



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 001-2014

25 February 2014

MS. MA. BELENDIA Q. AMBI

Officer-in-Charge

DEPARTMENT OF TRADE AND INDUSTRY-REGION XI

3/F Mintrade Building, Monteverde cor. Sales Sts.,

Davao City

Re: BAC Composition at the Regional Offices

Dear Ms. Ambi:

This is in response to your letter dated 28 December 2013¹ seeking clarification on the following issues:

- (1) Whether the Finance and Administration Division (FAD) Chief of a regional office can concurrently be a Bids and Awards Committee (BAC) member and BAC Secretariat Head; and
- (2) Whether a regional office, with only five (5) division chiefs, can designate a 4th level official as BAC member.

As represented, the Department of Trade and Industry Region XI (DTI-Region XI), at present, has one (1) BAC for the regional office and separate BACs for its field offices in Davao City, Davao Oriental, Davao del Sur and Davao del Norte. The Regional Office of DTI-Region XI has only five (5) division chiefs with the FAD Chief also designated as the BAC Secretariat Head.

BAC member in concurrent capacity as BAC Secretariat Head

Sections 11 and 12 of Republic Act No. (RA) 9184 and its Implementing Rules and Regulations (IRR) require the HOPE to create a BAC and a BAC Secretariat, and designate its members.

In designating BAC members for regional offices, Sections 11 and 12 of the IRR of RA 9184 provide that apart from having unquestionable integrity and procurement proficiency, regular BAC members should be at least a third ranking permanent official.

¹ Received by the Government Procurement Policy Board-Technical Support Office (GPPB-TSO) on 7 January 2014.

while provisional BAC members should either have the relevant technical expertise or be a member of the end-user unit.

As for the BAC Secretariat for regional offices, Section 12 of the IRR allows the HOPE to identify an organic office or create an *ad hoc* body. It does not specify qualification requirements for its members, but requires that the BAC Secretariat Head should be at least a third ranking permanent employee, or if not available, a permanent employee of next lower rank.

Although we note that RA 9184 and its IRR do not categorically prohibit the HOPE from designating the same personnel as BAC member and BAC Secretariat Head, we expressed the view in a previous opinion² that "procurement officials should avoid holding concurrent positions in the BAC and its Secretariat in accordance with the thrust to professionalize the procurement organization geared towards strengthening the procurement functions in order to increase operational effectiveness and efficiency." We note that concurrent appointments as BAC member and BAC Secretariat Head diminishes the effectiveness of the BAC and BAC Secretariat in carrying out their functions.

In this regard, we wish to reiterate our earlier advice that procuring entities should avoid designating procurement officials to hold concurrent positions in the BAC and the BAC Secretariat in view of the delineation of functions of their respective offices.

BAC Composition for Regional Offices

The BAC for regional offices consists of at least three (3) regular members, and at least two (2) provisional members. The regular BAC members, including the BAC Chairperson, shall be at least third ranking permanent officials coming from the legal, administrative or finance areas of the procuring entity, to the extent possible. On the other hand, provisional BAC members shall consist of at least an officer who has technical expertise relevant to the procurement at hand and a representative from the end-user unit who has knowledge of procurement laws and procedures.

Clearly, only regular BAC members are required to be at least a third ranking permanent personnel. Section 11 of the IRR mentions the qualifications of provisional BAC members as an officer who has technical expertise, while the other, a representative from the end-user unit. It does not require provisional BAC members to be of a specific rank, thus implying that an employee of any rank, even below a third ranking permanent official, *i.e.*, *fourth ranking permanent officials*, can qualify as provisional BAC members.

In view of the foregoing, we are of the view that fourth ranking permanent officials of regional offices are disqualified from becoming regular BAC members, but may be designated as provisional BAC members. Thus, the Division Chiefs of DTI-Region XI may be designated as provisional BAC members based on the relevance of their respective technical expertise or by reason of their capacity as end-user representative.

