



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

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ATTY. ANNA LYDETTTE M. GIRADO

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OFFICE OF THE AUDITOR

AUDIT GROUP A - NATIONAL GOVERNMENT SECTOR, TEAM 7

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS - REGION VI

Muelle Loney Street, Iloilo City 5000

Re: BAC Secretariat Head as Notary Public

Dear Atty. Girado:

We write in response to your letter to Director Rodolfo B. Encajonado of the Civil Service Commission-Regional Office VI, which was forwarded to this office for appropriate action, seeking an opinion on the following:

1. Whether the Bids and Awards Committee (BAC) Secretariat Head may notarize contracts entered into by her agency as a result of successful procurement activities where she has taken active participation in such official capacity; and
2. Whether the BAC Secretariat Head may sign procurement-related documents, such as the abstract of bids as read, and notices of pre-bid conference and opening of bids.

BAC Secretariat Head; Authority to Notarize

Section 3, Rule IV of the 2004 Rules of Notarial Practice¹ provides that **a notary public is disqualified from performing a notarial act if he/she is a party to the instrument or document that is to be notarized**. However, although the BAC Secretariat Head is, technically speaking, not a party to a contract between the procuring entity and the winning bidder, a liberal interpretation of the provision would indirectly allow what the rule prohibits directly, *i.e.* a conflict of interest on the part of the notary public.

Philippine jurisprudence has established at least three (3) tests to determine conflict of interest for lawyers, and *albeit* predominantly applied to lawyer-client relationships these may provide sufficient guidance on the matter. One such test is “whether the acceptance of a new relation would prevent the full discharge of the lawyer’s duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty”.²

¹ A.M. Mo. 02-8-13-SC.

² *Quiambao v. Bamba*, Administrative Case No. 6708, 25 August 2005, citing prior jurisprudence.

The BAC Secretariat provides a vital supporting role for the procuring entity in the public procurement process. In many occasions, it is even the BAC Secretariat that prepares the ensuing Contract for the project; and to a large extent, the BAC Secretariat provides administrative assistance to the BAC and acts as the central channel of communication for all concerned procurement stakeholders. If the BAC Secretariat Head is to notarize the resulting contract, she would then take on a more central role by bestowing upon the contract the imprimatur of a legal attestation by a *third person* that the parties to the deed or contract have read and understood the contents thereof, and that they have executed the same upon their free and voluntary act and deed.


Jurisprudence has it that “a notarial document is, by law, entitled to full faith and credit upon its face”.³ Moreover, “a notarized document is executed to lend truth to the statements contained therein and to the authenticity of the signatures” of the parties; and “[n]otarized documents enjoy the presumption of regularity which can be overturned only by clear and convincing evidence”.⁴

However, the sharp contrast in the two roles sought to be exercised by the person who will be BAC Secretariat Head and Notary Public at the same time may invite suspicion of unfaithfulness, conflict of interest, and issues and concerns relative to encroachment or influence over the voluntariness and willfulness of the acts of the parties to the instrument, which may cast doubt on the contract in particular, and the entire procurement activity as a whole.

Accordingly, we are of the considered view that it is not advisable that the BAC Secretariat Head be the same Notary Public who will notarize the ensuing contract for the project. It is worthy to stress that questions, insinuations and doubts on the execution of documents should be obviated at all times.

BAC Secretariat Head; Authority to Sign Documents

As mentioned above, the BAC Secretariat provides administrative assistance to the BAC and acts as the central channel of communication for all public procurement stakeholders. In the performance of these functions, the BAC Secretariat Head may be called upon to sign procurement-related documents. However, considering that the act of signing a document purports approval of or consent to the contents of such document, the authority of the BAC Secretariat Head to sign procurement-related documents should be confined to those that are within the scope of her duties and responsibilities under Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR), and should exclude those that require the exercise of discretion, consent or approval on matters under the jurisdiction of a different authority.

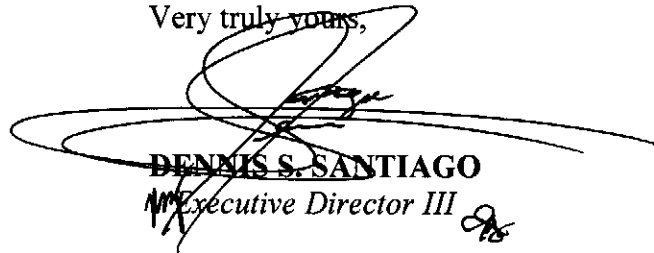
In this regard, we are of the view that the BAC Secretariat Head may only sign procurement-related documents that are well within the functions, duties and responsibilities of the BAC Secretariat under RA 9184 and its IRR, and do not require the exercise of discretion, approval, or consent that otherwise belongs to another authority, such as the BAC or the Head of the Procuring Entity. 

³ *Lustestica v. Bernabe*, A.C. No. 6258, 24 August 2010, citing prior jurisprudence.

⁴ *Delfin et al. v. Billones et al.*, G.R. No. 146550, 17 March 2006, citing prior jurisprudence.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

Copy furnished:

MR. RODOLFO B. ENCAJONADO

Director IV

CIVIL SERVICE COMMISSION - REGION VI

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