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NPM No. 49-2007

14 August 2007

DR. ARSENIO A. FORTIN, Ph.D.
OIC-Regional Executive Director
DEPARTMENT OF AGRICULTURE
Regional Field Office Unit No. 5
San Agustin, Pili, Camarines Sur

Re: Qualification of the Chairman of the Bids and Awards Committee

Dear Dr. Fortin:

We respond to your letters dated 5 January and 10 July 2007 requesting for clarification on the qualification of the Chairman of the Bids and Awards Committee (BAC). In particular, you wish to know if your office may validly appoint a lawyer holding the position of Legal Officer III, who while admittedly is not a third ranking official, possesses the required knowledge, experience, and/or expertise in procurement.

We regret to inform you that a lawyer occupying the position of Legal Officer III may not be validly appointed as BAC Chairman. Section 11.2.1 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R. A. 9184) prescribing the qualification of a BAC Chairman is clear as it is concise. It provides that, for regional offices, the BAC Chairman must be at least a third ranking permanent official of the procuring entity. Since the position of Legal Officer III is not a third ranking personnel in your agency, s/he cannot be appointed as BAC Chairman.

While we concur with your position that an official-lawyer, who has sufficient experience in government procurement, may be more competent to hold the position of a BAC Chairman than more senior ranking officials who do not have the required knowledge or experience in the procurement law, Section 11.2.1 does not provide for any exception to the third-ranking rule. *Dura lex, sed lex*. The law may be harsh, but it is still the law.

Nevertheless, to address this loophole in the law, the Government Procurement Policy Board has embarked on a training program aimed at increasing the knowledge and improving the capability of our BAC officials. We would like, thus, to encourage your BAC, together with the BAC Secretariat, Technical Working Groups and Procurement Unit, if any, to attend the basic training programs on procurement being conducted by state colleges/universities duly accredited by this Office.

We hope to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvarez', written over a diagonal line.

RUBY U. ALVAREZ
Executive Director III