



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

NPM No. 53-2012

2 May 2012

DR. SHIRLEY B. DOMINGO

Vice President – PhRO NCR and Rizal

PHILIPPINE HEALTH INSURANCE CORPORATION

10th Floor Sunnymede IT Center Building

1614 Quezon Avenue, Quezon City

**Re: Composition of the Bids and Awards Committee and Requirement for
Terms of Reference**

Dear Dr. Domingo:

We respond to your letter dated 21 February 2012 seeking confirmation on the following matters:

1. Whether the actions/decisions of a Bids and Awards Committee (BAC) which was presided over by the Vice-Chairman by reason of the resignation of the Chairman may be considered valid pursuant to Section 11.2.1 of Rule V of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.
2. Whether there is a need for Terms of Reference (TOR) for the public bidding of toner cartridges considering that these involve only supplies.

As represented, the BAC-Philippine Health Insurance Corporation (BAC-PHIC) is composed of five (5) members including the Chairman and Vice-Chairman. It conducted a public bidding for the procurement of toner cartridges. However, the Chairman resigned prior to the conduct of the pre-procurement conference, which prompted the Vice-Chairman to preside over the conference together with the three (3) other BAC members.

Composition of the Bids and Awards Committee

Please note that Section 11.2.1 of Rule V of the IRR of RA 9184 expressly provides that the BAC should consist of at least five (5) but not more than seven (7) members. If the composition of the BAC is reduced to less than five (5) members, the BAC composition is considered non-compliant with Section 11.2.1 of the IRR. Without the necessary composition, the BAC cannot be considered to have the authority to exercise its duties and functions. As such, any action or decision of a BAC that does not have sufficient quorum or the necessary composition is deemed invalid.

It should be clarified that Section 12.4¹ of the IRR, which provides that the Vice-Chairman can preside in the Chairman's absence, implies that the BAC composition still complies with the requirement of the IRR. Hence, it does not apply when the Chairman is permanently absent and the BAC composition is less than the required number in the IRR.

In view of the foregoing, the resignation of the Chairman, resulting in the reduction of the BAC-PHIC composition to less than five (5) members, renders the BAC composition non-compliant with Section 11.2.1 of the revised IRR. Consequently, the decisions and actions, such as those taken during a pre-procurement conference, shall be deemed invalid. Until the BAC composition is complied with by designating a new member to increase the BAC composition to at least five (5) members, the BAC composition shall remain non-compliant with Section 11.2.1 and its decisions and actions invalid.

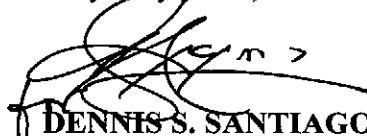
Terms of Reference not required in Procurement of Goods

Please note that Terms of Reference (TOR), as defined in the World Bank Consulting Services Manual, is a document which explains the objectives of the assignment, scope of work, activities, tasks to be performed, respective responsibilities of the Borrower and the consultant, expected results, and deliverables of the assignment. In the Asian Development Project Administration Instruction No. 2-01, the TOR is defined as a document describing the objectives, scope of work, detailed tasks, and reporting requirements for a specific consulting service assignment. Under our rules, TOR is required as part of the Philippine Bidding Documents for Consulting Services, specifically, Section VI thereof.

It is clear from the foregoing that TOR is required when the nature of procurement is consulting services. Considering that the procurement of toner cartridges falls under Goods, a TOR is not necessary for its procurement. What the rules require, however, is for the Bidding Documents to include the Technical Specifications, which should provide a clear statement of the standards of workmanship, materials and performance of the goods and general services to be procured.

We hope that our advice sufficiently addresses your concern. 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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¹ The Chairman or, in his absence, the Vice Chairman, shall preside at all meetings of the BAC. The decision of at least a majority of those present at the meeting at which there is quorum shall be valid and binding as an act of the BAC: *Provided, however,* That the Chairman or, in his absence, the Vice Chairman, shall vote only in case of a tie.