



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

NPM No. 140-2014

9 December 2014

MR. AGAPITO O. BALILI

Secretary to the Sanggunian

OFFICE OF THE SANGGUNIANG BAYAN SECRETARY

Municipality of Labason, Province of Zamboanga del Norte

Re: Restrictions on Members of Local Government Unit Bids and Awards Committee

Dear Mr. Balili:

This is in response to your letter requesting clarification on the following issues:

1. The propriety of a Secretary to the Sanggunian to be a member of Local Government Unit (LGU) Bids and Awards Committee (BAC); and
2. The consequence of the relation by consanguinity or affinity of the bidder to the BAC Chairman.

Culled from your letter, you are currently the Secretary to the Sangguniang Bayan of the Municipality of Labason, Province of Zamboanga del Norte, which is a department head level in the LGU. Immediately after the Municipal Mayor assumed office on 1 July 2013, you were designated as one of the members of the BAC and were unanimously voted to be the Chairman. It is pursuant to this factual backdrop that you seek opinion relative to the above-mentioned issues.

BAC Composition

Section 11.2.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 categorically provides that BAC for LGUs shall be composed of one representative each from the regular offices under the Office of the Local Chief Executive (LCE); and, a representative from the end user unit. Considering the clear and unambiguous mandate of the provision, and taking note that the position of the Secretary to the Sangguniang Bayan is not a regular office under the office of the LCE, we are of the considered view that the Secretary to the Sangguniang Bayan cannot be designated as BAC member, except as end-user representing the Sanggunian.

Based on Section 11.2.3 of the IRR of RA 9184, a Secretary to the Sanggunian cannot be a member of the LGU BAC for the simple reason that the provision did not include any

member from the local legislative body.¹ Accordingly, a careful reading of Section 11.2.3 of the IRR of RA 9184 shows that BAC members should come from the regular offices under the Office of the Local Chief Executive, and a representative from the end user unit of the procuring entity.

Disclosure of Relations


Section 47 of RA 9184 and its IRR provides the rules on disclosure of relations, thus:

All bids shall be accompanied by a sworn affidavit of the bidder that is not related to the Head of Procuring Entity (HOPE), members of the BAC, the TWG, and the BAC Secretariat, the head of the Project Management Office (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 ground for the automatic disqualification of the bid in consonance with Section 30 of the IRR. **For this reason, relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity.** On the part of the bidder, this provision shall apply to the following persons:

- a) If the bidder is an individual or sole proprietorship, to the bidder himself;
- b) If the bidder is a partnership, to all its officers and members;
- c) If the bidder is a corporation, to all its officers, directors, and controlling stockholders; and
- d) If the bidder is a joint venture, the provisions of items (a), (b), or (c) of this Section shall correspondingly apply to each members of the said joint venture, as may be appropriate.

In an earlier opinion², we had the opportunity to clarify the effect of the relationship of the bidder with the concerned official and the inhibition of the official from the bidding process, to wit:

The predicament of a bidder [who falls within the prohibition provided in Section 47 of RA 9184 and its IRR] is not salvaged by the inhibition of his relative from participating in the proceedings. We stress that the wisdom behind the provision is to avoid the imminent evil of the project being tailored to favor the interest of a pre-determined bidder or the danger of allowing room for collusion or influence peddling to advance the bid of a particular bidder. This evil or danger is not averted by the mere act of the officers or employees of inhibiting themselves from the procurement process.

Significantly, the inhibition of an officer or employee from the bidding process in view of paving way for the bid of a relative usually takes place after the opening of bids. By then, the participation of the officer or employee in the bidding process has commenced or his direct access to any information relative to the bidding process had already taken place. In this case, the presence of the evil or danger being avoided has preceded the remedy of inhibition; and the latter comes, virtually, as a futile measure. 

¹ NPM No. 13-2004 dated 13 February 2004.

² NPM No. 07-2014 dated 28 March 2014, citing NPM No. 012-2005 dated 15 February 2005.

Moreover, the context of Section 47 of IRR-A is clear to the legal import of relationship in the cases and conditions therein mentioned. The bidder is disqualified by mere fact of relationship. Thus, notwithstanding the inhibition made by the officers or employees, the cause-and-effect link between relationship and disqualification is not severed by the supposed corrective measure.

Accordingly, a bidder who is a relative of the HOPE, or any member of the BAC, TWG, BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, within the third (3rd) civil degree of consanguinity or affinity shall be automatically disqualified, regardless of the inhibition of the concerned official from the bidding process.

Summary

In sum, we wish to clarify that the Secretary to the Sangguniang Bayan cannot be designated as a member of the LGU BAC, except as a representative of the Sangguniang Bayan to procurement activities where it is the end user unit. We also wish to reiterate that a bidder who falls within the prohibition provided in Section 47 of RA 9184 and its IRR shall be automatically disqualified, and is not affected by the inhibition of the official from participating in the procurement proceedings.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being 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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