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**NPM No. 38-2009**

28 July 2009

**ENGR. EDGAR R. CALASARA**  
*Manager, Production Department*  
*OIC, Office of the General Manager*  
**METRO ILOILO WATER DISTRICT**  
Bonifacio Drive, Iloilo City

**Re : BAC Members on Hold-Over Capacity**

**Dear Engr. Calasara:**

We respond to your letter dated 9 June 2009 seeking guidance on the legality of the contracts entered into by the Metro Iloilo Water District (MIWD) based on recommendations of the Bids and Awards Committee (BAC) acting on a hold-over capacity.

We gather from your letter that the term of the BAC expired on April 18, 2009 but it was only during the last week of May that MIWD realized the said oversight. The Board of Directors of MIWD thereafter designated the new BAC with some new members sitting, for a fixed term of one (1) year.

The primary issue therefore is the validity of the recommendations of the BAC whose designation had expired.

While the Heads of Procuring Entities are encouraged, in the interest of professionalization, to re-appoint BAC members who have shown efficiency and probity in the performance of their duties, there is no provision in Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part - A (IRR-A) allowing the automatic renewal of said designation upon the lapse of their fixed one (1) year term.

The Supreme Court, in the case of *Topacio Nueno v. Angeles* (76 Phil. 12) enunciated the rule on hold-over in the law on public officers, viz: "in the absence of an express or implied constitutional or statutory provision to the contrary, an officer is entitled to hold the office until his successor is appointed or chosen and has qualified". Such is adopted in order to provide against all contingencies which might result from the office during the interregnum.

Thus, the recommendations of the old BAC may be considered as valid provided that they were executed with the presence of a quorum and in accordance with the pertinent provisions of the IRR-A of R.A. 9184. Furthermore, the subsequent approval of the contracts

by the Head of the Procuring Entity through the Board of Directors served as the imprimatur of approval for the said contracts.

Nonetheless, we strongly urge you to conduct timely planning on the establishment of your procurement organizations so as not to unduly disrupt the operations of your Office in the future.

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,

*Rubia U. Alvarez*  
RUBY U. ALVAREZ  
Executive Director III

24 July 2009

**ENGR. EDGAR R. CALASARA**  
*Manager, Production Department*  
*OIC, Office of the General Manager*  
**METRO ILOILO WATER DISTRICT**  
 Bonifacio Drive, Iloilo City

**Re : BAC Members on Hold-Over Capacity**

Dear **Engr. Calasara**:

We respond to your letter dated 9 June 2009 seeking guidance on the legality of the contracts entered into by the Metro Iloilo Water District (MIWD) based on recommendations of the Bids and Awards Committee (BAC) acting on a hold-over capacity.

We gather from your letter that the term of the BAC expired on April 18, 2009 <sup>and</sup> it was only during the last week of May <sup>2009</sup> that MIWD realized the said oversight. The Board of Directors of MIWD thereafter ~~renewed and~~ designated the new BAC with new members sitting, for a fixed term of one (1) year.

The primary issue <sup>posed</sup> ~~therefore~~ is the validity of the recommendations of the BAC whose designation had expired.

While the Heads of Procuring Entities <sup>in the interest of professionalization</sup> are encouraged to re-appoint BAC members who have shown efficiency and probity in the performance of their duties, ~~there is no direct~~ provision in Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part - A (IRR-A) allowing the automatic renewal of said designation. <sup>after the lapse of the one year</sup>

The Supreme Court, in the case of *Topacio Nueno v. Angeles* (76 Phil. 12) enunciated the rule on hold-over in the law on public officers, <sup>112</sup> ~~such that~~ "in the absence of an express or implied constitutional or statutory provision to the contrary, an officer is entitled to hold the office until his successor is appointed or chosen and has qualified". Such is adopted in order to provide against all contingencies which might result from the office during the interregnum.

Thus, the recommendations of the old BAC may be considered as valid provided <sup>by law</sup> that they were executed with the presence of a quorum and in accordance with the ~~other~~ <sup>provisions</sup> provisions of the IRR-A of R.A. 9184. Furthermore, the subsequent approval of the contracts by the Head of the Procuring Entity through the Board of Directors served as the imprimatur of approval for the said contracts.

Nonetheless, we strongly urge you to conduct timely planning on the establishment of your procurement organizations so as not to unduly disrupt the operations of your Office in the future.

Finally, we would like to inform you that upon effectivity of the Revised Implementing Rules and Regulations of R.A. 9184, BAC members, after expiration of their terms, shall continue to exercise their functions until the new BAC members are designated.

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,

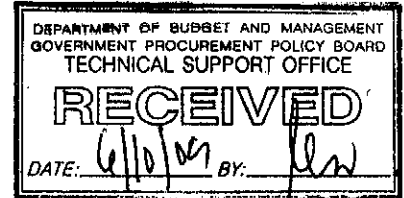
**RUBY U. ALVAREZ**  
*Executive Director III*



**METRO ILOILO WATER DISTRICT**  
Bonifacio Drive, Iloilo City

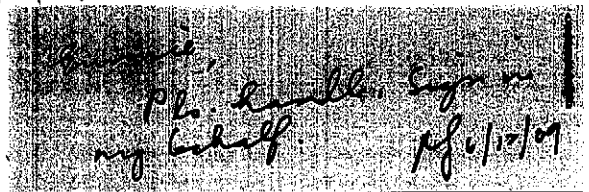
*Atty. Glycer*

*There are seeming inconsistencies in the facts, as represented herein. Near-June 9, 2009*  
*theless, the actions of the BAC Members, I think, while on hold-over capacity, are valid and/or may be ratified by the Board. Also, the Board's approval to contracts recommended by the BAC, gives the imprimatur of validity. What do you think?*  
*Pls. draft reply.*



**RUBY U. ALVAREZ**  
Executive Director III  
Government Procurement Policy Board  
Unit 2506 Raffles Corporate Center  
F. Ortigas Jr. Avenue, Ortigas Center  
Pasig City, Philippines 1605

*re. 11/10/09*



**Subject: BAC Members on Hold-over Capacity**

Madam:

This is in relation to our case wherein normally, the term of the members of the BAC expires every June 30 of the current year, ending their fixed term of one year. Our Board of Directors, reconstituted a new membership of the BAC last April 17, 2008, which will have a fixed term of one year. However, it was only last week of May that it was found out that the term of the current BAC members has already expired.

Now, our HOPE, the Board of Directors would like to know the validity of all contracts awarded by the agency after the lapse of the term of the current BAC members. These contracts were recommended by the BAC and were approved by the Board.

As of this writing, our Board has already renewed and appointed some new members in the BAC with a fixed period of one year.

We hope for your guidance on this matter.

Very truly yours,

*[Signature]*  
ENGR. EDGAR R. CALASARA  
Manager, Production Department  
OIC, Office of the General Manager

- cc:
- Board of Directors
  - BAC
  - File