



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

NPM No. 18-2011

24 October 2011

ATTY. MACUR D. MAROHOMBSAR
Vice-Chairman, Bids and Awards Committee
DEPARTMENT OF EDUCATION

MS. NANETTE R. MAMORANSING
Member, Bids and Awards Committee
DEPARTMENT OF EDUCATION

MS. DEMETRIA L. MANUEL
Member, Bids and Awards Committee
DEPARTMENT OF EDUCATION

MR. ARTEMIO S. CAPELLAN, JR.
Member, Bids and Awards Committee
DEPARTMENT OF EDUCATION

Re : Legal Assistance to and Indemnification of BAC Members

Dear Madams and Sirs:

This refers to your letter dated 1 September 2011 seeking the assistance of this office relative to your claim for legal assistance for criminal and administrative cases filed against yourselves as members of the Bids and Awards Committee (BAC) of the Department of Education (DepED).

We note that you filed your claim for reimbursement with the DepED pursuant to Sections 72 and 73 of Republic Act No. (RA) 9184 and its Implementing Rules and Regulations (IRR). The matter was then referred to the Government Procurement Policy Board for opinion/comment on the observations of the Office of the Undersecretary for Legal and Legislative Affairs of DepED. On 14 February 2011, this office issued its response on the basis of which, the DepED paid your claim for one (1) administrative case but refused to grant your claim for two (2) other administrative cases and two (2) criminal cases. A copy of our 14 February 2011 letter is attached hereto and made an integral part hereof.

As represented, you believe that the opinion of this office enunciated in said 14 February 2011 letter is not in accord with the intention of RA 9184 for the reason that Sections 72 and 73 clearly entitles the members of the BAC to "free legal assistance, liability insurance, and other forms of protection and indemnification for all reasonable fees, costs, expenses incurred by such person in connection with any administrative, civil, or criminal action, suits, or proceeding." You likewise

argued that the requirement for a "Court Notice" under Section 72 of the IRR is nothing more than the notices received by yourselves when you were required by the Office of the Ombudsman to submit Counter-Affidavits *vis-à-vis* the criminal cases filed against yourselves.

While we agree with your view that the BAC is entitled to free legal assistance, among other benefits, such privilege is not without conditions or requirements. The conditions/requirements for grant of free legal assistance are provided in Sections 72 and 73 of the IRR and the Guidelines for Legal Assistance and Indemnification of BAC Members and its Support Staff¹ (Guidelines). More importantly, the basis of the claim for legal assistance and the conditions for its grant is dependent on the nature of the case filed against the BAC member or Support Staff. Thus, it is incumbent upon the claimants to prove the existence of, or their compliance with, the conditions/requirements provided in the rules and the Guidelines.

Private Legal Assistance under Section 72 of RA 9184 and its IRR

In the case of engagement of services of private lawyers or external counsels, Section 72 categorically provides that the BAC may employ the same immediately upon receipt of Court Notice that a civil or criminal action, suit, or proceeding is filed against them. It further provides that the matter of the lawyer's fee shall be part of the indemnification package for the BAC members, subject to the provisions of Section 73 of RA 9184 and its associated IRR. Hence, if the claim for reimbursement of expenses is borne from the engagement of services of private lawyers or external counsels for a civil or criminal case, the proper basis of the claim is Section 72 of the IRR and the grant thereof shall be based upon showing that the engagement was done after receipt of Court Notice and the BAC member or Support Staff has not been adjudged as guilty.

Indemnification Package under Section 73 of RA 9184 and its IRR

On the other hand, the Guidelines issued on the basis of Section 73 of the IRR, allows indemnification of expenses for any civil, criminal, or administrative case brought against a BAC member or Support Staff, provided that the service of a private lawyer or an external counsel has been engaged and that the BAC member or Support Staff has not been adjudged as guilty of gross negligence, misconduct, or grave abuse of discretion. Accordingly, if the claim for free legal assistance is borne from a pending or completed action, suit, or proceeding whether civil, criminal, or administrative in nature, the proper bases are the provisions of Section 73 and the Guidelines, and the grant thereof shall be couched upon a showing that a private lawyer or external counsel was engaged and the BAC member or Support Staff has not been adjudged guilty as mentioned.

Re-evaluation of Claims

All told, we uphold our opinion of 14 February 2011 as it clearly delineated and identified the instances when private legal assistance may be availed of under Section 72; and when free legal assistance may be claimed as an indemnification mechanism under Section 73. Consequently, whether the engagement of private lawyers or external counsel was triggered by the receipt of a Court Notice in a civil or criminal action; or by virtue of being a party to any administrative, civil, or criminal action, suit, or proceeding, the BAC members and its Support Staff are entitled to private and free legal

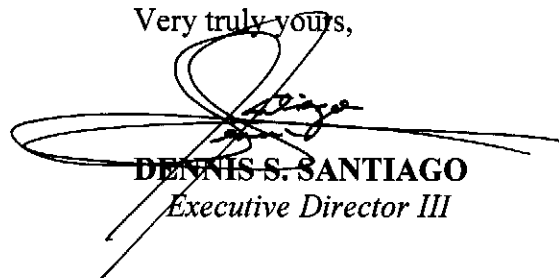
¹ Approved through GPPB Resolution No. 19-2006 dated 6 December 2006.

assistance pursuant to the provisions of Sections 72 or 73 of the IRR and the Guidelines issued by the GPPB.