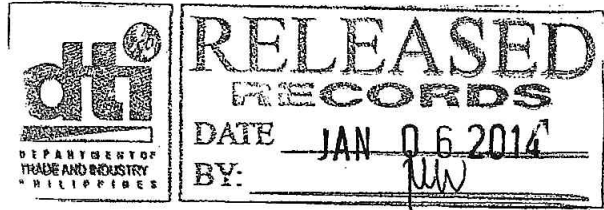
We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular

² Non-Policy Matter Opinion 069-2004 dated 6 May 2004.

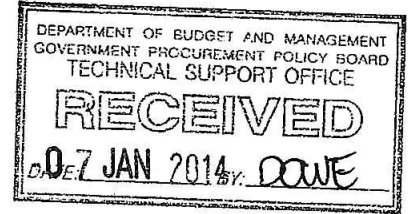
7/22/14



December 28, 2013



MR. DENNIS S. SANTIAGO
Executive Director, Technical Support Office
Government Policy Procurement Board (GPPB)
Unit 2506, Raffles Corporate Center, F. Ortigas Jr. Road
Ortigas Center, Pasit City 1605
Fax No. 02-9006741



Dear Mr. Santiago,

This is with reference to the Audit Query Memorandum we received from the COA last December 13, 2013 on the composition of the DTI-XI Regional Office BAC. Our present set-up for the BAC is that we have one (1) for the Regional Office and the Davao City, Davao Oriental, Davao del Sur and Davao del Norte Field Offices have their own. At present we only have five (5) Division Chief positions and the FAD Chief was also designated to head the BAC Secretariat as this also requires a third ranking officer.

In view of the above, may we request your opinion on the following items:

- Since our FAD Chief is a member of the BAC, can she also head in concurrent capacity the BAC Secretariat?
- With only five (5) Division Chiefs in the Regional Office, can we designate a 4th level official as BAC member?

Thank you and we look forward to receive clarifications on this matter the soonest.

Very truly yours,

*Ray/Marc,
please prepare OPINION.
THX. DSS*

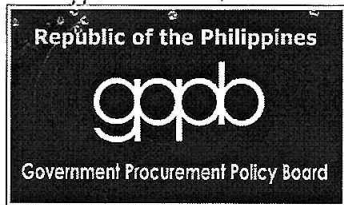
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Enabling Business, Empowering Consumers

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DTI-XI Management System is ISO 9001:2008 Certified



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. xx-2014

9 January 2014

MA. BELENDIA Q. AMBI
Officer-in-Charge
DEPARTMENT OF TRADE AND INDUSTRY
-REGION XI
3/F Mintrade Building, Monteverde cor.
Sales Sts., Davao City

Re: BAC Composition at the Regional Offices

Dear Ms. Ambi:

This is in response to your letter dated 28 December 2013¹ seeking clarification on the following issues:

- (1) Whether the Finance and Administration Division (FAD) Chief of a regional office, who is member of the Bids and Awards Committee (BAC), can concurrently head its BAC Secretariat; and
- (2) Whether a regional office, with only five (5) division chiefs, can designate a 4th level official as BAC member.

As represented, the Department of Trade and Industry Region XI (DTI-Region XI), at present, has one (1) BAC for the regional office and separate BACs for its field offices in Davao City, Davao Oriental, Davao del Sur and Davao del Norte. The Regional Office of DTI-Region XI has only five (5) division chiefs with the FAD Chief also designated as the BAC Secretariat Head.

BAC member in concurrent capacity as BAC Secretariat Head

Section 14² of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184 states the BAC Secretariat shall be created by the Head of the Procuring Entity in order to carry out functions and responsibilities such as provide administrative support and to organize all the necessary arrangements for BAC meetings and conferences, among others.

¹ Received by the Government Procurement Policy Board-Technical Support Office (GPPB-TSO) on 7 January 2014.

