

NPM No. 04-2013

16 January 2013

MR. GERARDO A.I. ESQUIVEL*Administrator***METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS)**4th Floor, Administration Building, MWSS Complex,

489 Katipunan Avenue, Balara, Quezon City

Re: Creation of Separate Bids and Awards Committee (BAC) and Grant of Honoraria

Dear Administrator Esquivel:

We respond to your letter dated 3 October 2012, requesting our opinion on the following issues:

1. Whether MWSS can create separate BACs pursuant to Section 11.1.2¹ of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 to expedite the bidding of its numerous projects; and
2. Whether MWSS can grant honoraria to members of the BAC, BAC Secretariat and Technical Working Group (TWG) considering the existence of the Commission of Audit (COA) Audit Observation Memorandum (AOM) prohibiting the grant of the same.

Creation of Separate BACs

On the first issue, Section 11.1.1 of the IRR of RA 9184 provides that each Procuring Entity (PE) shall establish in its head office a single BAC to undertake the functions specified in Section 12 of the IRR in order to facilitate professionalization and harmonization of procedures and standards. The exception to this rule may be found in Section 11.1.2 of the IRR, which provides that the Head of the Procuring Entity (HOPE) may create separate BACs where the number and complexity of the items to be procured shall so warrant in expediting the procurement process. Hence, Section 11 of RA 9184 and the IRR clearly establishes the authority of the HOPE to create a separate BAC, without the need of securing any approval or ratification from the Government Procurement Policy Board² provided it is warranted by (1) the number of the items, and (2) complexity of the items to be procured by the PE.

¹ However, to expedite the procurement process for practical intents and purposes, the Head of the Procuring Entity may create separate BACs where the number and complexity of the items to be procured shall so warrant. The BACs may be organized either according to: (a) geographical location of PMO or end user units of the procuring entity; or (b) nature of procurement. Similar committees for decentralized and lower level offices may also be formed when deemed necessary by the Head of the Procuring Entity.

² PM No. 007-2003 dated 12 August 2012.

In addition, we wish to stress that the PE should consider the "rank" requirement in designating the regular members of the separate BACs, who must be permanent official/personnel of the PE, as provided in Section 11.2.2 of RA 9184 and its IRR. The term "permanent" refers to a *plantilla* position within the PE concerned, and it does not qualify whether the person occupying the *plantilla* position is a contractual, temporary or regular official or personnel; rather, the concern specifically refers to whether the position exists within the organizational structure of the PE.³

Grant of Honoraria

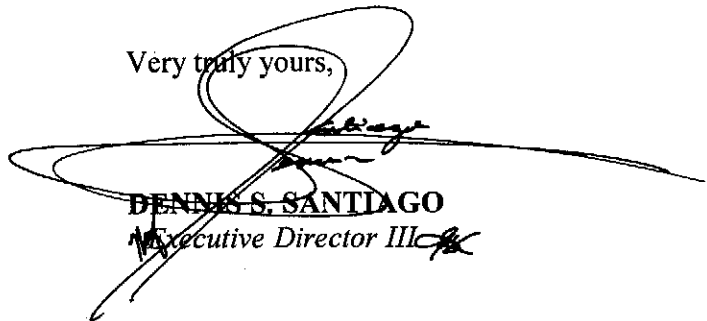
Anent your second query, Department of Budget and Management (DBM) Budget Circular (BC) No. 2004-5A⁴, as amended by BC No. 2007-3⁵, allows the payment of honoraria to members of the BAC, BAC Secretariat and TWG for successfully completed procurement projects. This provides sufficient basis in the grant of honoraria to members of the BAC, its Secretariat and the TWG.

As to the matter involving the COA AOM prohibiting the grant of honoraria to members of the BAC, its Secretariat and the TWG, we regret that we cannot comment on this matter as we have no knowledge of issues raised in the AOM. For further clarifications on this subject, we suggest that an opinion be sought from COA and the DBM - Organization, Position Classification and Compensation Bureau (OPCCB) as they are the appropriate government agency with the authority to make determinations and/or clarifications on the matter involving grant of honoraria.

Based on the foregoing, we wish to clarify that the HOPE may create separate BACs if justified by the conditions stated in Section 11.1.2 of the IRR of RA 9184, *i.e.* (1) the number of the items; and, (2) the complexity of the items it has to procure. In the matter of granting honoraria, DBM BC 2004-5A, as amended by BC 2007-3 provides sufficient legal basis in the payment of honoraria for members of the BAC, its Secretariat and the TWG. However, we suggest that a consultation with COA and the OPCCB be arranged to determine the effect of your standing AOM prohibiting payment of honoraria to members of the BAC, its Secretariat and the TWG.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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³ NPM No.147-2012 dated 29 November 2012.

⁴ Issued on 7 October 2005.

⁵ Issued on 29 November 2007.