



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Avenue, Ortigas Center,
Pasig City, Philippines 1605

NPM No. 28-2005

May 31, 2005

ROLANDO R. PROMENTILLA
Chief, Marketing Division
Bureau of Animal Industry
Department of Agriculture
Visayas Ave., Diliman, Quezon City

**Re : Creation of the Supplier's Accreditation Committee (SAC) and
Technical Evaluation Committee (TEC)**

Dear Mr. Promentilla:

This refers to your letter dated May 25, 2005, which we received through facsimile on even date, addressed to the undersigned, requesting for clarification on the legality of the creation of the Supplier's Accreditation Committee (SAC) and the Technical Evaluation Committee (TEC) within your agency.

**Functions of the Bids and Awards Committee (BAC)
and the BAC Secretariat**

Section 12.1 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184) expressly provides for the functions of the Bids and Awards Committee (BAC), quoted hereunder, to wit:

The BAC shall have the following functions; advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, **determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids**, undertake post qualification proceedings, resolve motions for reconsideration, recommend award of contracts to the head of the to the head of the procuring entity or his duly authorized representative: Provided, however, that in the event the head of the procuring entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Rule XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group (TWG) from a pool of technical, financial and/or legal experts to assist in the procurement process, particularly in the eligibility screening, evaluation of bids and post-qualification. In proper cases, the BAC shall also recommend to the head of

the procuring entity the use of Alternative Methods of Procurement as provided for in Rule XVI hereof. (Emphasis supplied).

Likewise, Section 14 .1 of the same law enumerates the functions of the BAC Secretariat. The pertinent section is stated as follows:

The head of the procuring entity shall create a Secretariat which will serve as the main support unit of the BAC. He may also designate an existing organic office within the said procuring entity to serve as Secretariat. However to strengthen and promote the professionalization of the organization's procuring unit, he may reorganize the unit by designating it as BAC Secretariat and redeploying appropriate existing personnel to it to perform this function, as well as procurement related task. The Secretariat shall have the following functions and responsibilities:

1. Provide administrative support to the BAC;
2. Organize and make all necessary arrangement for BAC meetings;
3. Attend BAC meetings as Secretary;
4. Prepare Minutes of the BAC meetings;
5. Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidders;
6. Assist in managing the procurement processes;
7. Monitor procurement activities and milestones for proper reporting to relevant agencies when required;
8. Consolidate PPMs from various units of the procuring entity to make them available for review as indicated in Section 7 of this IRR-A
9. Make arrangements for the pre-procurement and pre-bid conferences and bid openings; and
10. Be the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, civil works and consulting services, and the general public.

Based on the foregoing provisions, it may be very well inferred that the functions of the BAC and the BAC Secretariat are actually mandated by law and cannot be further delegated to another committee. Although the law provides that the BAC may create a Technical Working Group (TWG) to assist it during the procurement process, its role is limited only to providing assistance to the BAC especially in the technical aspects of the bid process along its area of expertise.¹ This does not however mean that the BAC may create several permanent committees which in effect will perform the actual functions specifically assigned to them by law.

Creation of the Supplier's Accreditation Committee (SAC) and the Technical Evaluation Committee

Generally, the enactment of R.A. 9184 brought about major reforms in the procurement system, the most significant of which is the use of competitive bidding in all government procurement as a matter of policy. In this light, the creation of a Supplier's Accreditation Committee (SAC) within the Bureau of Animal Industry (BAI) which is tasked to develop a Supplier's Accreditation System is not in accordance with the mandate of the new procurement law, as it in fact contravenes the very basic principles of competitive bidding. Specifically, the establishment of an accreditation system within the agency would tend to limit the participation of bidders only to those accredited suppliers, to the exclusion of the other bidders in the market.

¹ Page 79, *Government Procurement Tool Kit*, by Sofronio B Ursal, 2004

Corollary to this, it would also be noteworthy to consider that a similar accreditation system for suppliers which was in place in the Department of Health (DOH) has already been abolished by virtue of DOH Administrative Order No. 130, S. 2004² for having been declared inconsistent with the provisions of R.A. 9184.

