

**NPM No. 05-2010**

03 February 2010

**MR. ALAN D. PASUMBAL**

*Director, Finance and Administrative Services*

**OFFICE OF THE PRESIDENTIAL ADVISER**

**ON THE PEACE PROCESS**

7/F, Agustin 1 Bldg., F.Ortigas Jr. Road  
Ortigas Center, Pasig City

**Re : Approving Authority**

Dear Mr. Pasumbal:

We respond to your letter dated 20 January 2010 seeking guidance on certain issues relating to the approval for payment of awarded projects of the OPAPP-Bids and Awards Committee (OPAPP BAC) in the amount of Php5.4 Million.

Specifically, you represent that the transactions requiring your approval form part of the "payables" of the OPAPP since the pertinent purchase orders and vouchers have already been processed. However, you have reservations on approving the said payments pending clarification on the role of the Assistant Secretary for Finance and Administrative Services (ASEC-FAS) as the approving officer for procurement as well as the check signatory and concurrent Chair of the BAC, vis-à-vis its effect on the projects.

At the outset, please be informed that the Government Procurement Policy Board (GPPB) has no jurisdiction to rule over actual controversies arising from the conduct of the bidding process and the implementation of the awarded contracts since it has no quasi-judicial functions under Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations (IRR). Instead, it is merely granted with quasi-legislative or rule-making power primarily intended to determine policy directions in the area of public procurement.

Be that as it may, we would like to point out the following, for your guidance:

Section 11.2.5 of the revised IRR of RA 9184 provides:

*"In no case shall the Head of the Procuring Entity and/or the approving authority be the Chairman or a member of the BAC."*

Meanwhile, COA Circular No. 2003-004 states, thus:

*"...it is hereby directed that the Chief Accountant and the personnel of the Accounting Unit of any agency of the government are prohibited from being regular members of the agency's Bids and Awards Committee as contemplated under the Implementing Rules and Regulations of R.A. 9184. However, they may serve as provisional members when the Unit is the end-user of the items, subject of the bidding."*


Both the aforecited provisions have been crafted for purposes of, averting possible conflict of interest, affording check and balance, and, ensuring that the procurement and payment functions are segregated, in keeping with the rules and principles of good internal control.

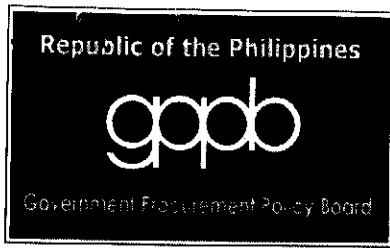
Hence, it is important for the procuring entity to make a determination whether the official designated as the approving authority for the subject contracts worth PhP 5.4 Million is also the same officer who has the authority to issue payment for the same contracts. In both instances, said official cannot be appointed as the BAC Chairman, to avoid conflict of interest and to maintain the integrity of the procurement process and contract implementation.

The foregoing notwithstanding, we likewise note that services/goods have already been delivered and/or received by the procuring entity herein. Thus, we posit that, subject to the findings of the Commission on Audit and/or the regular courts, the principle of *quantum meruit* may be used as a guidepost for considering the payment to the winning suppliers.

We trust that this sufficiently addresses your concern. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
**RUBY U. ALVAREZ**  
*Executive Director III*



## TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

22 January 2010

**Alan D. Pasumbal**

*Director*

**OFFICE OF THE PRESIDENTIAL ADVISER  
ON THE PEACE PROCESS (OPAPP)**

7/F, Agustin 1 Bldg., F. Ortigas Jr. Rd.

Ortigas Center, Pasig City

275-1270 Pasumbal

**Re: Approving authority and BAC Chairman**

Dear Mr. Pasumbal:

We respond to your letter dated January 20, 2010 inquiring the following issues:

1. Whether or not their Associate Secretary of Finance and Administrative Service (ASEC-FAS) is disqualified as a BAC Chairman.
2. What is the effect to the procurement done by a disqualified BAC Chair, will it be considered null and void?

