

**NPM No. 47-2008**

20 November 2008

**ATTY. VON F. RODRIGUEZ**

*Manager*

**LEGAL DEPARTMENT**

**SUBIC BAY METROPOLITAN AUTHORITY**

Rm. 205, Bldg. 255, Barryman Road,  
Subic Bay Freeport Zone, Olongapo City, Pampanga

**Re: Establishment of a Bids and Awards Committee**

Dear Atty. Rodriguez

We refer to your letter dated 20 October 2008 seeking clearance on whether your office may validly further subdivide its Bids and Awards Committee (BAC) for the procurement of regular supplies and equipment into several BACs, to wit:

- a) BAC for Medical Supplies;
- b) BAC for Construction Supplies;
- c) BAC for Office Supplies;
- d) BAC for Motor Vehicles and Vehicle Maintenance Parts and Supplies; and
- e) BAC for Information Technology Supplies and Equipments.

Corrollarily, if Subic Bay Metropolitan Authority (SBMA) will be allowed to subdivide its BAC, is it also necessary to create separate Technical Working Groups and BAC Secretariats, respectively.

As you are well aware of, the existing policy is that each procuring entity is mandated to establish a single BAC in its head office. It is only in exceptional cases where the number and complexity of the items to be procured shall so warrant may the head of the procuring entity (HOPE) create separate BACs in order to expedite the procurement process. Furthermore, the same shall be limited in order to facilitate professionalization of procedures and standards (Section 11, IRR-A of R.A. 9184).

From the foregoing, it is clear that creating more than a single BAC for every agency is highly discouraged inasmuch as, this has the inevitable effect of diluting and/or putting to naught the principles behind the policy.

Relative therefore to your query, we wish to be clarified if your intent is really to further subdivide the existing BAC for Regular Supplies and Equipment in your corporation into five (5) more BACs; or, you actually wish to create more BACs for the procurement of regular supply and equipment.

Corrollary thereto, we would like to point out that there should be sufficient justifications for the HOPE of SBMA to create additional BACs. We noted that none has been stated in your representation. We also note that the exception provided under Sec. 21 of the IRR-A has already been availed of by your office when you created three (3) separate BACs according to the nature of procurement. Furthermore, the availability of the manpower that will be able to comply with the procurement law's requirements on BAC composition should also be seriously considered.

It maybe emphasized that the BAC shall consist of the following officials and comply with the following qualifications, to wit:

- (a) The Chairman, who is at least a third (3<sup>rd</sup>) ranking permanent official of the procuring entity;
- (b) An officer, who holds at least a third (3<sup>rd</sup>) ranking permanent position, with knowledge, experience and/or expertise in procurement and who to the extent possible represents the legal or administrative area of the bureau;
- (c) An officer, who holds at least a third (3<sup>rd</sup>) ranking permanent position, with knowledge, experience and/or expertise in procurement who to the extent possible represents the finance area of the bureau;
- (d) An officer who has technical expertise relevant to the procurement at hand, and, to the extent possible, has knowledge, experience and/or expertise in procurement; and
- (e) A representative from the end user unit who has knowledge of procurement laws and procedures.

Members of the BAC shall be composed of at least five (5) members but not to exceed seven (7).<sup>1</sup> In the case of a BAC with five (5) members, three (3) shall be regular members and two (2) shall be provisional members. In case the BAC has seven (7) members, the Head of the Procuring Entity may designate the additional two (2) members, either as regular or as provisional members, or a combination thereof<sup>2</sup>. Provisional members are designated to sit in the BAC for a particular procurement activity while regular members sit in all the procurement activities of the agency. It bears stressing, however, that all members of the BAC, whether regular or provisional, must occupy a *plantilla* position in the procuring entity<sup>3</sup>.

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<sup>1</sup> Section 11.2.3, IRR-A

<sup>2</sup> Please see "The Handbook of Frequently Asked Questions on R.A. 9184 and its IRR-A."

<sup>3</sup> Please See GPPB-TSO NPM Opinion No. 25-2004, dated 8 March 2004 and NPM Opinion No. 31-2004, dated 22 March 2004. According to the Department of Budget and Management (DBM), *plantilla* refers to the list of positions authorized to be created by the DBM.

