



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

**NPM No. 76-2012**

22 June 2012

**ENGR. HAROLD R. JABEL**  
*Acting General Manager*  
**AYUNGON WATER DISTRICT (AWD)**  
Province of Negros Oriental,  
Municipality of Ayungon

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

Dear Engr. Jabel:

We respond to your letter dated 11 April 2012 requesting for clarification on Section 11.2.1 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 regarding the composition of the BAC.

As represented, AWD is a small local water district composed of six (6) regular employees, including the General Manager and the Accounting Processor A. Given the current set-up, clarification on the following queries is requested:

1. How can AWD create its BAC with its required composition?
2. Can AWD designate members of the Board of Directors to become BAC members?
3. Can AWD request BAC members from other local water district or from its local government unit to acts as the BAC for its procurement process?

Under Section 11.2 of the IRR, 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. Regular members must sit in all the procurement activities of the agency while the provisional members can sit for a particular procurement activity of the BAC. The specific qualifications of the BAC members are as follows:

- (a) The Chairman, who is at least a third ranking permanent official of the procuring entity;

- (b) An officer, who holds at least a third ranking permanent position, with knowledge, experience and/or expertise in procurement and who to the extent possible represents the legal or administrative area of the bureau;
- (c) An officer, who holds at least a third ranking permanent position, with knowledge, experience and/or expertise in procurement who to the extent possible represents the finance area of the bureau;
- (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.

Considering the foregoing requirements, for as long as five (5) of the six (6) regular employees of AWD satisfy the qualifications needed for the regular and provisional members, it can constitute its own BAC. It bears stressing, though, that the term "permanent" refers to a *plantilla* position within the procuring entity concerned. It does not qualify whether *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>1</sup>

Furthermore, even though the General Manager is the first (1<sup>st</sup>) ranking permanent employee in the *plantilla* position of a local water district, s/he is not considered as the HOPE, unless duly authorized by the Board of Directors.<sup>2</sup> In the case of the Accounting Processor A, RA 9184 and the Commission on Audit (COA) have identified certain officers to be disqualified as BAC members. These include:

- (a) Head of the Procuring Entity and/or approving authority<sup>3</sup>;
- (b) Official who approves procurement transactions; and
- (c) Personnel from the accounting office, including the Chief Accountant or Head of the Accounting Unit, except in cases where the accounting office is the end-user unit requesting for a particular procurement<sup>4</sup>.

Anent your second query, we are of the view that the individual members comprising AWD's Board of Directors may not be designated to the BAC. Under Section 5(t) of the IRR, the HOPE for government-owned and controlled corporations such as AWD, is the governing board or its duly authorized official. As members of the collegial body constituting the approving authority of AWD, Section 11.2.5 of the IRR provides that the approving authority is disqualified from becoming a member of the BAC to avoid any conflict of interest that may arise in the approval and signing of the contract.<sup>5</sup> Hence, the individual members of the Board cannot be designated as BAC members.

Working on the assumption that the Board of Directors authorizes one of the members or another official to act as the approving authority, the other members of the Board still cannot serve as BAC members. Section 8 of Presidential Decree 198 or the Provincial Water Utilities Act of 1973 provides that the Board of Directors of a district shall be composed of five citizens of the Philippines who are of voting age and residents within the district. They

<sup>1</sup> NPM No. 33-2011 dated 28 December 2011 citing NPM No. 24-2009 dated 22 May 2009.

<sup>2</sup> NPM No. 054-2009 dated 14 October 2009.

<sup>3</sup> Section 11.2.5 of the IRR of RA 9184.

<sup>4</sup> Commission on Audit Circular No. 2003-004 dated 30 July 2003.

<sup>5</sup> NPM No. 18-2006 dated 8 November 2006.

shall be appointed by the appropriate appointing authority depending upon the geographic coverage and population make-up of the particular district. Thus, it appears from the composition of the Board of Directors<sup>6</sup> that none of them occupies *plantilla* positions in the procuring entity. This runs counter to the requirement that BAC members, whether regular or provisional, must occupy a *plantilla* position in the procuring entity.<sup>7</sup>

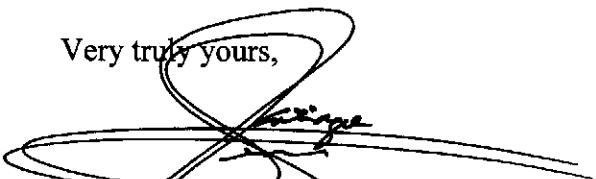
In the same vein, as regards your final question, the designation of members from other LWDs or LGU to the BAC is not allowed since they do not occupy *plantilla* positions in AWD.

We wish to inform you that Section 53.6 of the IRR allows a procuring entity that does not have the proficiency or capability to undertake a particular procurement to avail the services of a Procurement Agent in order to hasten project implementation. This is an option that AWD may pursue if it fails to properly constitute its BAC.<sup>8</sup>

Based on the foregoing, we are of the opinion that AWD should first determine among its present employees if it can validly constitute a BAC composed of five members. If this is not possible then AWD can request other government agencies, such as its LGU, to act as its procurement agent. Nonetheless, in the selection of said agency or procurement agent, its track record in, and expertise to undertake, procurement under RA 9184 and its IRR must be taken into account.

We hope our advice provided sufficient guidance on the matter. 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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<sup>6</sup> One member shall be a representative of civic-oriented service clubs, one member a representative of professional associations, one member a representative of business, commercial, or financial organizations, one member a representative of educational institutions and one member a representative of women's organizations.

<sup>7</sup> NPM No. 60 dated 18 May 2012.

<sup>8</sup> NPM No. 026-2010 dated 13 August 2010.