



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 011-2016

21 March 2016

MR. ALEXIS D. LAPIZ

Vice Chairperson, Bids and Awards Committee (BAC)

CLIMATE CHANGE COMMISSION (CCC)

2U Little Presidents Learning Palanca (LPLP) 1558 JP Laurel Street
Malacañang Compound, San Miguel, Manila

Re: Designation of BAC Chairman

Dear Mr. Lapid:

This refers to your letter requesting our opinion on whether a highest ranking permanent employee, who is not an approving authority, may be designated as the BAC Chairman of CCC.

As represented, at the time of the request, the CCC has only one Commissioner, who is also the Head of the Procuring Entity (HOPE). You are aware that under Section 11.2.2(a) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the BAC Chairman must be at least a third ranking permanent official of the procuring entity. However, Section 11.2.5 of the same IRR proscribes the HOPE to become Chairman or member of the BAC. In order not to impair the procurement process, you believe that until the President appoints new Commissioners, it is in the best interest of the CCC to designate your highest ranking permanent employee, who is not an approving authority, as BAC Chairman. Hence, this request for opinion.

We wish to clarify that for an official to be designated as BAC Chairman, such official must possess all of the qualifications and none of the disqualifications provided under existing laws, rules and regulations.

Under Sections 11.2.1 and 11.2.2 of the IRR of RA 9184, the BAC Chairman must be a person of unquestionable integrity and procurement proficiency who is at least a third ranking permanent official of the procuring entity. In our previous opinions, we had the occasion to explain the requirement for a "third ranking permanent official". We stated that the requirement in Section 11.2.2 of the IRR of RA 9184 is explicit and does not provide for any exception to the third-ranking rule.¹ The rationale for this ranking requirement is to ensure that the official to be designated as BAC Chairman possesses the level of responsibility, decision-making and accountability which the function of the position calls for. /s/

¹ NPM 24-2011 dated 26 December 2011.

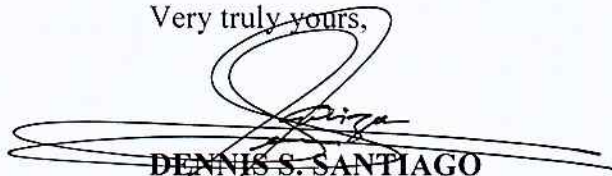
On the other hand, the term "permanent" refers to a *plantilla* position within the procuring entity concerned.² It does not qualify whether *plantilla* position is contractual, regular, or appointed, but rather the concern specifically refers to whether the position exists within the organizational structure of the procuring entity.³ Consequently, an official whose position exists in the organizational structure of the procuring entity may be appointed as BAC Chairman if he is occupying a third ranking permanent position.

It bears stressing, however, that the HOPE and/or the approving authority shall in no case be the Chairman or a member of the BAC.⁴ In addition, the Commission on Audit (COA) Circular No. 2003-004⁵ prohibits the Chief Accountant and personnel of accounting units to be regular members of the Bids and Award Committee as it is also necessary to ensure that the procurement and payment functions of a procuring entity are separated, in keeping with the rules and principles of good internal control and to avert the possibility of conflict of interest, as prohibited under the rules.

Accordingly, the highest ranking permanent employee referred to by the CCC, may be designated as BAC Chairman, provided that such employee possesses all of the qualifications and none of the disqualifications provided under existing laws, rules and regulations. In particular, the highest ranking permanent employee must be at least a third ranking permanent official of the procuring entity. Additionally, such employee must be a person of unquestionable integrity and procurement proficiency and in no case shall be the HOPE, an approving authority, or a Chief Accountant or personnel of the Accounting Unit, except as an end-user representative when the Accounting Unit is the requesting or procuring end-user.

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 *VMS*

² Section 11.2.2 last par. of the IRR of RA 9184.

³ NPM No. 34-2011 dated 28 December 2011 citing NPM No. 24-2009 dated 22 May 2009.

⁴ Section 11.2.5 of the IRR of RA 9184.

⁵ Issued on July 30, 2003.