



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

**NPM No. 141-2012**

5 November 2012

**MS. SHIRLEY O. NUEVO**

*Head, Bids and Awards Committee (BAC) Secretariat*

**DEPARTMENT OF FOREIGN AFFAIRS (DFA)**

2330 Roxas Boulevard, Pasay City

**Re: Payment of Overtime Services to Members of the BAC Secretariat**

Dear Ms. Nuevo:

We respond to your letter dated 12 July 2012 seeking guidance on the claim for overtime payment for services rendered by members of the BAC Secretariat provided in Department of Budget and Management (DBM) Budget Circular (BC) No. 2004-5A<sup>1</sup>, as amended by DBM BC No. 2007-3<sup>2</sup>, in relation to Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR). Specifically, the DFA is requesting clarifications on the following matters:

1. Can members of the BAC Secretariat claim overtime pay for services rendered in excess of official working hours for all procurement related activities, *i.e.* not limited to services rendered for projects procured through competitive bidding?
2. Can DFA source the overtime payment of BAC Secretariat members from the proceeds of the sale of bidding documents?
3. What are the required documents to support the claim for overtime of the members of the BAC Secretariat?

**Claim for Overtime Pay**

In the payment of honoraria and overtime pay, we would like to distinguish between members of the BAC Secretariat whose positions are in the Procurement Unit and those who are in non-procurement units. Section 5.6 of DBM BC No. 2004-5A allows the payment of honoraria to BAC Secretariat members who are performing the attendant functions in addition to their regular duties in the Procuring Entity (PE). Members of a permanent BAC Secretariat unit or procurement units serving concurrently as BAC Secretariat of the agency are not entitled to honoraria, but may be entitled to overtime pay subject to existing rules and

<sup>1</sup> Guidelines on the Grant of Honoraria to Government personnel Involved in Government Procurement dated 7 October 2005.

<sup>2</sup> Dated 29 November 2007.

policies on the matter, as the nature of their office involves BAC Secretariat duties, functions and responsibilities.

Moreover, Section 5.10 of DBM BC No. 2004-5A states that those who are receiving honoraria for their participation in procurement activities shall no longer be entitled to overtime pay for procurement-related services, which have been rendered in excess of the official working hours. In addition, it bears stressing that members of the BAC Secretariat belonging to the other units of the PE cannot opt to avail of overtime pay instead of receiving honoraria.

We note, however, that the relevant provisions in DBM BC No. 2004-5A do not qualify whether payment for overtime services is limited only to procurement that involves competitive bidding. Applying the rule *ubi lex non distinguit, nec nos distinguere debemus*<sup>3</sup>, we are of the view that the payment of overtime services to members of the BAC Secretariat under Section 5.6 of DBM BC No. 2004-5A covers all procurement related activities and is not limited only to procurement activities involving competitive bidding.

### **Funding Source**

Anent your second query, Section 6.1 of DBM BC No. 2004-5A and Section 3.1 of DBM BC No. 2007-3 clearly identify proceeds from sale of bidding documents as one of the sources for the payment of overtime pay. In an opinion<sup>4</sup> issued by the Organization, Position Classification and Compensation Bureau (OPCCB) of the DBM, it provided the list of sources that may be used for payment of honoraria and overtime pay to government personnel involved in government procurement, thus – a) proceeds from sale of bidding documents; b) fees from contractor/supplier registry; c) fees charged for copies of minutes of bid openings, d) BAC resolutions and other BAC documents; e) Protest Fees; and, f) proceeds from bid security forfeiture .

### **Required Documentation for Overtime Pay**

As regards the issue on the required documents to support the claim for overtime pay of BAC Secretariat members, we refer you to the Revised Documentary Requirements for Common Government Transactions as prescribed under the Commission on Audit Circular No. 2012-001<sup>5</sup>. Section 5.10 thereof enumerates the documentary requirements for overtime pay such as (1) the overtime authority stating the necessity and urgency of the work to be done and the duration of overtime work; (2) overtime work program; (3) quantified overtime accomplishment duly signed by the employee and the supervisor; and, (4) certificate of service or duly approved daily time record.

For further clarifications on the specificities of the required supporting documents for overtime pay claims, we suggest that an opinion be sought from the DBM-OPCCB as it is the appropriate government agency with the authority to make determinations and/or clarifications on the matter.

Based on the foregoing, we are of the position that under Section 5.6 of DBM BC No. 2004-5A, the payment of overtime services to members of the BAC Secretariat unit or

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<sup>3</sup> Where the law does not distinguish, courts should not distinguish.

<sup>4</sup> Dated 19 January 2010.

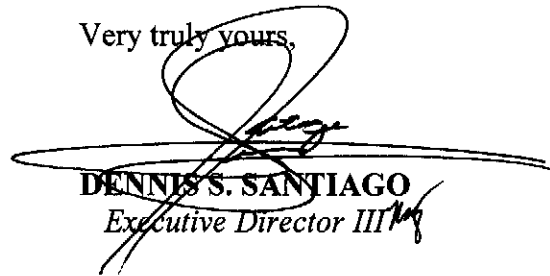
<sup>5</sup> Dated 14 June 2012.



procurement units serving concurrently as BAC Secretariat covers all procurement related activities, whether it involves competitive bidding or not. In addition, one of the identified funding sources for the payment of overtime services are the proceeds from the sale of bidding documents as provided in Section 6.1 of DBM BC No. 2004-5A and Section 3.1 of DBM BC No. 2007-3.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director III*

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