

NPM No. 162-2015

22 December 2015

MS. JENNIFER S. GILOT

State Auditor IV

COMMISSION ON AUDIT (COA)

Regional Office No. XI, Davao City,

Audit Group CGS 1-C, Audit Team No. R11-03

Re: Applicability of Section 11.2.5 of the IRR of RA 9184 to GOCCs/NGAs

Dear Auditor Gilot:

We respond to your letter dated 8 November 2015 seeking our opinion whether the bids and awards committee (BAC) of the Land Bank of the Philippines (LBP)-Eastern Mindanao Banking Group (EMBG) conforms with Section 11.2.5 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, the Regional BAC LBP-EMBG is chaired by the Head of the LBP-Davao Lending Center-XI who is the 2nd ranking official of the organization with approving authority. Moreover, the 2nd up to the 5th ranking officials are all approving officers of the bank. Hence, you would like to seek our advice on the legality of the composition of the BAC. Given that Section 11.2.3 refers to BAC composition in LGUs, you would like to be clarified whether Section 11.2.5 of the same IRR applies to GOCCs/NGAs since the said provision is silent on the matter and it is your interpretation that Sections 11.2.3, 11.2.4 and 11.2.5 of the IRR of RA 9184 expressly state that they apply to LGUs.

A careful review of the pertinent provisions of the IRR of RA 9184 show that Section 11.2.3, Sections 11.2.4 and 11.2.5 do not expressly state their exclusive applicability to LGUs, thus:

Section 11.2.3. The BAC for Local Government Units¹ shall be composed of the following:

- a) One representative each from the regular offices under the Office of the Local Chief Executive such as, but not limited to, the following: Office of the Administrator, Budget Office, Legal Office, Engineering Office, General Services Offices; and
- b) A representative from the end user unit.

The members shall elect among themselves who shall act as the Chairman and Vice-Chairman. The Chairman of the BAC shall be at least a third ranking permanent official of the procuring entity. The members of the BAC shall be personnel occupying *plantilla* positions of the procuring entity concerned.

Section 11.2.4. The 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. The alternate members shall attend meetings of the BAC and receive the corresponding honoraria, whenever their principals are absent. The alternate members shall have the same term as their principals. The accountability of the principal and the alternate member shall be limited to their respective acts and decisions.

Section 11.2.5. In no case shall the Head of the Procuring Entity and/or approving authority be the chairman or a member of the Bids and Awards Committee (BAC).

Section 11 and all its subsections of the revised IRR of RA 9184 on the BAC and its Composition should be interpreted harmoniously with other provisions of the IRR and should not be applied in segregated parts, unless stated otherwise. Thus, in *Civil Service Commission v. Joson*¹ the Supreme Court had the occasion to rule that:

[a] law must not be read in truncated parts; its provisions must be read in relation to the whole law. It is the cardinal rule in statutory construction that a statute's clauses and phrases must not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Every part of the statute must be interpreted with reference to the context, *i.e.* that every part of the statute must be considered together with other parts of the statute and kept subservient to the general intent of the whole enactment.

Accordingly, Section 11 must be viewed and read in conjunction with Section 4 of the same IRR relative to its Scope and Application, to wit:

This IRR shall apply to all procurement of any branch, agency, department, bureau, office, or instrumentality of the GOP, including government-owned and/or -controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).

In addition, the approving authority contemplated under Section 11 of R.A. 9184 and its revised IRR refers to the official who approves procurement transactions, who could be the Head of the Procuring Entity (HOPE) or the person authorized by the HOPE to perform said function in his or her behalf. As we have explained in our earlier opinion², the prohibition stated in Section 11.2.5 of the IRR is intended to avoid any conflict of interest on the part of the official who takes part in the selection process, and who would eventually be the same official to approve the resultant contract. Consequently, such prohibition does not apply to approving authorities where this conflict of interest is not present.

Anent the foregoing, the rule that no HOPE and/or approving authority should be the chairman or a member of the Bids and Awards Committee also applies to the members of the BAC in GOCCs and NGAs.

¹ The *Civil Service Commission v. Joson*, G.R. No. 154674, May 27, 2004, 429 SCRA 773,786.

² NPM No. 011-2010 dated 22 April 2010.

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 V

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