Based on your letter you have, you have assumed the position of the Finance and Administrative Service Director for the OPAPP as of 11 November 2009 through an Office Order No. 2009-001 (OP) issued by the Office of the Deputy Executive Secretary for Finance and Administration – Office of the President (DEFSA)

And now the approval for the **payments** of the awarded bids fall on your lap specifically the Five Million Four Hundred Thousand Pesos (Php 5,400,000.00) awarded by the OPAPP-BAC

That ASEC-FAS was the approving officer for procurement of the subject contract worth Five Million Four Hundred Thousand Pesos (Php 5,400,000.00) and was the concurrent Chair of the BAC.

Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) only renders policy and non-policy opinions respectively, on issues purely relating to the interpretation and application of our procurement laws, rules and regulations.

On the other hand, for your guidance, Section 11.2.5 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (RA 9184) provides that:

In no case shall the Head of the Procuring Entity and/or the approving authority be the Chairman or a member of the BAC.

And COA Circular 2003-004 entitled Prohibition for the Chief Accountant and personnel of accounting units to be regular members of the Bids and Award Committees.

Here, we must determine the following:

1. Whether or not ASEC-FAS is the approving authority of the subject contract worth 5.4 Million.
2. Whether or not ASEC-FAS is the officer who has the authority to issue the payment for the subject contract worth 5.4 Million.

If ASEC-FAS has the approving authority of the subject contract or has the authority to issue the payment for the subject contract, he/she is disqualified to be a BAC Chair or member under the above given provisions.

The disqualification of an approving authority as a BAC Chairman does not affect his authority to approve the contract. Therefore the procurement will remain valid. The procurement done will be considered as if there was no BAC Chairman. }

We must take note that in order for the procurement process to be valid in this instance, we must consider the following:

1. That the procurement done by a disqualified BAC Chair under the above given provisions will be considered as if there was no BAC Chair.
2. That the BAC Vice Chairman during the procurement is present.
3. That there was a quorum during the procurement process, considering that the BAC Chair was not counted to be present.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

**RUBY U. ALVAREZ**  
*Executive Director III*



A.O. 272

# TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

GPPB ISOWORMAN... 1400.00 UK. Thank,

22 January 2010

Please advise accordingly.

**Alan D. Pasumbal**  
Director

**OFFICE OF THE PRESIDENTIAL ADVISER/ ON THE PEACE PROCESS (OPAPP)**

7/F, Agustin 1 Bldg., F. Ortigas Jr. Rd.  
Ortigas Center, Pasig City

fy.  
H  
H/10

### Re: Approving authority and BAC Chairman

Dear Mr. Pasumbal:

DEC-2009  
BASOLAN

We respond to your letter dated January 20, 2010 inquiring whether or not there Associate Secretary of Finance and Administrative Service (ASEC-FAS) is disqualified as a member of the Bids and Awards Committee (BAC) or as a BAC Chairman.

SUCANA

ASEC FAS

Based on your letter, the approval for the payments of the awarded bids fall on your lap specifically the Five Million Four Hundred Thousand Pesos (Php 5,400,000.00) awarded by the OPAPP-BAC as you have assumed the position of the Finance and Administrative Service Director for the OPAPP as of 11 November 2009 through an Office Order No. 2009-001 (OP) issued by the Office of the Deputy Executive Secretary for Finance and Administration - Office of the President (DEFSA).

make your facts clearer & easier to understand (this is a complex complex sentence)

VALGAS  
ALAN

Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) only renders policy and non-policy opinions respectively, on issues purely relating to the interpretation and application of our procurement laws, rules and regulations.

NOV, 11 2009 YOU HAVE ASSUMED THE POSITION OF FAS DIR. HOW NOW TASKED TO

APPROVE THE PAYMENT OF THE 5.4M

PROJECT APPROVED BY THE OFF. OF DEPUTY EXEC. SEC.

On the other hand, for your guidance, Section 11 of Republic Act No. 9184 (RA 9184) provides that:

x x x However, in no case shall the approving authority be a member of the BAC.

And Section 11.2.5 of the revised Implementing Rules and Regulations (IRR) of RA 9184 provides that:

In no case shall the Head of the Procuring Entity and/or the approving authority be the Chairman or a member of the BAC.

Here, we must determine the following:

1. Whether or not ASEC-FAS is the approving authority of the subject contract worth 5.4 Million.
2. Whether or not ASEC-BAC is the officer who has the authority to issue the payment for the subject contract worth 5.4 Million.

