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NPM No. 34-2009

14 July 2009

MR. JOHNSON U. BONIFACIO
Administrative and Finance Division
DEPARTMENT OF AGRARIAN REFORM
Quezon II Provincial Office
3rd Floor L.M. Tanada Building
Gumaca, Quezon City 4307

Re: Conflict of Interest

Dear Mr. Bonifacio:

We respond to your letter dated 02 April 2009 requesting for clarification on whether or not the participation of an employees' cooperative in the bidding and purchasing process of the government agency where they are employed is a case of conflict of interest and therefore violative of Rule XV, Section 47 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184).

To elucidate on your query, you have cited specific instances pertaining to the award by your agency of certain supplies and catering services contracts to the employees' cooperative whose directorship, per your representation, includes those officers designated as members of the agency's Bids and Awards Committee (BAC).

At the outset, we wish to inform you that the Government Procurement Policy Board is primarily a policy-making body, and has no jurisdiction to rule over actual controversies with regard to the conduct of bidding and other procurement processes inasmuch as it has no quasi-judicial functions. As such, it cannot ascertain the existence of facts, validate claims, representations or arguments of contending parties.

Nevertheless, and pursuant to our thrust to monitor and improve compliance by government agencies with the provisions of R.A. 9184 and its IRR-A, we hereby propound the following for your guidance:

One of the legal documents required for determining the eligibility of a bidder is its sworn statement that it is not related by consanguinity or affinity up to the third civil degree to the head of the procuring entity, members of the BAC, Technical Working Group and Secretariat, or to any of the procuring entity's official who directly or indirectly took part in the bidding or procurement process. This requirement applies to both natural and juridical entities, and extends to the latter's

officers, directors, stockholders and members. Failure to issue this disclosure statement is considered as a ground for automatic disqualification.¹ In this regard, it bears stressing that whether the contract will be secured through public bidding or one of the alternative modes, the fact remains that the supplier/contractor/consultant to be awarded the contract must first be determined to be eligible by the procuring entity thru its BAC. Thus, to be eligible, compliance with this disclosure requirement is a condition sine qua non, among others.

Corrollarily, the determination of the existence of a conflict of interest is essentially and primarily lodged with the BAC of the procuring entity. For this purpose, it is incumbent upon the BAC to ascertain whether the relationship of the bidder to the procuring entity or any of its BAC, TWG, Secretariat, or officers or employees having direct access to information that may substantially affect the result of the bidding or any procurement processes, puts it in a position to unduly influence or be given preference in the award of the contract.

Relative to the above, and consistent with the *Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees* or R.A. 6713, a conflict of interest occurs, when the official or employee is a member of the Board of Directors and the interest of such corporation or business, or the official or employee's rights or duties therein, are opposed to or affected by the faithful performance of official duty.

Further, in the event that a conflict of interest arises, the official or employee involved shall resign from his position and/or divest himself of his shareholdings or interests within the prescribed period, reckoned from the date when the conflict of interest had arisen.² In any case, it shall be incumbent for any public official or employee to avoid conflict of interest at all times.

We hope that this sufficiently addresses your concern. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

Emiluisa C. Peñano
EMILUISA C. PEÑANO
Officer-in-Charge

Copy furnished:

PARO Joselito Nathaniel I. Diaz
DAR-Quezon II

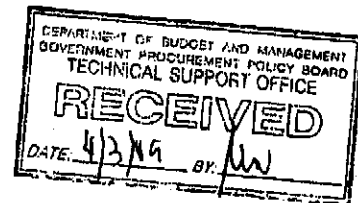
¹ Please refer to Section 47 of the Implementing Rules and Regulations Part A of R.A. 9184

² Please refer to Rule IX of the Rules Implementing R.A. 6713.

Lea/Bryan

9006701-04

April 2, 2009



HON. RUBY U. ALVAREZ
Executive Director
Technical Support Office
Government Procurement Policy Board
Unit 2506, Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City

Madam:

Undersigned employee of the Department of Agrarian Reform – Quezon II, is most respectfully requesting for a legal opinion on whether or not the participation of an employees' cooperative in the bidding and purchasing process of the government agency where they are employed is a case of conflict of interest and therefore a violation of Rule XV, Section 47 of IRR of RA 9184.

The above query is preceded by a seminar/orientation on the provisions of RA 9184 and its implementing rules and regulation conducted by our Regional Office sometime in August 2008 where undersigned attended together with our head of office, head of legal division, budget officer and supplies officer. It is in the said seminar/orientation when we first learned about the provisions on conflict in interest. It is known in our office that our employees' cooperative where almost all of our staffs are members and therefore managing the same, is occasionally transacting with our agency particularly in the sale of office supplies and catering service. Recently, our cooperative has been given the opportunity to submit quotation for office supplies and equipments by our newly instituted BAC chaired by our Chief Agrarian Reform Program Officer (CARPO) for Finance and Administration who also a member of the board of directors of our employees' cooperative. As I was assigned in the Administrative and Finance division, I learned soon enough that our BAC awarded to three (3) different bidders, which include our employees' cooperative, the contract for the purchase of our office supplies and equipments. Incidentally, the total amount of the entire contract amounted to more than Two Hundred Fifty Thousand Pesos (P250,000.00), a clear case of splitting of contracts as defined in Section 52 of the Implementing Rules and Regulations of Republic Act No. 9184 in relation to Shopping as an alternative method of procurement.

