



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

NPM No. 139-2014

5 December 2014

MR. SAMSON S. BARRIENTOS
Municipal Civil Registrar,
Chairman, Bids and Awards Committee
MUNICIPALITY OF SIAY,
Province of Zamboanga Sibugay

Re: Pecuniary Interest in Procurement Contracts of Local Government Units (LGU)

Dear Mr. Barrientos:

This refers to your request for opinion on the legality of procurement contracts awarded to a local government department head or employee and/or to his relative within the *fourth* civil degree of consanguinity or affinity, where said official or employee is neither the Head of the Procuring Entity (HOPE) nor a member of the Bids and Awards Committee (BAC), Secretariat and Technical Working Group (TWG).

Prohibited Business and Pecuniary Interest of Local Officials and Employees

Section 89(a)(1) of Republic Act (RA) No. 7160, the Local Government Code (LGC) of 1991, explicitly provides for the prohibition against local officials and employees from having business and pecuniary interest with their LGUs, thus:

Sec. 89. *Prohibited Business and Pecuniary Interest.* (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:

- (1) Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm. (Emphasis supplied.)

Conversely, Section 514 of the LGC imposes the corresponding penalties for the violation of the afore-cited provision, to wit:

Sec. 514. *Engaging in Prohibited Business Transaction or Possessing Illegal Pecuniary Interest.* Any local official and any person or persons dealing with him who violate the prohibitions provided in Section 89 of Book I hereof, shall be punished with imprisonment for six months and one day to six years, or a fine of not less than Three Thousand pesos (P3,000.00) nor more than Ten

Thousand Pesos (10,000.00), or both such imprisonment and fine, at the discretion of the court. (Emphasis supplied.)

We wish to stress that the afore-cited provisions apply to all local officials and employees. Verily, even though a local official or employee is neither the HOPE nor a member of the BAC, Secretariat or TWG, he or she is nonetheless prohibited under the LGC from engaging in any business transaction whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the LGU.

Prohibition on Relatives of Public Officials/Employees

On the other hand, Section 47 of the revised Implementing Rules and Regulations (IRR) of RA 9184, the Government Procurement Reform Act, provides for the rule on Disclosure of Relations, thus:

All bids shall be accompanied by a sworn affidavit of the bidder that it is **not related to the Head of the Procuring Entity, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree.** Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR... (Emphasis and underscoring supplied.)

The mandate of the law is to disqualify bidders from participating in any public bidding where such relation will most likely affect the result of the bidding process¹. We wish to note, however, that the prohibition is exclusive to bidders related within the *third* civil degree of consanguinity or affinity to the above-enumerated officers, and does not extend to the fourth civil degree of consanguinity or affinity.

Although the critical relational degree is limited within the 3rd civil degree of consanguinity or affinity, the concerned public official should likewise examine the relevant provisions of RA 6713, the *Code of Conduct and Ethical Standards for Public Officials and Employees*, specifically the aspect of "*conflict of interest*", among others, when dealing with bidders with whom they have close ties or relationship, thus:

Section 3. Definition of Terms.

(i) "*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.

The norms of conduct of public officials and employees under Section 4 of RA 6713 likewise provide that they shall not dispense or extend undue favors on account of their office to their relatives:

Section 4. *Norms of Conduct of Public Officials and Employees.* — (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

¹ NPM No. 012-2005 dated 15 February 2005.

(c) *Justness and sincerity.* — Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. **They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.** (Emphasis supplied.)

Summary

1. It is unlawful for *any* local official or employee to engage in any business transaction whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the LGU;
2. Prospective bidders related to the Head of the Procuring Entity, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree are disqualified from participating in government procurement of the concerned LGU; and
3. Public officials and employees should seriously consider the aspect of “conflict of interest” when dealing with bidders with whom they have close ties or relationship. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity.

We hope that this opinion issued by the 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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