

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
Technical Support Office  
*Mezzanine 125, Mabini Hall, Malacañang, Manila*  
*Telefax Nos. (02) 735-4962; (02) 736-5758*

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**NPM No. 013-2004**

February 13, 2004

**MR. REY P. CABABASAY**  
State Auditor II  
Commission on Audit  
Regional Office No. VI  
Pavia, Iloilo

**Re: Composition of the Bids and Awards Committee ("BAC") in the  
Barangay Level and Other Matters**

Dear Mr. Cababasay:

This refers to your letter dated October 23, 2003, which we received through facsimile on even date. In the said letter, you raised the following queries, to wit:

1. Who are the members of the BAC for barangays?
2. In the LGU, can the Sanggunian member be a member of the BAC?
3. Shall all purchase orders passed (sic) through the BAC for the determination of which methods of procurement shall be undertaken?
4. In the five (5) alternative methods of procurement, who will undertake the purchase/ negotiation, the HOPE or the BAC?
5. How are we going to resolve in case of tie in the Lowest Calculated Bid/ Highest Rated Bid?

**Membership of Bids and Awards Committee ("BAC") in Barangays**

Republic Act No. 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A") are silent as to the composition of the BAC in the barangay level. However, recognizing the need to create the barangay BAC, the matter was brought to the Government Procurement Policy Board ("GPPB") for appropriate action. At present, the BAC membership in the barangay is still being determined and studied by the Government Procurement Policy Board-Technical Support Office ("GPPB-TSO") and the Department of Interior and Local Government ("DILG"). Meanwhile, pending the issuance of such guidelines, barangays may

procure through "outsourcing," an alternative method allowed under section 53 (e) of the IRR-A of R.A. 9184, to wit:

### Section 53. Negotiated Procurement

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e) Purchase of goods from another agency of the Government, such as the PS-DBM, which is tasked with the centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction no. 755 and Executive Order No. 359, series of 1989. Further, in order to hasten project implementation, **agencies which may not have the proficiency or capability to undertake a particular procurement, as determined by the head of the procuring entity concerned, may request other agencies to undertake such procurement for them**, or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function. (Emphasis supplied).

For guidance, procurement "outsourcing" may be resorted to by requesting the municipality or city having jurisdiction over the barangay to undertake the procurement in its behalf following the rules and procedures under R.A. 9184 and its IRR-A.

### **Sanggunian official as BAC member**

With regard to the second issue, it must be stressed that a member of the local Sanggunian cannot be designated by the LCE as a member of the BAC for the simple reason that the officials enumerated in Section 11.2.2 of the IRR-A of R.A. 9184 does not include any member from the local legislative body. Section 11.2.2 provides:

#### *11.2.2 Local Government Units*

The BAC shall be composed of one (1) representative each from the regular offices under the Office of the Local Chief Executive such as, but not limited to the following: **Office of the Administrator, Budget Office, Legal Office, Engineering Office, General Services Offices. The end user office shall always be represented in the BAC.** The Chairman of the BAC shall be at least a third ranking permanent official of the procuring entity. The members of the BAC shall be personnel occupying *plantilla* positions of the procuring entity concerned. (Emphasis supplied)

The local chief executive shall designate the members of the BAC. The members shall elect among themselves who shall act as the Chairman and the Vice-Chairman.

Based on the foregoing provision, it is clear that Sanggunian officials are excluded from being members of the BAC. Under the legal principle of *Expressio Unius Est Exclusio Alterius*, a basic crucible in statutory construction, "the express mention of one thing in the law, will as a general rule, mean the exclusion of others not expressly mentioned" (Alcantara, 1997: 77).

### **BAC recommendation for the use of Alternative Method**

With respect to the third issue, it is not clear to us what procurement method for the utilization of the "purchase orders" is being referred to, however, for purposes of clarification, if the procurement is to be conducted through any of the alternative methods, the same should be recommended by the BAC to the head of the procuring entity for approval. Section 12.1 of the IRR-A of R.A. 9184 provides:

Section 12.1 xxx    xxx    xxx

In proper cases, the BAC shall also recommend to the head of the procuring entity the use of Alternative Methods of Procurement as provided for in Rule XVI hereof.

### **Alternative Methods of Procurement**

On the fourth issue, it must be pointed out that if the alternative method adopted requires a bidding procedure, such as in limited source bidding, the BAC shall undertake the procurement, otherwise the procurement may be conducted by the end-user or any office or department duly authorized by the head of the procuring entity to effect transactions by way of alternative method. However, it is imperative that the use of any of the alternative methods should be recommended by the BAC and approved by the head of the procuring entity.

### **Identical Offers**

On the last issue, it must be noted that a tie between two (2) or more bidders is not contemplated in R.A. 9184 and its IRR-A for lack of any provision relating thereto. However, we believe that you have also raised a theoretical problem regarding a circumstance wherein two (2) or more bidders submit identical offers. Should this peculiar situation occurs, we recommend the following actions, to wit:

1. Award portions or components of the project to each of the bidders, if the bidders agree, provided that the project is divisible; or
2. Exercise the remedy under Section 35.2 of the IRR-A, which is to declare a failure of bidding and re-bid the contract with re-advertisement while maintaining the approved budget for the contract if the project is indivisible.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts and circumstances.

We trust that this clarifies matters.

Very truly yours,

  
**ESTANISLAO C. GRANADOS JR.**  
Acting Executive Director

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