is a person of unquestionable integrity and procurement proficiency occupying a third ranking permanent position within the PE and who is not an approving authority of the PE concerned.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular 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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[4] NPM Nos. 102-2014, dated 3 November 2014, and 16-2009, dated 11 March 2009.
[5] NPM No. 14-2013, dated 1 March 2013.