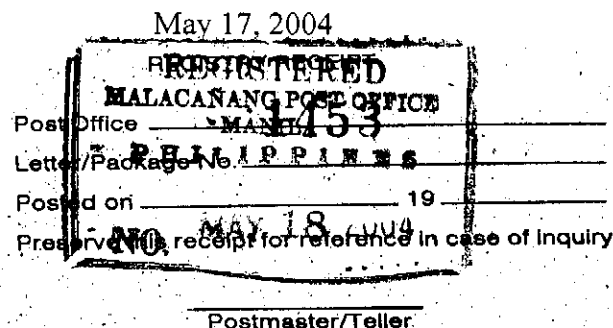


REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 069 -2004

MR. DELFIN C. HILARIO
General Manager
Metro Cotabato Water District ("MCWD")
Gov. Gutierrez Avenue
Cotabato City



Re : Composition of the Bids and Awards Committee (BAC)

Dear Mr. Hilario:

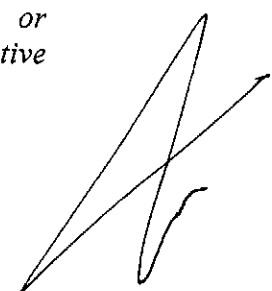
This refers to your letter dated April 2, 2004, which we received on April 19, 2004, requesting for assistance to resolve the following issues, to wit:

1. Whether or not the Finance Department Manager, a second (2nd) ranking permanent official who supervises the budget, finance and accounting sections of the Finance Department of the MCWD, is covered by the prohibition on the Chief Accountant and any personnel of the Accounting Unit of any agency to become regular members of the BAC, brought about by the Commission on Audit ("COA") Circular No. 2003-004 dated July 30, 2003;
2. Whether or not the Department Manager for Administrative Services, a second (2nd) ranking permanent official who is also the Head of the MCWD-BAC Secretariat, be validly designated as a regular member of the MCWD-BAC, at the same time.

Finance Department Manager as a Regular Member of the BAC

Section 11.2.1 of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184"), is quoted hereunder, as follows:

"National Government agencies, departments, bureaus, offices or instrumentalities of the Government including the judiciary and legislative branches, constitutional commissions, SUCs, GOCCs, and GFIs:



Regular Members:

X X X X

3.) An officer, who is at least a fifth ranking permanent official, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the **finance area** of the procuring entity, provided that in the case of bureaus, regional offices and sub-regional offices/district offices, BAC members shall be at least a third ranking permanent personnel;" (Emphasis Supplied)

In this connection, we further quote the pertinent portions of Commission on Audit ("COA") Circular No. 2003-004 dated July 30, 2003, relative to this point, to wit:

"[T]he BAC shall be responsible for ensuring compliance with the standards in the law in the procurement of goods and services and prosecuting infrastructure projects of the agency.

On the other hand, **the Chief Accountant and personnel under him are tasked to approve the voucher in payment of such goods and services procured and of the infrastructure prosecuted and to certify to the availability of funds for the project subject of the bidding.** Thus, it becomes necessary to ensure that the procurement and payment functions are segregated in keeping with the rules and principles of good internal control and to avert the possibility of conflict of interest that may arise under the circumstances.

[I]t 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." (Emphasis Supplied)

Based on the foregoing, the only personnel from the finance area who are prohibited to be designated as members of the BAC are the Chief Accountant and any personnel of the Accounting Unit of the procuring entity concerned. Clearly, the position of the Finance Department Manager is different from that of the Chief Accountant; neither can the former be considered as a personnel of the Accounting Unit who is under the control of the latter. In fact, it is the Chief Accountant who is under the supervision of the Finance Department Manager, who, based on your letter and the Position Description Form attached therewith, directly supervises the operations of the budget, finance and accounting Sections of the Finance Department and evaluates the performance of the personnel thereof.

Hence, we believe that the Finance Department Manager is not prohibited from being designated as a regular member of the BAC.

Head of the BAC Secretariat Cannot Hold a Concurrent Position in the BAC

Although we agree with your observation that under R.A. 9184 and its IRR-A, the Head or any member of the BAC Secretariat is not prohibited to become a member of the BAC at the same time, it is highly advised that procurement officials should avoid holding concurrent positions in the BAC and its Secretariat in accordance with the thrust to professionalize the procurement organization geared towards strengthening the procurement functions to increase operational effectiveness and efficiency. This is in view also of the possible conflict in the delineation of functions of the BAC under Section 12.1 of the IRR-A of R.A. 9184 and its Secretariat under Section 14.1 of the same IRR-A.

Thus, we believe that it is only under this ideal set-up may procuring entities be able to maintain a credible, orderly, systematic, and efficient procurement process.

With the foregoing, we trust that our opinion provided the MCWD the needed information in the creation of its BAC. Please bear in mind that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily applicable upon a different set of facts or circumstances.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director