

NPM No. 111-2016

6 December 2016

ENGR. JAYSON S. ANDAYA
Water Utilities Management Officer A
INDANG WATER DISTRICT
508 De Ocampo Street
Indang, Cavite

Re: BAC Composition; Honoraria

Dear Engr. Andaya:

This refers to your electronic mail dated 18 November 2016, which we received on 22 November 2016, inquiring on the following:

- (1) Which position/s in a local water district satisfies the requirement of third level ranking official for membership to the Bids and Awards Committee (BAC) in accordance with Section 11 of Republic Act (RA) No. 9184 and its 2016 revised Implementing Rules and Regulations (IRR);
- (2) Can an employee, designated as Division Head, with a Salary Grade Sixteen (SG-16), be assigned as the Chairperson of the BAC; and
- (3) Can the BAC be given Honoraria sourced from the fund of the Procuring Entity (PE) after a successful award of contract if there are no proceeds from the sale of bidding documents?

Based on your representation, a Local Water District in Cavite is composed of the Board of Directors, regarded as the Head of the Procuring Entity (HOPE); next, the General Manager; then, the Division Managers; and, followed by the supervisory posts. Also, an SG-16 employee, was designated as Division Head. In this regard, you are requesting for clarification on what position in the local water district is third ranking and whether an employee designated as Division Head can be assigned as BAC Chairperson. Additionally, you are inquiring whether the BAC can be given honoraria after a successfully awarded procurement project from the PE's fund if there are no proceeds from the sale of bidding documents.

BAC Chairperson in a Local Water District

Section 11.2.2 of RA 9184 and its 2016 IRR provide that the BAC for national government agencies, departments, bureaus, offices, or instrumentalities of the Government of the Philippines, including the judicial and legislative branches, constitutional commissions; State Universities and Colleges; Government Owned and/or Controlled Corporations; and, Government Financial Institutions shall be presided by a Chairperson, who is at least a third ranking permanent official of the PE.



The HOPE is mandated to designate a BAC Chairperson who must be at least a third ranking permanent official. As we have stated in previous opinions, this provision does not provide any exception to the third ranking rule.

A PE's compliance with the rank requirement under Section 11.2.2 of RA 9184 and its IRR for its BAC composition and membership is based on the term "permanent" as defined in the above-mentioned provision.¹ The term "permanent" refers to a *plantilla* position within the PE concerned.² Hence, 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. It does not qualify whether the person occupying *plantilla* position is contractual, regular, or temporary, but rather the concern specifically refers to whether the position exists within the organizational structure of the PE.³ In a previous opinion⁴, 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 position cannot be designated as such.

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.⁵

Thus, an employee occupying a SG 16 position is eligible to become a BAC Chairperson for as long as the office he is currently occupying or the position of Division Head to which he is designated is a third ranking existing *plantilla* position of the Local Water District.

Source of Honoraria

Pursuant to Section 15 of RA 9184 and its 2016 revised IRR, the PE may grant honoraria to the BAC, BAC Secretariat, and TWG members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds, relevant rules and guidelines promulgated by the Department of Budget and Management (DBM.)

For guidance, please refer to DBM Budget Circular (BC) Nos. 2004-5A⁶ and 2007-3,⁷ dated 23 March 2004 and 29 November 2007, respectively, which provide the guidelines on the grant of Honoraria to government personnel involved in government procurement consistent with RA 9184 and its 2016 revised IRR.

Based on the foregoing Circulars, the sources for the grant of Honoraria are limited to the following, to wit:

- (1) Collections from successfully completed procurement projects limited, however, to activities prior to awarding of contracts to winning bidders, viz.:
 - (a) Proceeds from the sale of bidding documents;
 - (b) Fees from the contractor/supplier registry;
 - (c) Fess for the copies of the minutes of bid openings, Bids and Awards Committee (BAC) Resolutions, and other BAC documents;

¹ NPM 034-2011, 28 December 2011.

² NPM 018-2010, 2 June 2010.

³ NPM No. 33-2011 dated 28 December 2011 citing NPM No. 24-2009 dated 22 May 2009.

⁴ NPM No. 24-2011, dated 22 October 2011.

⁵ NPM Nos. 102-2014, dated 3 November 2014, and 16-2009, dated 11 March 2009.

⁶ Issued on 7 October 2005.

⁷ Issued on 29 November 2007.

- (d) Protest Fees; and
 - (e) Proceeds from the bid security forfeiture; and
- (2) Savings realized from the current year specific budget of the agency under the General Appropriations Act for National Government Agencies, savings from the DBM-approved corporate operating budgets for Government-Owned and/or Controlled Corporations, or savings from the local budgets approved by their respective Sanggunian subject to the pertinent provisions of RA 7160 (Local Government Code of 1991) in the case of Local Government Units.

Applying the Latin maxim *expressio unius est exclusio alterius* - a rule in statutory construction, which means the express mention of one person, thing or consequence, implies the exclusion of all others - the Honoraria cannot be sourced from other means apart from those enumerated in DBM BC Nos. 2004-5A and 2007-3. Accordingly, the payment of Honoraria cannot be made to the BAC members absent funding from the foregoing sources.

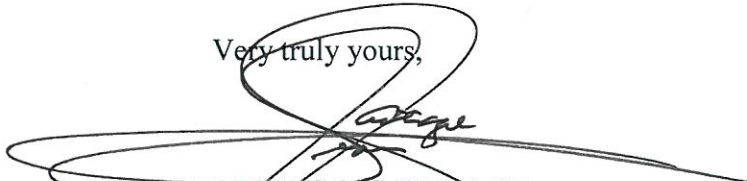
Summary

All told, we wish to emphasize the following:

1. It is the *plantilla* position in the organizational structure of the PE that determines whether an official is eligible to become a member of the BAC. Hence, she may be appointed as BAC Chairperson or a member, as the case may be, provided that she is occupying the appropriate position with the corresponding rank within the organizational structure of the PE pursuant to Section 11 of RA 9184 and its 2016 revised IRR; and
2. The PE may grant Honoraria only from the sources enumerated in DBM BC Nos. 2004-5A and 2007-3. Absent such funds, Honoraria cannot be provided to BAC members.

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 *DS*

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