



Republic of the Philippines  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**



**NPM No. 22-2015**

7 October 2015

**MR. EDRIC M. LUYAO**  
*General Manager*  
**TABUELAN WATER DISTRICT (TWD)**  
Tabuelan, Cebu

**Re: Composition of Bids and Awards Committee (BAC) in Water Districts**

Dear Mr. Luyao:

This refers to your electronic mail (email) requesting the Government Procurement Policy Board (GPPB) to consider and acknowledge the TWD's BAC composition that conducted the procurement of the Supply of Various uPVC pipes, and to allow them to pay their obligation to the supplier.

As represented, the TWD received a loan in the amount of PhP17 Million from Local Water Utilities Administration (LWUA) for the water system project. The TWD has no qualified employees to be designated to the BAC, since it has only four (4) permanent employees who are 1<sup>st</sup> level in rank and fifteen (15) Job Order employees. As a result, it sought assistance from Carcar Water District and Balamban Water District to conduct the procurement process but both districts declined.

In this connection, phase one (1) of the project, which was the acquisition of uPVC pipes with an Approved Budget for the Contract (ABC) of PhP5.2 Million, was conducted through public bidding by TWD. Due to the lack of qualified personnel, the BAC that conducted the said procurement activity was composed of 1<sup>st</sup> level permanent staff and one (1) permanent employee from the local government unit (LGU) of Tabuelan.

Thereafter, the resident engineer of LWUA refused to sign the documents for the payment to the supplier because the BAC composition that conducted the bidding was not in accordance with Section 11.2.2 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.<sup>1</sup>

<sup>1</sup> The BAC for NGAs, departments, bureaus, offices, or instrumentalities of the GOP, including the judicial and legislative branches, constitutional commissions, SUCs, GOCCs, and GFIs shall be composed of the following:

Regular Members:

- a) Chairman, who is at least a third ranking permanent official of the procuring entity;
- b) An officer, who is at least a fifth ranking permanent official, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the legal or administrative area of the procuring entity, provided that in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel;

It is in this context that the GPPB's consideration and acknowledgment is being requested with regard to the TWD BAC composition which conducted the said procurement activity. In addition, the TWD also requests the GPPB that they be allowed to pay their obligation to the supplier.

### **BAC Composition**

Under Section 11.2 of the IRR of RA 9184, the BAC may be composed of at least five (5) but not more than seven (7) members. In case of a BAC with five (5) members, three (3) of them shall be designated as regular members while the other two (2) shall be provisional. The specific qualifications of the BAC members are provided under Section 11.2.2 of the IRR.<sup>2</sup>

Per representation, the current staffing complement of the TWD consists of four (4) permanent employees and fifteen (15) job orders, which is not enough to validly constitute a BAC. It bears stressing that all members of the BAC, whether regular or provisional, must occupy a *plantilla* position in the procuring entity.<sup>3</sup> The term "permanent" refers to a *plantilla* position within the procuring entity concerned. It does not qualify whether the *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.<sup>4</sup> Thus, the designation of one (1) permanent employee from Tabuelan LGU to the TWD BAC is not permissible since he or she does not occupy a *plantilla* position within the TWD.

However, we wish to inform you that Section 53.6 of the IRR of RA 9184 allows a procuring entity that does not have the proficiency or capability to undertake a particular procurement to avail the services of another government agency, such as, but not limited to, the Local Government Unit (LGU) where it is situated, to serve as its Procurement Agent in order to hasten project implementation. This is an option that TWD may pursue if it fails to properly constitute its BAC.<sup>5</sup>

### **Functions of the GPPB**

We wish to note that the Government Procurement Policy Board (GPPB) or its Technical Support Office (TSO) is not in the position to decide for and on behalf of a procuring entity, nor can it give its imprimatur to acts of the procuring entity that are not in accordance with RA 9184 or its IRR. The GPPB has no jurisdiction to rule over actual controversies with regard to the conduct of bidding, and thus, cannot dictate actions or

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- c) An officer, who is at least a fifth ranking permanent official, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the finance area of the procuring entity, provided that in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel;

Provisional Members:

- d) An officer who has technical expertise relevant to the procurement at hand, and, to the extent possible, has knowledge, experience and/or expertise in procurement; and
- e) A representative from the end user unit who has knowledge of procurement laws and procedures.

<sup>2</sup> *Supra*, Note 1.

<sup>3</sup> NPM No. 18-2006 dated 08 November 2006.

<sup>4</sup> NPM No. 33-2011 dated 28 December 2011 citing NPM No. 24-2009 dated 22 May 2009.

<sup>5</sup> NPM No. 026-2010 dated 13 August 2010.

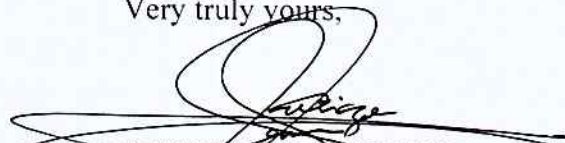
decisions upon the BAC that are well within the latter's authority, discretion, and accountability to make. For this reason, we regret that we cannot favorably act on your request to acknowledge or recognize the composition of the TWD BAC, nor give authority to allow payment of obligations to TWD's supplier.

**Summary**

Based on the foregoing, we are of the opinion that the regular and provisional members of the BAC should occupy a plantilla position within the procuring entity, in this case, the TWD. In the event that the procuring entity cannot validly constitute a BAC composed of at least five (5) members, it may request other government agencies, such as its LGU, to act as its procurement agent as sanctioned by Section 53.6 of the IRR of RA 9184. Nonetheless, in the selection of said agency or procurement agent, its track record and expertise to undertake procurement under RA 9184 and its IRR must be taken into account. Lastly, we wish to clarify that it is not within the powers and functions of the GPPB or its TSO to give its imprimatur to acts of the procuring entity that are well within the latter's authority, discretion, and accountability.

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 V*

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