Undersigned have maintained his position on the matter that employees' cooperative's involvement in the above-narrated circumstances is a clear case of conflict of interest. This matter was personally brought by the undersigned to the attention of the BAC Chairperson during a meeting called by the latter to discuss the same. However, the BAC Chairperson not heeding to my opinion argued along the following lines: That cooperatives are eligible to participate in the bidding for the supply of goods; that there is no conflict of interest considering that there is no relationship to speak of between the head of the procuring entity and a cooperative which is a juridical person; and finally, that considering that Shopping was utilized as an alternative method of procurement in this instant, bidding did not transpire and therefore the conflict of interest clause does not apply.

During the meeting, a representative from the legal division of our office was requested in order to give an opinion on the matter. In summary, the legal division representative gave the opinion that there might be a case of conflict of interest as the members of the BAC themselves are members of the employees' cooperative and even assuming that they did not exert their authority in this instant the fact remains that they are officers and employees having direct access to information that may substantially

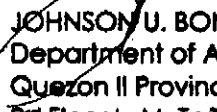
affect the result of the bidding, such matter requires full disclosure. The legal representative cited the inapplicability of the relationship by consanguinity or affinity by the head of the procuring office to the bidder in the instant case, for the obvious reason that the bidder is a juridical entity. Finally, the legal representative opined further that Shopping though an alternative method of procurement is in effect a bidding process which is summary in nature. Furthermore, provisions in the implementing guidelines of RA No. 9184 did not specifically indicate that the conflict of interest clause is not applicable in case of shopping. In fact, the conflict of interest is applicable in all the phases of the process of bidding and procurement. A recommendation was rendered by the legal representative that the participation in the bidding of the employees' cooperative and that members of the BAC fully disclose their interest in the said cooperative in each and every letter requesting for quotation, thereby giving fair chance to the other bidders to contest the employees' cooperative's participation in the process. Should there be no protestants, the employees' cooperative should be allowed to participate.

Despite all the precautions given to the BAC, they still proceeded with their original shopping procedure and without disclosing their financial interest as employees-members they continued in making the employees' cooperative one of the awardees.

It is therefore imperative that undersigned secure the above-requested independent legal opinion from your end to once and for all settle the issue. Attached herewith is a print copy of undersigned's query and answer on your Online Help Desk regarding the matter.

Thank you very much and hoping that this merits you prompt action on the matter, I am

Very truly yours,



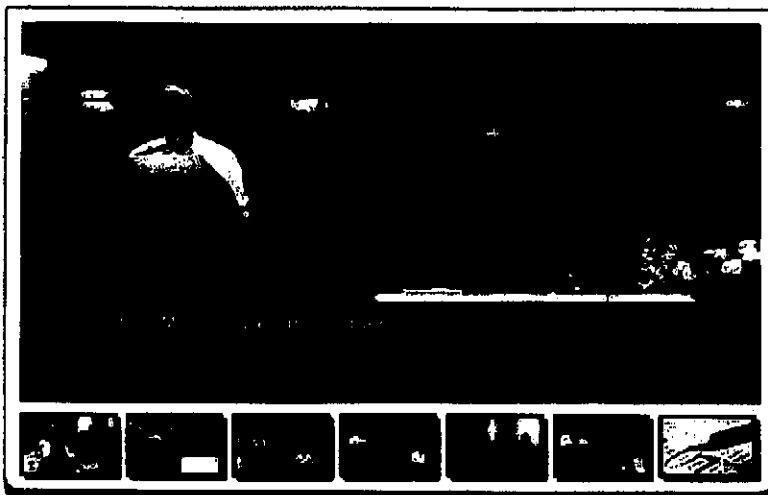
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Department of Agrarian Reform
Quezon II Provincial Office
3rd Floor L. M. Tañada Building
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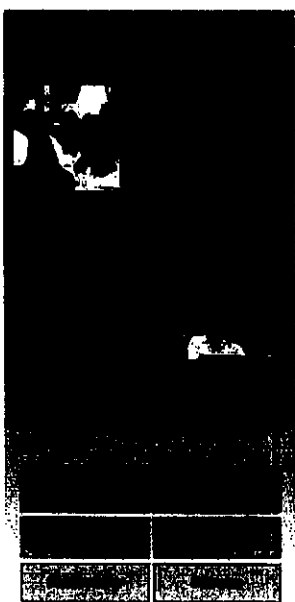
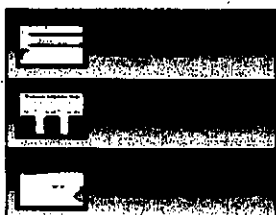


[16:29] meeboguest938043: how can I ask for a written legal opinion regarding conflict of interest regarding procurement of supplies from our cooperative

[16:40] gppbno: You may address your letter to Executive Director Ruby U. Alvarez of the Government Procurement Policy Board - Technical Support Office. Our address is Unit 2506, Raffles Corporate Center, P. Ortigas Jr. Road, Ortigas Center, Pasig City

[16:43] meeboguest938043: THANKS

Type [here](#) and hit enter to send a private message.



