

NPM No. 113-2015

3 November 2015

MR. HANNIBAL M. CHAVEZ
Chairman, Board of Directors
FISHERS MULTI-PURPOSE COOPERATIVE (FMPC)
BFAR 4A-FFRS, Bambang, Los Banos, Laguna

Re: Conflict of Interest on Government Employees' Cooperative

Dear Mr. Chavez:

This refers to your letter inquiring on the basis of the prohibition against government employees cooperative to participate in the procurement within its agency on the ground of conflict of interest.

It is represented that FMPC is composed of employees of the Bureau of Fisheries and Aquatic Resources Region 4A (BFAR 4A). It is registered with the Cooperative Development Authority (CDA). Its CDA registration number and TIN number are 9520-04011131 and 237442229000, respectively. FMPC has also a Blue Membership with the Philippine Government Electronic Procurement System (PhilGEPS) and Certificate Number PHILGEPS-2015-141913. Despite said registrations, BFAR 4A's Bids and Awards Committee (BAC) excludes FMPC from its procurement opportunities exceeding Fifty Thousand Pesos (Php 50,000.00) on the ground of conflict of interest. Hence, this request for opinion.

At the outset, we wish to clarify that government employees' cooperatives can participate in the procurement opportunities of the government provided that they meet all the requirements prescribed under the revised Implementing Rules and Regulations (IRR) of RA 9184. An exception to this is their participation in the procurement opportunities of their own agencies. The prohibition against government employees cooperative participating in the procurement within its agency on the ground of conflict of interest finds support from the general principles of government procurement under RA 9184, as well as related laws and issuances pertaining to conflict of interest.

Conflict of Interest under RA 9184 and Related Issuances

Under Section 3(b) of RA 9184 and its IRR, one of the governing principles of government procurement is competitiveness, which means extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in the procurement opportunity. Equal opportunity demands a level playing field where no single

bidder acquires undue advantage on the procurement process whether in the dissemination of information, evaluation of bids, or award of contract, among others.

Presence of conflict of interest contravenes the principle of extending equal opportunity, or competition itself. In relation to this, the Generic Procurement Manual (GPM)¹ and the Philippine Bidding Documents (PBDs)², states that there exist a general conflict of interest if a bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another bidder or influence the decisions of the PE regarding the bidding process. Thus, in a previous opinion³ we explained that employees' cooperatives are disqualified from participating in procurement opportunities within their agencies because their participation poses undue advantage in terms of access to information, which are generally not available to outside bidders.

Conflict of Interest under RA 6713

Conflict of interest, on the other hand, is defined under Section 3(i) of Republic Act (RA) No. 6713 or "Code of Conduct and Ethical Standards for Public Officials and Employees" to wit:

Conflict of interest arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.

From the foregoing provision, there exists a conflict of interest when a cooperative participates in a procurement activity of any government entity where a public official or employee who is involved in the procurement process is at the same time a board member, officer or substantial owner of that cooperative. Without necessarily supplanting or imposing upon the wisdom of the BFAR 4A BAC, perhaps this situation is what it seeks to address.

Based on your representation, FMPC, a prospective bidder, is a cooperative whose members are composed of the same employees of BFAR 4A, the Procuring Entity (PE), who may also be involved in the procurement process of BFAR, thereby creating a situation where conflict of interest may exist, and partiality or familiarity may be unfairly attributed to the members of the selection committee, its support staff, the Secretariat or even the Technical Working Group.

It behooves all public servants to contemplate that "[g]overnment employees, must uphold the time-honored principle that a public office is a public trust. Thus, the suspicion of conflict of interest must be avoided at all times."⁴

¹ Volume I, p.64.

² Clause 4.1(d) of the Instruction to Bidders (ITB) of the PBDs for the Procurement of Goods and Infrastructure Projects.

³ NPM 142-2014, dated 10 December 2014.

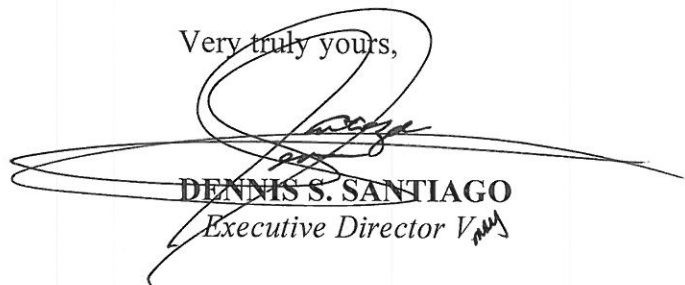
⁴ Section 9 of RA 6713.

Summary

All told, considering the principles of competition, transparency and accountability as clearly expressed in RA 9184 and its IRR and the provisions on conflict of interest found in RA 6713, the GPM and the PBDs, it is our considered view that government employees' cooperatives should be disqualified from participating in the procurement within their agencies because it poses undue advantage in terms of access to information, which are generally not available to other bidders, and it sows suspicion of partiality or familiarity among market operators participating in the procurement process. This notwithstanding, government employee's cooperatives may still participate in the procurement opportunities of other procuring entities. It bears stressing that the determination of the existence of a conflict of interest is essentially and primarily lodged with the BAC of the PE.⁵

We hope this opinion issued by 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 there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director

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⁵ NPM No. 34-2009 dated 14 July 2009.