

NPM No. 50-2008

17 December 2008

ATTY. GIOVANNI ALFONSO F. MIRAFLORES

Legal Officer III

Technical Working Group

BIDS AND AWARDS COMMITTEE - CITY OF ILOILO

Robinsons Place Iloilo, Mabini Street, Iloilo City

Re: Designation of the Local Chief Executive's Representative

Dear Atty. Miraflores:

This pertains to your letter dated October 29, 2008 positing the following queries:

1. Who may be designated as Local Chief Executive (LCE) representative for purposes of signing documents related to the procurement process?
2. Can the duly designated representative of the LCE approve Bids and Awards Committee (BAC) Resolutions:
 - a. Recommending the change in mode of procurement from competitive public bidding to any of the alternative modes?
 - b. Recommending the short list of consultants?"

It is noteworthy to state that Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part -A (IRR-A), allow the Head of the Procuring Entity (HOPE), or the LCE in the case of local government units (LGUs), to delegate certain responsibilities to a duly authorized representative, some of which are as follows:

- i. To receive, and, approve or disapprove the recommendation for contract award by the BAC;¹
- ii. In case of approval, to immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid (LCRB) or Highest Rated Responsive Bid (HRRB);² and
- iii. To approve, and whenever justified by the conditions provided in R.A. 9184 and its IRR-A, the recommendation of the BAC to resort to any of the alternative modes of procurement.³

¹ See Sections 12 and 37, Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A)

² Ibid.

Inasmuch as the nature and form of the delegation of power that the LCE may bestow upon his/her "duly authorized representative" is not categorically defined under R.A. 9184 and its IRR-A, it is the considered opinion of the Government Procurement Policy Board – Technical Support Office (GPPB-TSO) that the said representative designated by LCE is one who is such by virtue of a written instrument and who possesses the requisite qualifications and none of the disqualifications under the law. Further, the LCE must ensure that check and balance is maintained, and the person s/he duly designates as his/her representative is not given a designation that may conflict with their designation as such.

In addition, for purposes of consistency with the requirements on designating members of the BAC, Technical Working Group (TWG) and BAC Secretariat, it is opined that the LCE's "duly authorized representative" should, among others, possess the following:

- a. Plantilla position in the LGU concerned;
- b. Integrity;
- c. Procurement proficiency; and
- d. Appropriate rank.

The designation by the LCE of his/her representative is essentially discretionary and should be performed in his/her best judgment. It falls within the prerogative of the LCE to create the manner s/he is to select a representative should s/he decide to do so, provided, that all pertinent laws and issuances on the matter are complied, and subject to the form of liabilities that may be imposed therewith.

As to your second question, please be advised that it is expressly stated under Section 48.1 of IRR-A, that the procuring entity may, in order to promote economy and efficiency, resort to any of the alternative methods of procurement provided in the Rule subject to the approval of the HOPE or his *duly authorized representative*, and whenever justified by the conditions provided in the Act. (*Emphasis supplied*) Thus, the LCE, through his representative, may approve the recommendation of the BAC to deviate from the default mode of public bidding.

The LCE, may not, however, delegate the authority to approve a BAC resolution recommending the short list of consultants. Under Section 24.15.4 of IRR-A as amended by GPPB Resolution 014-2006, dated July 20, 2006,

The BAC shall recommend the short list of consultants to the head of the procuring entity for consideration and approval. The entire process of eligibility check and short listing shall not exceed twenty (20) calendar days.

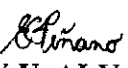
Hence, only the HOPE or the LCE may approve the BAC resolution recommending the said short list, in view of the familiar maxim, *expressio unius est exclusio alterius*, or express mention means implied exclusion.

³ Section 48, Article XVI, R.A. 9184.

Accordingly, it is our opinion that your agency may prescribe standards or additional requirements to properly ensure that the character and form by which the representative of the LCE would be duly authorized is in accordance with law and public policy.

Anent all the foregoing, we hope to have clarified your concern. Should you have other questions, please do not hesitate to contact us.

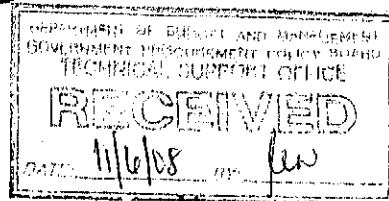
Very truly yours,


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

Atty. Ayce,
Pls. draft reply.

T.V.
11/6/08

REPUBLIC OF THE PHILIPPINES
CITY OF ILOILO
Robinsons Place Iloilo, Mabini Street
Iloilo City 5000 Tel. (033)335-15-54



BIDS AND AWARDS COMMITTEE

October 29, 2008

Enuncie,

Pls. handle. Sign on
my behalf.

11/7/08

Government Procurement Policy Board - Technical Su
Unit 2506 Raffles Corporate Center
Emerald Avenue, Ortigas Center
Pasig City

RE: QUERY ON DESIGNATION OF LCE's REPRESENTATIVE.

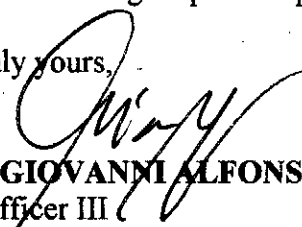
Dear Sir/Ma'am:

The Implementing Rules and Regulations – A (IRR-A) and the Procurement Manual for Local Government Units allow the representative of Local Chief Executives to sign documents related to the procurement process as prescribed by Republic Act No. 9184. In this connection, the Bids and Awards Committee of Iloilo City most respectfully requests your opinion on the following:

1. Who may be designated as LCE's representative for purposes of signing documents related to the procurement process?
2. Can the duly designated representative of the LCE approve BAC Resolutions:
 - (a) recommending the change in mode of procurement from competitive public bidding to any of the alternative modes?
 - (b) Recommending the short list of consultants?

In behalf of the Bids and Awards Committee, I would like to thank the GPPB in advance for their continuing help and support to the Iloilo City Government.

Very truly yours,


ATTY. GIOVANNI ALFONSO F. MIRAFLORES
Legal Officer III
Technical Working Group
Bids and Awards Committee – City of Iloilo