On the other hand, the following officers are disqualified from membership in the BAC:

- (a) Head of the Procuring Entity and/or approving authority;<sup>4</sup>
- (b) Official who approves procurement transactions;<sup>5</sup> and,
- (c) Personnel from the accounting office, including the Chief Accountant or Head of the Accounting Unit, except in cases where the accounting office is the end-user unit requesting for a particular procurement;<sup>6</sup>

We also take note of the fact that the BAC proposed to be “further subdivided” is tasked with the procurement of regular supplies and equipment. Inasmuch as these items are “regular”, i.e. ordinary, used in the day-to-day operations of the corporation, not complex in nature and the requirement for which could be determined over a period of time, then, perhaps it would be better if the BAC, instead, focused on improving their Annual Procurement Plan so that there will be no need for creating additional BACs.

Finally, we would like to note that the same policy should be applied to the establishment of TWGs and BAC Secretariats.

We trust that the foregoing sufficiently addresses your concerns. Should you have any additional question, please do not hesitate to contact us.

Very truly yours,

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

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<sup>4</sup> Section 11.2.5, IRR-A

<sup>5</sup> *Ibid.*

<sup>6</sup> Commission on Audit (“COA”) Circular No. 2003-004 dated July 30, 2003, which provides as follows:

“Pursuant to the authority vested in this Commission to promulgate accounting rules and regulations including those for strengthening of internal control in the operations of the government, it is hereby directed that the Chief Accountant and the personnel of the Accounting Unit of any agency of government are prohibited from being regular members of the agency’s Bids and Awards Committee as contemplated under the Implementing Rules and Regulations of R.A. 9184. However, they may serve as provisional members when the Unit is the end-user of the items, subject of the bidding.”

**SUBIC BAY METROPOLITAN AUTHORITY  
LEGAL DEPARTMENT**



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*Enunio,*

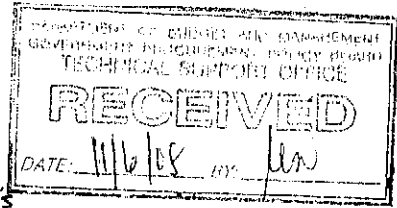
*Pls. Handle. Sign in  
my behalf.*

*11/7/08*

2008 October 20

**ATTY. RUBY U. ALVAREZ**  
Executive Director III  
Government Procurement Policy Board  
Technical Support Office

*By further subdividing existing BACs  
should be discouraged since this could  
go against existing policy.  
SBMA doesn't even provide justifications*



Dear Atty. Alvarez:

*for further subdividing its BAC. Also,  
I don't think they have enough manpower  
who could be qualified to meet the requirements  
of BAC/ TWA Secretariat. > They need proper training dir.*

This to seek your office's opinion on whether or not the Subic Bay Metropolitan Authority (SBMA) may further divide its Bids and Awards Committee for the procurement of regular supplies and equipments.

Section 11 of the Implementing Rules and Regulations-A (IRR-A) of Republic Act No. 9184 provides that:

**"Section 11. The BAC and its Composition**

Each procuring entity shall establish in its head office a single BAC to undertake the functions specified in Section 12 of this IRR-A. However, to expedite the procurement process for practical intents and purposes, the head of the procuring entity may create separate BACs where the number and complexity of the items to be procured shall so warrant. The BACs may be organized either according to: (a) geographical location of PMO or end-user units of the procuring entity; or (b) nature of procurement. Similar committees for decentralized and lower level officer may also be formed when deemed necessary by the head of the procuring entity. The creation of the separate BACs shall be limited in order to facilitate professionalization and harmonization of procedures and standards. In line with the objective to integrate the operations of foreign assisted projects to the mainstream operation of agencies separate BACs created to manage foreign assisted projects are discouraged."

In line with the foregoing, the SBMA divided its BAC according to the nature of procurement into:

- 1) BAC for Infrastructure;
- 2) BAC for Consultancy; and
- 3) BAC for Regular Supplies and Equipments.

Special BACs are created from time to time depending on the existence of special projects.

*[Handwritten mark]*

We understand that the mandate of the IRR-A is for the procuring entity to create a single BAC, save in cases that fall within the exceptions provided in the said IRR-A. Having this limitation in mind, we would like to seek clearance whether SBMA may validly sub-divide its BAC for the Procurement of Regular Supply and Equipments into several BACs; as follows:

- 1) BAC for Medical Supplies;
- 2) BAC for Construction Supplies;
- 3) BAC for Office Supplies;
- 4) BAC for Motor Vehicles and Vehicle Maintenance Parts and Supplies; and
- 5) BAC for Information Technology Supplies and Equipments.

In the affirmative, are we correct to assume that there would arise a necessity to create separate Technical Working Groups, as well as appoint separate BAC Secretaries/Secretariats, for each BACs?

Your immediate response on the matter will be greatly appreciated.

Thank you and best regards.

Very truly yours,

**ATTY. VON F. RODRIGUEZ**  
Manager