



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 028-2015

27 April 2016

MR. ROBERTO R. MENDOZA
Assistant General Manager,
Finance Group
ZAMBOANGA CITY WATER DISTRICT
Pilar Street, Zamboanga City

Re: Free Legal Assistance

Dear Mr. Mendoza:

This refers to your letter seeking clarification on the applicability of Section 4.1.5.b of the Government Procurement Policy Board (GPPB) Resolution No. 021-2005, dated 07 October 2015, which provides that free legal assistance shall not cover “any action or suit initiated by the Government against the BAC member or BAC support staff”.

It is represented that the criminal charges filed by the Office of the Ombudsman (OMB) against your BAC members relative to the discharge of their BAC functions, which are now pending with the Sandiganbayan, were initiated by Bendimil Construction. In view thereof, they are requesting for assistance for the posting of bail bond on the criminal cases filed against them relative to the performance of their duties and functions.

Hence, your request for clarification on the following matters:

1. Whether the BAC members can avail of the Free Legal Assistance under Section 4.1 of the GPPB Resolution;
2. Whether the posting of bail bond is allowed, including all legal and litigation expenses following the posting bond, or the limitations, if any.

At the outset, we wish to emphasize that the conditions/requirements for the grant of free legal assistance are provided in Sections 72¹ and 73² of Republic Act (RA) No. 9184, its

¹ **Section 72. Private Legal Assistance**

All the members of the BAC are hereby authorized to engage the services of private lawyers or external counsel immediately upon receipt of Court Notice that a civil or criminal action, suit or proceeding is filed against them in connection with the lawful performance of their official functions and duties as BAC members. The lawyer's fee shall be part of the indemnification package for the BAC members, subject to the provisions of Section 73 of the Act and this IRR. For purposes of this Rule, the BAC members shall be understood to include its support staff, such as the members of the TWG and the BAC Secretariat.

² **Section 73. Indemnification of BAC Members**

73.1. The GPPB shall establish an equitable indemnification package⁶⁸ for public officials providing services in and for the BAC, which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all reasonable fees, costs, and expenses incurred by such

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revised Implementing Rules and Regulations (IRR), and the *Guidelines for Legal Assistance and Indemnification of BAC Members and its Support Staff* (Guidelines). More importantly, the basis of the claim for legal assistance and the conditions for its grant is dependent on the nature of the case filed against the BAC member or Support Staff. Indeed, it is incumbent upon the claimants to prove the existence of, or their compliance with the conditions/requirements provided in the rules and the Guidelines.³

Free Legal Assistance under Section 4.1

With respect to your first query, Section 4.1 of the Guidelines provides that the coverage of free legal assistance shall not include those cases initiated by the BAC member or BAC Support Staff in his personal capacity or in behalf of the procuring entity, or any action or suit initiated by the Government against the BAC member or BAC Support Staff.

As culled from your letter, the complaint filed against the BAC members of your office actually stemmed from the action filed by Bendimil Construction, who is a private party, to the Office of the Ombudsman (Ombudsman). After the conduct of the required fact-finding investigation, a Complaint was subsequently elevated by the Ombudsman to the Sandiganbayan. Given such chain of event, it is clear that the pending criminal case against your BAC members originated from a complaint filed by a private entity. This being the case, it is our considered view that the pending criminal charges do not fall within the ambit of the exclusion set forth under Section 4.1 of the Guidelines. Hence, your BAC members may be entitled to free legal assistance, provided that the conditions set forth in the IRR and the Guidelines are duly complied with.

Coverage of Legal Assistance

Anent your second concern, we refer you to Section 72 of the IRR of RA 9184, which explicitly provides that lawyer's fee shall be part of the indemnification for the BAC members, subject to the provisions of Section 73 of the law and its IRR.

Corollarily, Section 73.1 of the IRR of RA 9184 explicitly states, among others, that the equitable indemnification package for public officials providing services in and for the BAC, may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for **all reasonable fees, costs and expenses incurred by such persons in connection with any administrative, civil or criminal action, suit or proceeding** to which they may be, or have been made, a party, by reason of the lawful performance of their official functions or duties, provided, that they are not finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion, or otherwise held liable or guilty of the complaints or charges.

persons in connection with any administrative, civil or criminal action, suit or proceeding to which they may be, or have been made, a party, by reason of the lawful performance of their official functions and duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion, or otherwise held liable or guilty of the complaints or charges.

73.2. In the event of a settlement or compromise, indemnification shall be confined only on matters covered by the settlement, for which the procuring entity had been advised by counsel, that, the public officials to be indemnified have not committed gross negligence or misconduct or grave abuse of discretion in the performance of their functions and duties.

73.3. The members of the BAC and its support staff, such as the members of the TWG and the BAC Secretariat, shall also be entitled to medical assistance for injuries incurred in the performance of their functions.


³ NPM No. 018-2011, dated 24 October 2011.

In the same vein, Section 4.1.1 of the Guidelines provides that to the fullest extent permitted therein, the procuring entity shall indemnify a BAC member and/or any of its support staff who was or is a party to a pending or a completed action, suit or proceeding brought against them in the performance of their duties.⁴ Moreover, Section 4.1.4 of the same Guidelines mandates that the free legal assistance shall cover actual cost of suit and attorney's fees in an amount which shall not exceed Five Thousand Pesos (P5,000.00) per appearance.

In sum, free legal assistance, which includes actual cost of suit and attorney's fees not exceeding P5,000.00 per appearance, may be extended to BAC members with pending criminal cases filed by a private complainant relative to the performance of their official duties and functions. On the other hand, their entitlement is subject to the condition that they have not been adjudged as guilty of gross negligence, misconduct, or grave abuse of discretion or otherwise held liable or guilty of the complaints or charges.

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

Very truly yours,


MELISSA A. SANTIAGO-YAN
Officer-in-Charge

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⁴ NPM No. 023-2012, dated 22 February 2012.