

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

**NPM No. 57-2012**

9 May 2012

**MS. LORELEI A. BALLESTA**  
*Audit Team Leader*  
**COMMISSION ON AUDIT (COA)**  
**CORDILLERA ADMINISTRATIVE REGION**  
Team 8, Audit Group E,  
Province of Benguet

**Re: Legal Assistance and Indemnification of Bids and Awards Committee  
(BAC) members**

Dear Ms. Ballesta:

We respond to your letter dated 3 February 2012 requesting for clarification on whether a private lawyer can bill the members of the BAC and the Head of the Procuring Entity (HOPE) individually, based on Sections 72 and 73 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

As represented, a bidder claiming to be the lowest bidder in an infrastructure project filed a petition for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction against the ten (10) BAC members and the HOPE of the Department of Public Works and Highways (DPWH) for the posting of the re-Invitation to Bid of the said project in the agency's website and publication in the Manila Standard Today. The BAC members engaged the services of a private lawyer and the case was dismissed for lack of merit. The private lawyer billed the BAC members and the HOPE individually for the acceptance fee/ attorney's fee and appearance fee per hearing. It is COA's opinion that the private lawyer should treat her client as one since the BAC members and the HOPE were jointly and solidarily acting as one in the performance of their duties.

For your guidance, the Guidelines for Legal Assistance and Indemnification of BAC Members and its Support Staff<sup>1</sup> (Guidelines) provides the rules and procedures in claiming for and granting indemnification and assistance to BAC members and its support staff. Please note that the Guidelines do not include the HOPE in its coverage. In addition, the Guidelines do not specify the terms of engagement of a private counsel.

A reading of the Guidelines would reveal, however, that BAC members may engage the services of a private lawyer individually. It also provides that claimant(s) should file their

<sup>1</sup> GPPB Resolution 021-2005 dated 7 October 2005

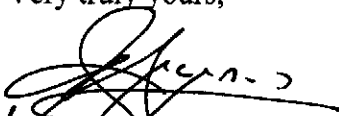
respective claim(s) for legal assistance, which implies that reimbursements will be made to the BAC members individually. Thus, it is not necessary that the BAC members engage private legal service as a group since the option is clearly left to the discretion of the members.

On the other hand, the manner of billing by the private counsel is dependent on the arrangement with the clients, and is not controlled by the provisions of the Guidelines. It is common practice for private lawyers to charge their clients individually, although his services have been retained for the group. Thus, it is possible that although the lawyer represents the BAC as a group, separate agreements were made with each BAC member for the lawyer's engagement.

Based on the foregoing, we are of the view that the propriety of individually billing the BAC members and the HOPE is dependent on their agreement to this effect. Corollary to this, we find it necessary to point out that Sections 72 and 73 of the IRR and the Guidelines cover legal assistance and indemnification of public officials providing services in and for the BAC.

We hope our advice provided sufficient guidance on the matter. This opinion is based on the information presented, and may not be applicable to a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



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