Thus, we suggest the re-submission of your claims for legal assistance in accordance with the foregoing discussions for DepED's re-evaluation. We wish to stress that the consideration of facts and interpretation of the circumstances surrounding your claim *vis-à-vis* the application of the pronouncements of this office are within the discretion and sound judgment of DepED, which this office has neither control nor authority to pass upon.

We trust that we have provided sufficient guidance on the matter.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III



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

14 February 2011

HON. FRANKLIN C. SUNGA
Undersecretary for Legal and Legislative Affairs
DEPARTMENT OF EDUCATION
DepEd Complex, Meralco Avenue, Pasig City

Dear Sir:

We refer to your letters dated 22 July 2010 and 15 September 2010 requesting for opinion on the observations made by your office relative to the request for authority to reimburse expenses for legal services by members of one of the Department of Education (DepEd) Bids and Awards Committee (BAC).

Based on the documents furnished us, we have gathered the following:

1. In compliance with the Order of the Office of the Ombudsman directing them to execute counter-affidavits in the complaints filed therewith by Prudencio Quido and Myrna Gonzales, the DepEd BAC I members composed of Vice-Chairman Atty. Macur Marohombsar and members Ms. Nanette Mamoransing and Ms. Demetria L. Manuel, engaged the services of Villanueva Law Office to prepare the necessary counter-affidavits and other pleadings and to handle their case.
2. The DepEd BAC I members requested for authority from the Office of the Undersecretary for Administration & Finance of DepEd to reimburse the expenses incurred for the services rendered by Villanueva Law Office in the amount of Three Hundred Seventy-Five Thousand Pesos (PhP 375,000.00). The basis for the claim is Section 72 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.
3. The Office of the Undersecretary for Administration & Finance transmitted the request for "legal clearance" to your office, which then expressed that the matter be referred to the Government Procurement Policy Board (GPPB).

Based on the comments and observations appearing in your letter, the specific issues are as follows:

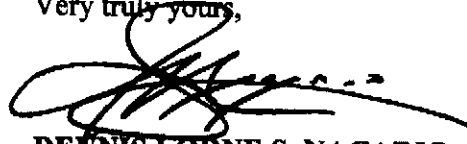
1. Whether BAC members may engage the services of a private lawyer or external counsel under Section 72 of RA 9184 and its IRR to prepare counter-affidavits in a case with the Office of the Ombudsman; and

to engagement of private lawyers or external counsel for civil and criminal actions. Thus, the proper basis of the claim appears to be Section 73 of the IRR rather than Section 72.

Finally, we wish to stress that the determination of the reasonableness of the services and the amount thereof is clearly within the discretion of the procuring entity and is not within the authority of the GPPB to pass upon.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dennis Lorne S. Nacario', written over a horizontal line.

DENNIS LORNE S. NACARIO

OIC – Executive Director

2. Whether the BAC members complied with the provisions of the IRR of RA 9184 in availing legal assistance and indemnification for the engagement of the services above-mentioned.

At the outset, we would like to inform you that the Government Procurement Policy Board (GPPB) is primarily an administrative body imbued with quasi-legislative powers in the area of public procurement. It has no jurisdiction to rule over actual controversies considering that it has no quasi-judicial powers under RA 9184 and its IRR.

For your guidance, however, we confirm that Section 72 of RA 9184 and its IRR authorizes members of the BAC to engage the services of private lawyers or external counsel immediately upon receipt of court notice that a civil or criminal action, suit or proceeding is filed against them in connection with the lawful performance of their BAC functions.

Section 73 of RA 9184 and its IRR, on the other hand, mandates the establishment of an indemnification package for public officials, which may be in the form of free legal assistance, liability insurance, and other forms of protection or indemnification for all reasonable fees, costs and expenses incurred by such persons in connection of any administrative, civil or criminal action, suit or proceeding to which they may be or have been made a party by reason of the lawful performance of their official functions and duties. It is on this basis that the GPPB issued the Guidelines for Legal Assistance and Indemnification of BAC Members and its Support Staff¹ (Guidelines).

It will be noted that Section 72 of the IRR provides when BAC members are authorized to engage the services of private legal assistance in the event of a civil or criminal action against them. Section 73 of the IRR, on the other hand, provides for the establishment of an equitable indemnification package.

Based on the afore-cited provisions, it appears that, although intricately related, the application of Sections 72 and 73 of the IRR is independent from and not reliant on the other. Stated differently, the existence of the situation mentioned in Section 72 of the IRR is not a pre-condition for the use of the indemnification package established under Section 73 of the same IRR. Similarly, the absence of an indemnification package does not preclude the engagement of private legal assistance under Section 72 of the IRR.

As such, we are of the view that BAC members may engage private legal assistance upon their receipt of court notice for a civil or criminal action even in the absence of an established legal indemnification package. Conversely, prior court notice is not necessary before BAC members may avail of any of the indemnification packages allowed in the Guidelines, such as free legal assistance for administrative cases. It goes without saying, however, that in the event that the private legal assistance is for a civil or criminal case, prior receipt of court notice under Section 72 of the IRR is necessary.

With regard to the second issue, we note that the claim for reimbursement of expenses incurred for private legal services in an administrative case is based on Section 72 of the IRR. Considering the foregoing discussion, legal services for administrative cases against the BAC may be claimed under the indemnification package as established on the basis of Section 73 of the IRR without need of prior court notice inasmuch as Section 72 of the IRR pertains only

¹ Issued through GPPB Resolution 021-2005 dated 7 October 2005