² Revised IRR of RA 9184; Section 14.1 The Head of the Procuring Entity shall create a Secretariat which will serve as the main support unit of the BAC. An existing organic office within the procuring entity may also be designated to serve as Secretariat. However, to strengthen and promote the professionalization of the organizations' procuring unit, the Head of the Procuring Entity may create procurement units that may serve concurrently as BAC Secretariats in accordance with the guidelines issued by DBM. xxx

The head of the BAC Secretariat, in cases of regional offices, shall be at least a third ranking permanent employee.³

On the other hand, the BAC is created through the HOPE who is to designate at least five (5) but not more than seven (7) members.⁴ The BAC shall consist of at least three (3) regular members and two (2) provisional members from which the Chairman and the Vice-Chairman shall be designated by the HOPE.⁵

In view of the provisions of the revised IRR of RA 9184, nowhere is it stated that a member of the BAC is prohibited from becoming Head of the BAC Secretariat. However, as previously opined in Non-Policy Matter Opinion 069-2004⁶, although a member of the BAC secretariat is not prohibited from concurrently becoming a member of the BAC, "it is highly advised that procurement officials should avoid holding concurrent positions in the BAC and its Secretariat in accordance with the thrust to professionalize the procurement organization..."

Thus, we wish to emphasize that the FAD Chief, who happens to be a member of the BAC is discouraged from being concurrently appointed as Head of the BAC Secretariat in view of the delineation of functions of the BAC and the BAC Secretariat. This is geared towards strengthening the procurement functions in order to increase operational effectiveness and efficiency.⁷

4th level officials as BAC members

To reiterate, members of the BAC consist of at least three (3) regular members, including the Chairperson, and at least two (2) provisional members. The BAC Chairperson shall be at least a third ranking permanent official while the other two (2) regular members, coming either from the legal/administrative areas of finance area of the procuring entity, shall be at least a fifth ranking permanent official with knowledge, experience and/or expertise in procurement provided that in case of bureaus, regional offices and regional/district offices, BAC members shall be at least a third ranking permanent personnel. On the other hand, the other two (2) provisional members of the BAC shall consist of: (a) an officer who has technical expertise relevant to the procurement at hand; and (b) a representative from the end-user unit who has knowledge of procurement laws and procedures.

As can be observed from the provisions of the revised IRR of RA 9184, the qualification as to the ranking of the BAC member only applies to "regular" members as earlier stated, *i.e.*, that aside from the BAC Chairman, the other two (2) regular members shall be **at least a fifth ranking permanent personnel** or in regional offices, **at least a third ranking permanent personnel**. Such requirement as to rank is not present for the "provisional" members of the BAC.

In view of the foregoing, the division chiefs, being third ranking permanent personnel of the regional office, are qualified as regular BAC members since the rule prescribes "at least a third ranking permanent personnel" in case of regional offices. Consequently, 4th ranking officials are disqualified from becoming regular members of the BAC there being no exception

³ *Id.*; Section 14.2 The head of the Secretariat in central offices shall be at least a fifth ranking permanent employee or, if not available, a permanent official of the next lower rank; or **shall be at least a third ranking permanent employee in bureaus, regional offices and sub-regional/ district offices**, or it not available, a permanent employee of the next lower rank. In addition to integrity, Heads of Procuring Entities shall consider procurement proficiency as a factor in designating the head of the Secretariat and Procurement Unit. (Emphasis ours)

⁴ *Id.*; Section 11.2.1 The Head of the Procuring Entity shall designate at least five (5) but not more than seven (7) members to the BAC of unquestionable integrity and procurement proficiency.

⁵ *Id.*; Section 11.2.2

⁶ Dated 17 May 2004

⁷ Non-Policy Matter Opinion 069-2004

to the requirement. Since the requirement as to rank applies to "regular" BAC members, 4th ranking permanent officials may be appointed as "provisional" members of the BAC there being no requirement as to rank for "provisional" members of the BAC.

Thus, we wish to clarify that 4th ranking personnel may nevertheless be appointed as members of the BAC, limited however only to "provisional" members where no requirement as to rank is necessary, *i.e.*, (a) an officer who has technical expertise relevant to the procurement at hand; and (b) a representative from the end user unit who has knowledge of procurement laws and procedures.

We hope that our advice 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 you have further questions, please do not hesitate to contact us.

Very truly yours,

DENNIS S. SANTIAGO
Executive Director V

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