Zoe Cee - Can the end user be at the same time the SAC chairperson?
Thanked 3/27/2009 3:58:34 PM

Guest - GPPB Online Forum is the better on the left page. 3/27/2009 3:58:04 PM

Guest - This SHOUTBOX is for "comments and suggestions only". Your questions should be in the GPPB Online Forum (upper left) or you can chat directly above. 3/27/2009 3:58:55 PM

guest from lacuna - can we ask them just to pay us for the items we have delivered and cancel the two items that we cannot provide. 3/27/2009 2:11:53 PM

guest from lacuna - gud pm sir/madam, I just want to seek your opinion regarding this matter. we have been awarded an contract for the delivery of various medical supplies and equipment. our problem now is that we still have 2 items not delivered as it is not already available. 3/27/2009 2:10:28 PM

jurisdiction - under RA 9184, can we consider ships / vessels as goods? What is the most expeditious way of acquiring vessels which our maritime country is in dire need of? pls email answer at eamie_180@yahoo.com 3/27/2009 10:12:02 AM

ede - kailan na po ba final implementation ng amended ra 9184? may suminar po ba ulit arara sa mga baw members? kailan? trix 3/27/2009 9:40:26 AM

my asking - our coop has a cooperative all of us are stockholders including all the members of bidding and awards committee. are we allowed to purchase goods from our cooperative. hindi po ba conflict of interest to lung ang mag su-suply ng goods sa amin sy coop 3/26/2009 2:51:36 PM

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3/4/2009

The Construction Industry Authority of the Philippines (CIAF) issued the consolidated list of blacklisted constructors as of 28 February 2009.

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Last 3 October 2008, the Government Procurement Policy

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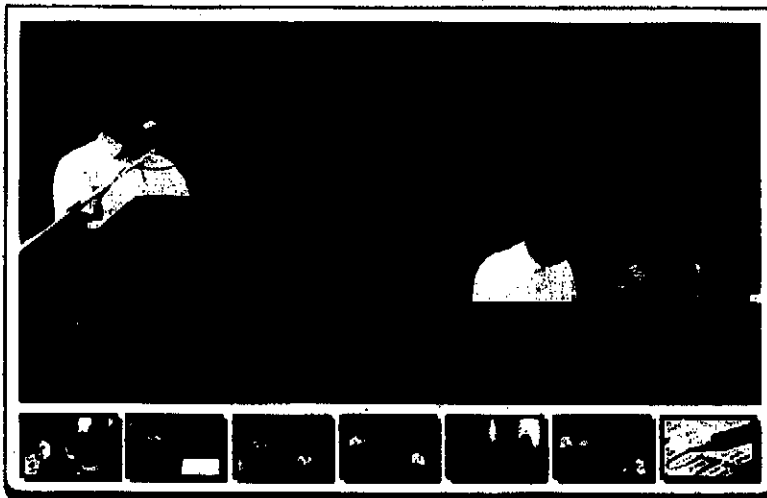
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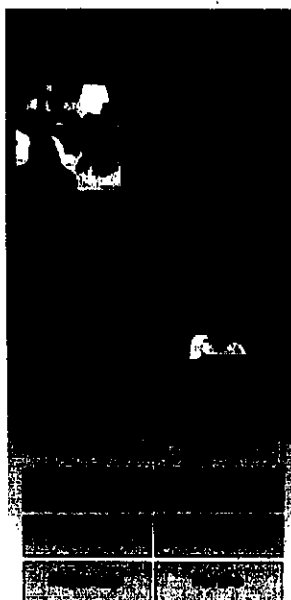
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[15:39] meeboguest455114: good pm po. meron po kami coop wala all of us are stockholders including members of the BAC. pwede po ba having bunil ng supplies sa ating cooperative. di po ba conflict of interest ko considering na lahat ng signatories ay stockholders ng cooperative natin

[15:56] gppb100: It appears to be a clear case of conflict of interest if the procuring entity procures from the cooperative whose members are employees of the same procuring entity.

Type here and hit enter to send a private message.



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quest - could a po require item 2 have a complete set of office supplies and pls check sure also that the quality should not be sacrificed. thankz... 3/26/2009 1:06:07 PM

ARYD - Do we have guidelines for a government to government transaction? 3/26/2009 9:34:39 AM

outbox - PLEASE POST YOUR QUESTIONS ON THE GPPB ONLINE FORUM. THIS SHOUTBOX IS FOR COMMENTS AND SUGGESTIONS

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Message:

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