



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

NPM No. 34-2011

28 December 2011

MS. NERIA A. ANDIN, CESO III
OIC, Director
FOREST MANAGEMENT BUREAU
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
Visayas Avenue, Diliman,
1100 Quezon City

Re: Bids and Awards Committee Composition and Membership

Dear Dir. Andin:

We refer to your letter dated 11 November 2011 seeking clarification on the following matters:

1. Whether the Forest Management Bureau's (FMB) present Bids and Awards Committee (BAC) composition complies with the requirements of Republic Act No. 9184 (RA 9184) and its revised Implementing Rules and Regulations (IRR);
2. Whether non-third ranking or non-Salary Grade (SG)-24 position holders designated as Division Chief may be allowed to become alternate members; and
3. Whether FMB can request for exemptions from complying with the eligibility requirements of regular BAC membership due to the limited availability of third ranking or SG-24 positions.

We understand from your letter that pursuant to the implementation of Executive Order No. 366 or the Government Rationalization Program, where FMB is prohibited to hire and promote since 2005, some of the present BAC members do not hold third ranking or SG – 24 positions. Notwithstanding the requirements of RA 9184, FMB has been constrained to strictly apply its provisions because only the Officer-in-Charge (OIC) Director, which is also the Head of the Procuring Entity (HOPE), holds a Director III (SG – 28) position.

BAC Composition or Membership

Anent your first query, the determination of a procuring entity's compliance with the 'rank' requirement of Section 11.2.2 of RA 9184 and its IRR for its BAC composition and membership is based on the term "permanent" as defined in said

provision. The term “permanent” refers to a *plantilla* position within the procuring entity concerned. As mentioned in a previous opinion, “It does not qualify whether the *plantilla* position should be contractual, regular, or appointed; rather the concern specifically refers to whether the position exists within the organizational structure of the procuring entity.¹”

For this reason, any person, who is holding a position existing within the organizational structure of the procuring entity and possesses the required ranking, may be designated as BAC Chairman or regular BAC member, as the case may be, subject to the disqualifications provided by law. Consistent with the afore-quoted opinion, we reiterate that, “the determining factor for regular membership in the BAC is not the employment status of the person but the position he is holding”.

Alternate BAC Membership

As regards alternate members in the BAC, we refer you to Section 11.2.4 of the IRR, which provides that: “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...**” (Emphasis ours)

Hence, the same rule applies to the designation of alternate members. The determining factor would not be the employment status of the person but the position he is holding, albeit on a temporary basis or as an OIC.

From the foregoing, assuming that the position of Division Chief is a third rank permanent *plantilla* position in the FMB, then the person designated as such, even on a temporary capacity, can be designated as an alternate member of the BAC for purposes of eligibility requirements under RA 9184.

Exemptions from the Eligibility Requirements of Regular BAC Members

At present, RA 9184 and its IRR do not provide for exemptions from the eligibility requirements of regular BAC members. Similarly, there is no mechanism by which the FMB can apply for such exemptions from the Government Procurement Policy Board (GPPB).

It bears stressing that, notwithstanding the present predicament of FMB on having a small number of its officials holding the rank or position to be eligible as BAC members FMB must comply with the eligibility requirements of BAC members as found in Section 11.2.2 of the IRR.

In the event that FMB cannot constitute a BAC for lack of qualified personnel, Section 53.6 of the IRR of RA 9814 gives procuring entities which may not have the proficiency or capability to undertake a particular procurement, as determined by the HOPE, the option (1) to request other government agencies to undertake such procurement for them; or (2) to engage procurement agents to assist them directly and/or train their staff in the management of procurement function.

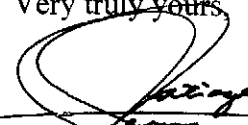

¹ See NPM No. 24 – 2009 dated 22 May 2009.

Considering that FMB is having difficulties in constituting a valid BAC due to a perceived lack of qualified officials, we are of the view that FMB may request other government agencies to procure in its behalf. However, in the selection of a procurement agent, please take into account its track record in, and expertise to undertake, procurement under RA 9184 and its IRR.²

We hope that our advice sufficiently addresses your concern. We wish to stress that this opinion is being rendered on the basis of the facts and particular circumstances as presented.

Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III 

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² See NPM No. 26-2010 dated 13 August 2010.