

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

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ATTY. CARLO FLORENDO C. CASTRO

Director, Legal Service

DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD)

IBP Road, Batasan Pambansa Complex,
Constitution Hills, Quezon City

Re: Bids and Awards Committee (BAC) Membership

Dear Director Castro:

This refers to your letter seeking our opinion on - (1) who would be considered a fifth ranking official in the Offices, Bureaus, Services and Units with no Assistant Bureau Directors (ABDs); and, (2) whether a fifth ranking official may sit as an Alternate Member of the BAC, in place for the Procuring Entity's (PE) fourth ranking official.

It is represented that the DSWD Central Office's Secretary, Undersecretaries, Assistant Secretaries and Directors occupy the positions of the first, second, third and fourth ranking officials, respectively. The fifth ranking official of DSWD would be the ABD, being the next lower ranking official after the Bureau Director. However, since there are some offices and bureaus that do not have ABD positions in their *plantilla*, the next lower rank to the Bureau Director would be the Division Chiefs. It is in this context that you seek our opinion on whether Division Chiefs in Offices and Bureaus without ABD positions are considered fifth ranking officials of DSWD for purposes of determining BAC membership.

Rank of BAC Members in National Government Agencies (NGAs)

Section 11.2.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 provides that regular BAC members for National Government Agencies (NGAs), departments, bureaus, offices, or instrumentalities of the Government of the Philippines (GOP) shall be composed of a Chairman, who is at least a third ranking permanent official, and officers who are at least fifth ranking permanent officials with knowledge, experience and/or expertise in procurement who, to the extent possible, represent the legal, administrative and finance areas of the PE.

A PE's compliance with the rank requirement under Section 11.2.2 of RA 9184 and its IRR for its BAC composition and membership is based on the term "permanent" as defined in the above-mentioned provision.¹ The term "permanent" refers to a *plantilla* position within the PE concerned.² Hence, it is the *plantilla* of the agency that will define whether the position qualifies for regular BAC membership, and the determination of ranking should take into consideration the

¹ NPM 034-2011, 28 December 2011.

² NPM 018-2010, 2 June 2010.

hierarchy of the *plantilla* positions present in the PE, and not whether an official has been appointed/designated/seconded and currently assumed or occupied the identified *plantilla* position.

Based on the representation that DSWD Central Office's Secretary, Undersecretaries, Assistant Secretaries, Bureau Directors, and ABDs occupy the positions of the first, second, third, fourth and fifth ranking officials, respectively, the Division Chief would be the sixth ranking permanent official, being the next position lower than the ABD. The identified ranking will remain even if there is no ABD appointed/designated/seconded to the position. Consequently, even in the absence of an ABD, as long as the entire organizational structure of the PE has an identified ABD position in the *plantilla*, a Division Chief in DSWD will remain a sixth ranking permanent official.

However, it will be a different scenario altogether if the position of ABD does not exist in the PE's *plantilla*. In this case, the fifth ranking official will be the Division Chief following the Secretary, Undersecretaries, Assistant Secretaries and Bureau Directors.

Qualifications of Alternate Members of the BAC

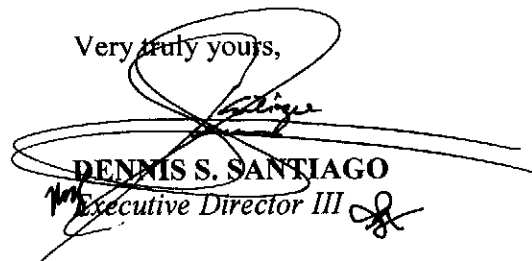
As regards your query on whether a fifth ranking permanent official may be designated as an alternate to a regular BAC member who is a fourth ranking permanent official, we refer to Section 11.2.4 of the IRR of RA 9184, which provides that *[t]he Head of the Procuring Entity may designate alternate members to the BAC, who shall have the same qualifications as their principals as set in the Act and this IRR.*

Based on the foregoing provision, the phrase, "the same qualifications as their principals", should be understood together with the clause "as set in the Act and this IRR". This means that the qualifications used in determining the principal are the same qualifications used in determining the alternate BAC member. As such, an alternate BAC Chairperson and an alternate regular BAC member should be at least a third ranking and a fifth ranking permanent official of the PE, respectively.

In sum, we are of the view that it is the *plantilla* position in the organizational structure of the PE that determines whether an official is eligible to become a member of the BAC. In addition, alternate members of the BAC must have the same qualifications as their principals as provided in Section 11.2.4 of the IRR of RA 9184.

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

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III