



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

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3 February 2012

**ATTY. CHRISTIAN V. SANTILLAN**  
*Port District Manager*  
**PORT DISTRICT OFFICE (PDO) – SOUTHERN MINDANAO**  
**PHILIPPINE PORTS AUTHORITY (PPA)**  
Km. 10, Port Area, Sasa, Davao City

**Re: Effect of Re-assignment of BAC Member**


Dear Atty. Santillan:

We respond to your letter requesting for an opinion whether the Bids and Awards Committee (BAC) can continue the conduct of its business pending replacement of one (1) of the provisional members who was re-assigned.

As represented, the BAC refused to take action on the Requests for Quotation and Abstract of Price Quotations due to the absence/re-assignment of one (1) provisional BAC member to the PPA-Port Management Office of Davao, which is directly under the auspices of PDO Southern Mindanao. They are of the view that the required BAC composition of at least five (5) members must be completed and complied with first before the BAC can continue performing its function.

**Effect of Absence of Provisional Member**

At the outset, it bears stressing that the absence of one (1) provisional member of the BAC does not affect the validity of the proceedings provided that a quorum is present. Although the BAC composition with a minimum of three (3) regular members and two (2) provisional members must still be observed<sup>1</sup>, Sections 12.3 and 12.4 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 are explicit in stating that a majority of the total BAC composition shall constitute a quorum to transact business.

As such, the BAC can still continue to conduct its business despite the mere absence of one (1) member provided that majority of its members are present in its proceedings, and the decisions arrived at by said majority shall be binding and valid as an act of the BAC. 

<sup>1</sup> Non-Policy Matter 41-2009.

### **Re-assignment of BAC Member**

It should be noted that re-assignment of a BAC member is not considered a simple case of absence. Section 6 (a) of Memorandum Circular 40, s. 1998 issued by the Civil Service Commission defines re-assignment as the movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status, or salary.

As can be gleaned from Section 11.2.6 of the IRR of RA 9184, the word re-assignment was enumerated together with the terms resignation, retirement, separation, transfer, removal, or death that all have a legal implication in the nature of severance from work, which happenstance ultimately requires the designation of a new BAC member to replace the vacated position in the BAC. Thus, a re-assignment operates to remove the personnel from the *plantilla* position he/she occupies within the procuring entity and transfers him/her to another *plantilla* position.

As such, the operations of the BAC will be hampered by the re-assignment of a member, whether provisional or regular, if such re-assignment results in the reduction of the BAC composition to less than five (5) members.


The effect of re-assignment, however, depends on the manner by which the office order creating the BAC delegated its members and the classification of the BAC member (*i.e.*, regular or provisional).

### **Re-assignment of Regular BAC Member**

If the office order creating the BAC refers to specific *plantilla* positions rather than the personnel, *e.g.*, Assistant Secretary for Operations; Administrative Services Director; Director of Finance; etc., the designation is primarily being made based on the nature and responsibilities ascribed to the identified positions such that any personnel who occupy such position shall be considered a BAC member.

Since BAC membership is linked to a *plantilla* position and not to the personnel occupying such position<sup>2</sup>, if the regular member was re-assigned to a *plantilla* position that is not designated or identified in the office order relative to the BAC Composition, it results in the removal of the re-assigned personnel as a BAC member.

On the other hand, if the office order creating the BAC refers to specific official or personnel rather than to a particular position, the designation is primarily being made based on the qualifications, knowledge, experience, expertise, and character of the personnel rather than the nature and responsibilities ascribed to its occupied position.

In this case, the re-assignment of the regular member shall not be deemed to affect his/her membership in the BAC, unless there is a categorical decision by the head of the procuring entity (HOPE) to remove such personnel as BAC member; or the *plantilla* position where the BAC member was re-assigned is not one of those mentioned in the office order on BAC Composition or is disqualified from BAC membership under the rules. 

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<sup>2</sup> Non-Policy Matter 24-2009.

### **Re-assignment of Provisional Member**

If a provisional member is designated as a BAC member by reason of his/her technical expertise, the consideration for his/her designation is similar to that of personnel specifically identified to be a BAC member. As such, his/her re-assignment will not remove him/her from the BAC so long as there is no categorical directive stating otherwise or the *plantilla* position where he/she was re-assigned is not one of those disqualified to be part of the BAC Composition or is disqualified from BAC membership under the rules.

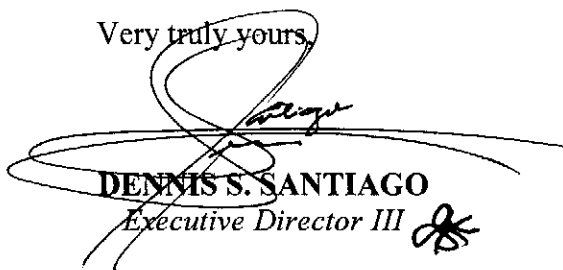
If the designation as provisional member is borne by employment with the end-user unit, the re-assignment results in the member's removal from the BAC when such re-assignment is to a different end-user unit, unless there is clear instruction from the HOPE designating the personnel as the representative of the end-user unit where he/she was re-assigned.

### **Conclusion**

In view of the foregoing discussions, the re-assignment of one (1) provisional BAC member may affect the conduct of BAC activities depending on the designation and the effect of such re-assignment on the BAC composition. Owing to the importance of the functions of the BAC, we wish to stress that it is imperative for the HOPE to immediately replace any vacant BAC position in order to maintain a valid constitution of the BAC and avoid a lull in its operation.

We hope our advice provided sufficient guidance on the matter. Should you have further questions, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*Executive Director III*

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