If ASEC-FAS has the approving authority of the subject contract or has the authority to issue the payment for the subject contract, therefore he/she is disqualified to be a BAC Chair or member under the above given provisions.

The disqualification of an approving authority as a BAC Chair or member does not affect his authority to approve the contract therefore the procurement is voidable.

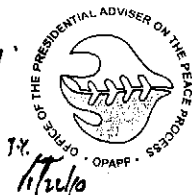
If it has no effect, then why does the contract become voidable?

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

**RUBY U. ALVAREZ**  
*Executive Director III*

*Ana*  
*Pls. draft reply.*  
*Consistent Bryan.*



*Emmie,*

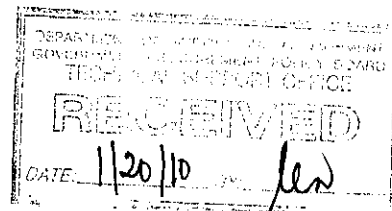
*Pls. handle.*  
*Sign in my*  
*behalf.*

*pf. 1/21/10*

**Office of the President of the Philippines**  
**OFFICE OF THE PRESIDENTIAL ADVISER ON THE PEACE PROCESS**

20 January 2010

**ATTY. RUBY U. ALVAREZ**  
Executive Director  
GPPB-TSO  
Unit 2506 Raffles Corporate Center  
F. Ortigas Jr. Road  
Ortigas Center, Pasig City



Dear Atty. Alvarez:

I am forwarding hereto my memorandum dated 02 December 2009 to the Presidential Adviser on the Peace Process on legal issues concerning the bids in the amount of **5.4 Million Pesos awarded by the OPAPP-Bids and Awards Committee, and delivered by the winning suppliers.**

*MPLT*  
The approval for the payments of the awarded bids fall on my lap as I have assumed the position of the Finance and Administrative Services Director for the OPAPP as of 11 November 2009 through an Office Order No. 2009-001 (OP) issued by the Office of the Deputy Executive Secretary for Finance and Administration - Office of the President (DESFA).

While the transactions form part of the "payables" of the OPAPP as the pertinent purchase orders and vouchers have been processed, I have deep reservation on approving payment of these transactions until legal concerns I raised in the memo to the DESFA are addressed with full clarity.

I would like then to request your advice on this urgent matter.

Sincerely,

**Alan D. Pasumbal**  
DIRECTOR

**MEMORANDUM FOR THE DEPUTY EXECUTIVE SECRETARY  
OP-PROPER, FINANCE AND ADMINISTRATION**

CC : **THE PAPP**

FROM : The Finance and Administrative Services Director, OPAPP

SUBJECT : **Payables under the BAC Process**

DATE : 02 December 2010

---

1. This refers to the **obligated amount** (with Purchase Orders and Vouchers ) of **P5.4 Million Pesos** against the National Unification Fund allotment for capital outlay resulting from the OPAPP-BAC bids and awards process (*Annex A – Summary of Bids*)
2. The Assistant Secretary for Finance and Administrative Services (FAS) and two of her General Services staff directly reporting to her sit as members of the BAC. (*Annex B – Office Order No. 2008-02-035*)
3. Under the Guidelines on the Establishment of Procurement Systems and Organizations of the RA No. 9184, one of the persons disqualified to the BAC membership of an agency is the "official who approves the procurement transactions". This is to preclude, as I understand it, conflict of interests. (*Annex C – page 16 of 95*)
4. \* Given that the ASEC-FAS is the approving officer for procurement as well as a check signatory and is the concurrent Chair of the BAC, a legal issue can be raised vis-à-vis the disqualification provision.
5. Given that the materiality of the total amount of government funds to be disbursed to pay the winning bidders merits circumspection in approving these transactions, I respectfully recommend the following actions:
  - Swift evaluation of the legal implication of this infirmity by the OP Legal or the Government Procurement Policy Board (Will this make the whole process "null and void"? / What is the legal remedy? / What is OPAPP's liability if we postpone payment pending review?)
  - Due diligence in the review of the prices of equipment being procured to assess the reasonableness by the Asset Management Office – OP.

**FOR YOUR CONSIDERATION AND APPROVAL.**

\* If the ASEC-FAS is not the approving officer for the subject  
5.4 M contract nor the check issuer, then there's no infirmity



**ALAN D. PASJMBAL**