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NPM No. 16-2009

11 March 2009

MR. ERNESTO J. CABEROY
Manager, Commercial Department
OIC – Office of the General Manager
METRO ILOILO WATER DISTRICT
Bonifacio Drive, Iloilo City

Re : **HOPE Delegation to BAC Chairperson**

Dear Mr. Caberoy:

This refers to your letter dated 5 February 2009 received on even date, seeking clarification whether the Chairman of the Bids and Awards Committee (BAC) of the Metro Iloilo Water District may, at the same time, be temporarily designated as the OIC of the Office of the General Manager. This is in connection with the fact that the Board of Directors of the said government-owned and controlled corporation (GOCC) authorized the BAC Chair as OIC General Manager, through a board resolution, to sign the contract in order to hasten the issuance of the Notice to Proceed (NTP) for a procurement activity.

Contract Award Approval

It is undeniable under Section 37.2.1 of the *Implementing Rules and Regulations Part – A (IRR-A) of Republic Act No. 9184 (R.A. 9184)* or the GOVERNMENT PROCUREMENT REFORM ACT that the head of the procuring (HOPE) entity may delegate a **duly authorized representative** to approve or disapprove the BAC recommendation of, the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and, the corresponding award of contract.

The exception to this rule, however, is made clear by law under Section 11.2.5 of the IRR-A. It states that,

In no case shall the head of the procuring entity and/or approving authority be the Chairman or a member of the BAC.

Hence, it may be aptly deduced from the said provision that the HOPE may delegate the authority to approve or disapprove the recommendation of the BAC so long as the said representative is neither the Chairman nor a member of the BAC that rendered the recommendation.

Signing of Contract / Issuance of the NTP

With regard to the person authorized to sign the contract and issue the NTP in the procurement of goods, reference to the Generic Procurement Manual – Manual of Procedures for the Procurement of Goods and Services, June 2006 should be made. In page 71 thereof, the following parties are involved in the signing and approval of the contract, and in the issuance of the Notice to Proceed:

1. The BAC Secretariat/Procurement Unit/Office;
2. **The Head of the Procuring Entity;**
3. The winning bidder; and
4. End-user.

Under Section 5(m) of the IRR-A, in the case of GOCCs, the Head of the Procuring Entity refers to the governing board or its **duly authorized official**. The prohibition under Section 11.2.5 of the IRR-A is limited only to the approval of the contract and does not extend to any restriction against the contract signing and issuance of the NTP. *Expressio unius est exclusio alterius*, express mention means implied exclusion.

Distinction must be made between approval and signing of contract in light of the provisions of R.A. 9184, such that the former refers to the affirmation by the HOPE of the BAC recommendation while the latter pertains to the mechanical act of the HOPE in affixing his signature in the contract.

Lastly, on the issuance of the NTP, the aforesaid Manual provides that,

7. *The Head of the Procuring Entity or his/her duly authorized representative issues the Notice to Proceed within three (3) calendar days from the date of the approval of the contract.¹ (Emphasis ours)*

Thus, it is the considered opinion of this office that the BAC Chair, in his capacity as OIC General Manager, although bereft of authority to approve the award of contract, may sign the contract and issue the NTP, provided, that, the proper board resolution is priorly issued for the purpose; and, provided, further, that such function is among those that can be delegated under the GOCC's corporate charter and other governing rules.

We sincerely hope to have shed some guidance on the matter.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

¹ Methodology, Generic Procurement Manual: Manual of Procedures for the Procurement of Goods and Services (Volume 2), page 72