



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
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NPM No. 18-2006

8 November 2006

MS. VIRGINIA NANAGAS BACTAD
Consultant
CULTURAL CENTER OF THE PHILIPPINES
Roxas Boulevard, Pasay City

Re: Composition of the Bids and Awards Committee

Dear Ms. Bactad:

We refer to your letter dated 8 June 2006, addressed to Atty. Estanislao C. Granados Jr., Executive Director of the Procurement Service, inquiring if the proposed composition of the Bids and Awards Committee (BAC) of the Cultural Center of the Philippines (CCP) is in accord with Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A). You further seek an exemption from the application of Section 11.2.1 of the IRR-A if our response to the first query is in the negative.

Section 11.2.1 of the IRR-A enumerates the officers who compose the Bids and Awards Committee (BAC) and their respective qualifications. They are as follows:

- (a) The Chairman, who is at least a third ranking permanent official of the procuring entity;
- (b) An officer, who holds at least a third ranking permanent position, with knowledge, experience and/or expertise in procurement and who to the extent possible represents the legal or administrative area of the bureau;
- (c) An officer, who holds at least a third ranking permanent position, with knowledge, experience and/or expertise in procurement who to the extent possible represents the finance area of the bureau;
- (d) An officer who has technical expertise relevant to the procurement at hand, and, to the extent possible, has knowledge, experience and/or expertise in procurement; and
- (e) A representative from the end user unit who has knowledge of procurement laws and procedures.

Members of the BAC shall be composed of at least five (5) members but not to exceed seven (7).¹ In the case of a BAC with five (5) members, three (3) shall be regular members and two (2) shall be provisional members. In case the BAC has seven (7) members, the Head of the Procuring Entity may designate the additional two (2) members, either as regular or as provisional members, or a combination thereof.² Provisional members are designated to sit in the BAC for a particular procurement activity while regular members sit in all the procurement activities of the agency. It bears stressing, however, that all members of the BAC, whether regular or provisional, must occupy a *plantilla* position in the procuring entity.³

On the other hand, the following officers are disqualified from membership in the BAC:

- (a) Head of the Procuring Entity and/or approving authority;⁴
- (b) Official who approves procurement transactions;⁵ and,
- (c) Personnel from the accounting office, including the Chief Accountant or Head of the Accounting Unit, except in cases where the accounting office is the end-user unit requesting for a particular procurement;⁶

We understand, based on our phone conversation with your Ms. Noreen Antonio, that CCP is governed by a Board of Trustees, which is composed of one *ex-officio member* and eleven (11) representatives from the private sector. One of the powers of the board is to approve contracts entered into by CCP.

Based on the foregoing, we opine that individual trustees may not be designated as members of the BAC. They are members of the collegial body who constitute the approving authority of the CCP. Under Section 11.2.5 of the IRR-A, the approving authority is disqualified from becoming a member of the BAC to avoid any conflict of interest that may arise in the approval and signing of the contract. Further, it appears that they do not occupy *plantilla* positions in the procuring entity, except for the *ex-officio* member.

We believe, however, that individual trustees may be designated as advisers or resource persons of the BAC. In this capacity, trustees may impart their knowledge, experience, and expertise to the BAC.

¹ Section 11.2.3, IRR-A

² Please see "The Handbook of Frequently Asked Questions on R.A. 9184 and its IRR-A."

³ Please See GPPB-TSO NPM Opinion No. 25-2004, dated 8 March 2004 and NPM Opinion No. 31-2004, dated 22 March 2004. According to the Department of Budget and Management (DBM), *plantilla* refers to the list of positions authorized to be created by the DBM.

⁴ Section 11.2.5, IRR-A

⁵ *Ibid.*

⁶ Commission on Audit ("COA") Circular No. 2003-004 dated July 30, 2003, which provides as follows:

"Pursuant to the authority vested in this Commission to promulgate accounting rules and regulations including those for strengthening of internal control in the operations of the government, it is hereby directed that the Chief Accountant and the personnel of the Accounting Unit of any agency of government are prohibited from being regular members of the agency's Bids and Awards Committee as contemplated under the Implementing Rules and Regulations of R.A. 9184. However, they may serve as provisional members when the Unit is the end-user of the items, subject of the bidding."

We also understand, based on your representation, that Department Manager III is a *plantilla* position in your agency. Thus, officials occupying this position are qualified to be designated as members of the BAC, whether regular (if considered as 3rd ranking official in the procuring entity's organizational structure) or provisional members.

On the other hand, consultants cannot be designated as members of the BAC. Consultants or individuals engaged through job orders or contracts of services constitute non-organic personnel of the agency and, therefore, are not included in the *plantilla* of the procuring entity. They may, however, be designated as members of the Technical Working Group of the BAC. In such capacity, they can assist in the preparation of the terms of reference and in the evaluation of bids. They can also submit their recommendations to the BAC.

Lastly, CCP may not designate a representative from a non-government organization (NGO) as a member of the BAC, unless said representative likewise occupies a *plantilla* position in the procuring entity. Representatives from NGOs may, however, sit as observers. As observers, they may attend all stages of the procurement process as long as the organization which they represent is duly registered with the Securities and Exchange Commission and meet the criteria provided under Section 13.2 of the IRR-A.

Finally, please be advised that the Government Procurement Policy Board (GPPB) is not legally authorized to grant exemptions from the implementation of R.A. 9184 and its IRR-A. GPPB's primary mandate is to provide policy direction in the field of public procurement. It cannot exercise functions beyond the scope of its authority.

We trust that the foregoing sufficiently addresses your concerns. Should you have any additional question, please do not hesitate to contact us.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III