Nevertheless, the procuring entity may establish a supplier's registry for purposes of maintaining a list of eligible suppliers to facilitate faster eligibility checking during the bidding process. It must be clarified, however, that even non-registered suppliers may still participate in the agency's bidding opportunities as long as said bidders/suppliers submit the required eligibility documents. Accordingly, the task of maintaining said registry of suppliers will be the responsibility of the BAC Secretariat, as part of its administrative support function.

Moreover, the creation of a Supplier's Accreditation Committee nor the development of a Supplier's Accreditation System is unnecessary, as the process of screening and determining the suppliers who are eligible to participate in the bidding will be addressed by the conduct of an "Eligibility check"; the first stage in the bid evaluation process which employs the use of the non-discretionary "pass or fail" criteria. This is clearly exemplified under Section 23.2 of the IRR-A provided hereunder as follows:

In relation to Section 25 on submission and receipt of bids, and subject to the provisions of Section 21.3 of this IRR-A, the **BAC shall determine if each prospective bidder is eligible to participate in the bidding by examining the completeness of each prospective bidder's eligibility requirements or statements against a checklist of requirements, using a non-discretionary "pass-fail" criteria**, as stated in the Invitation to Apply for Eligibility and to Bid, and shall be determined as either "eligible" or "ineligible". x x x (Emphasis supplied).

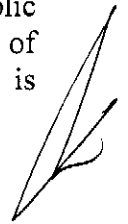
In the same light, it also appears that the creation of the Technical Evaluation Committee (TEC) is a mere surplusage as it would only result to a redundancy in the functions of the BAC and the TEC. Specifically, the functions of the TEC as provided in SO No 40, S. 2005 are stated hereunder, to wit:

1. Review bid proposals/offers after opening of bids
2. Submit result of evaluation to the BAC
3. Recommend measures on how to improve and standardize preparation of specifications especially those highly technical equipment and services.

Based on the aforementioned enumeration, the TEC will practically be performing the primary functions of the BAC, particularly bid evaluation.

In fine, it would also be noteworthy to discuss that the functions of the BAC and the BAC Secretariat are considered as mandatory duties conferred by law. One of the basic tenets in administrative law provides that statutes which confer upon a public body or officer power to perform acts which concerns the public interest or rights of individuals, are generally regarded as mandatory although the language used is

² Administrative Order No. 130, S. 2004, dated January 5, 2004, *Abolition of Existing Procurement-related Accreditation Committees*.



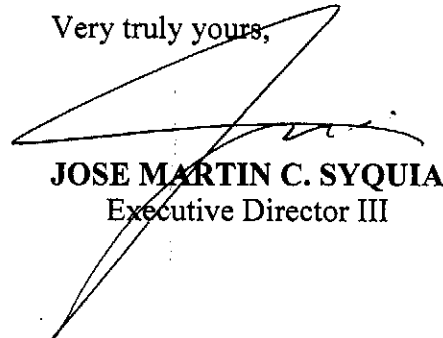
permissive only, since such statutes are construed as imposing rather than conferring privileges³. Thus, BAC members and the BAC Secretariat must vigilantly perform their duties as mandated by law and take responsibility for their decisions, as they are afforded sufficient protection by law, such as grant of honoraria and the availability of legal assistance and indemnification package. However, also by specific provision of the law, such privileges cannot be extended to members of other committees such as the SAC and TEC, since their creation is not contemplated by R.A. 9184. Consequently, although contrary to the dictum of equity, the members of such committees will bear their own risk for performing functions not sanctioned by the law.

Anent the foregoing, we hereby confirm your observation on the matter and recommend a review of the set-up, including functions and responsibilities of the aforementioned committees (SAC and TEC) to ensure compliance with the basic principles of the new procurement law.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

³ page 50, *Philippine Administrative Law*, by Ruben Agpalo, 1999