

**NPM No. 100-2016**

15 November 2016

**ATTY. JULITO D. VITRIOLO**  
*Executive Director and BAC Chairman*  
**COMMISSION ON HIGHER EDUCATION**  
C.P. Garcia Ave, Diliman, Quezon City

**Re: Bids and Awards Committee Membership**

Dear Atty. Vitriolo,

This refers to your letter seeking clarification on the following matters:

1. Is a member of the BAC with a *plantilla* of Chief Position (SG 24) who is designated as OIC Director IV of the Legal Legislative Service, which is equivalent to fifth ranking officer of CHED compliant with the requirement of Section 11 of the revised IRR?
2. Can the Head of the Procuring Entity (HOPE) designate the said OIC Director as a member of the BAC based on trust and confidence?

**OIC Director IV as Member of the BAC**

Under Section 11.2<sup>1</sup> of the IRR, the BAC may be composed of at least five (5) but not more than seven (7) members with the following qualifications:

- a) The Chairman, who is at least a third ranking permanent official of the procuring entity;

<sup>1</sup> Section 11.2 of the 2016 revised IRR of RA 9184, provides that:

11.2.2. The BAC for NGAs, departments, bureaus, offices, or instrumentalities of the GoP, including the judicial and legislative branches, constitutional commissions, SUCs, GOCCs, and GFIs shall be composed of the following:

Regular Members:

- a) Chairperson, who is at least a third (3rd) ranking permanent official of the Procuring Entity;
- b) An officer, who is at least a fifth (5th) ranking permanent official, *or if not available, an officer of the next lower rank with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the legal or administrative area of the Procuring Entity*: Provided, That in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third (3rd) ranking permanent personnel or if not available, an officer of the next lower rank;
- c) An officer, who is at least a fifth (5th) ranking permanent official, *or if not available, an officer of the next lower rank with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the finance area of the Procuring Entity*: Provided, That in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third (3rd) ranking permanent personnel or if not available, an officer of the next lower rank;

Provisional Members:

- d) An officer who has technical expertise relevant to the procurement at hand, and, to the extent possible, has knowledge, experience and/or expertise in procurement; and
- e) A representative from the end-user or implementing unit who has knowledge of procurement laws and procedures. When procurement tasks are outsourced to another GoP agency as a procurement agent pursuant to Section 7.3.3, a representative from the Procuring Entity may be designated as a provisional member to the BAC. For this purpose, the procuring entity shall recommend the provisional member to be designated.

The Chairperson and the Vice-Chairperson shall also be designated by the HoPE. Moreover, the Vice-Chairperson shall be a regular member of the BAC. For purposes of this IRR, the term "permanent" shall refer to a *plantilla* position within the Procuring Entity concerned.

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- b) An officer, who holds at least a fifth ranking permanent position, with knowledge, experience and/or expertise in procurement and who to the extent possible represents the legal or administrative area of the bureau;
- c) An officer, who holds at least a fifth ranking permanent position, with knowledge, experience and/or expertise in procurement who to the extent possible represents the finance area of the bureau;
- d) An officer who has technical expertise relevant to the procurement at hand, and, to the extent possible, has knowledge, experience and/or expertise in procurement; and
- e) A representative from the end user unit who has knowledge of procurement laws and procedures.

We have earlier opined<sup>2</sup> that it is the *plantilla* of the agency that will define whether the position qualifies for regular BAC membership, and the determination of ranking should take into consideration the hierarchy of the *plantilla* positions present in the PE and not whether an official has been appointed/designated/seconded and currently assuming or occupying the identified *plantilla* position.

The determining factor for regular membership in the BAC is not the employment status of the person but the position he is holding. Thus, notwithstanding appointment status as OIC of the Legal Legislative Service, as long as such position is considered as a fifth ranking position in the approved organizational structure, [the personnel] may be validly designated as BAC member<sup>3</sup> pursuant to Section 11.2 of the revised IRR.

**Designation of BAC Member**  
**Based on Trust, Confidence of the**  
**Head of the Procuring Entity (HOPE)**

In your letter, it was also raised whether the HOPE may designate the OIC Director IV of the Legal Legislative Service as BAC member based on trust and confidence of the HOPE supposing that he is disqualified under the law.

This issue has been settled in our earlier opinion<sup>4</sup>, where we stated that the HOPE has the discretion to designate the BAC member as long as he has complied with the qualifications prescribed under Sections 11.2.1, 11.2.2 and 11.2.3 of the IRR of RA 9184 and unless sooner removed for a cause, the BAC members shall have a fixed term of one (1) year, reckoned from the date of appointment, renewable at the discretion of the HOPE.

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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<sup>2</sup> NPM 002-2014 dated March 4, 2014 and NPM 160-2012 dated December 21, 2012

<sup>3</sup> NPM 034-2011 dated December 28, 2011

<sup>4</sup> NPM No. 168-2015 dated December 29, 2015