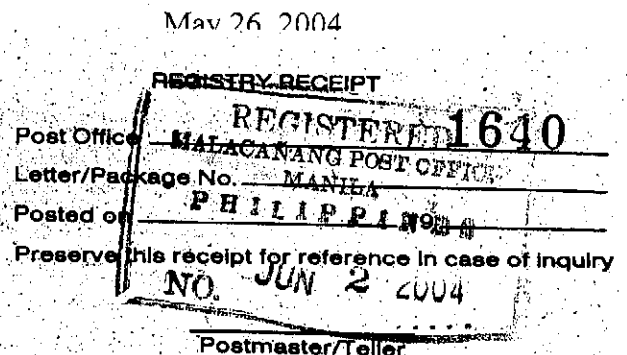


REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos. (02) 735-4962; (02) 736-5758

NPM No. 077-2004

MR. OSCAR L. PARAS
Officer-In-Charge
Manila International Airport Authority ("MIAA")
MIAA Administration Bldg., MIA Road
Pasay City, Metro Manila



Re : Composition of the Bids and

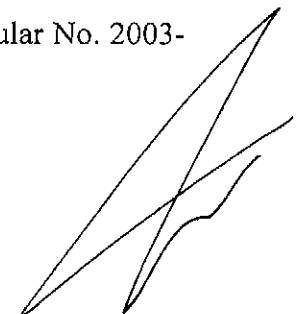
Dear Mr. Paras:

This refers to your letter dated May 7, 2004, addressed to Secretary Emilia T. Boncodin of the Department of Budget and Management as Chairperson of the Government Procurement Policy Board ("GPPB"), which we received on May 20, 2004, requesting for a legal opinion on the following issues, to wit:

1. Whether or not the Assistant General Manager for Finance and other officers and employees belonging to the said Office, who certify as to the availability of funds and approve vouchers in payment of the goods and services, and infrastructure projects procured by the MIAA, are 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 aforesaid officers and employees can serve as provisional members of the BAC when it is the said Office of the Assistant General Manager for Finance that is the end user unit of the items, subject of the bidding;

Interpretation of COA Circular No. 2003-004

As regards the first issue, we quote the pertinent portions of 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 functions of the Chief Accountant and any personnel under him that may conflict with the functions of a regular member of the BAC include approving the vouchers in payment of the goods and services, and infrastructure projects procured; and the act of certifying as to the availability of funds for the project subject of the bidding. These seem to be the functions given to the Assistant General Manager for Finance of MIAA and to other employees under the said Office, as mentioned in your letter.

With that, we respectfully concur with the opinion of the COA, through its Assistant Commissioner and General Counsel Raquel R. Ramirez-Habitan, that “the prohibition contained in COA Circular No. 2003-004 dated July 30, 2003 is not limited to the Chief Accountant and any personnel under him but extends to such other officers and employees who certify as to the availability of funds and approve vouchers in payment of the infrastructure projects, goods and services procured by the agency.” It must be noted that the said COA Circular No. 2003-004 was issued by the COA by virtue of its exclusive authority to promulgate accounting and auditing rules and regulations under Article IX-D, Section 2 (2) of the 1987 Constitution of the Philippines. As such, the COA has the sole prerogative and authority to interpret and explain the rationale behind the promulgation of all accounting rules and regulations issued by the said Commission.

Representatives from the End User Unit as Provisional Members 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

Provisional Members:

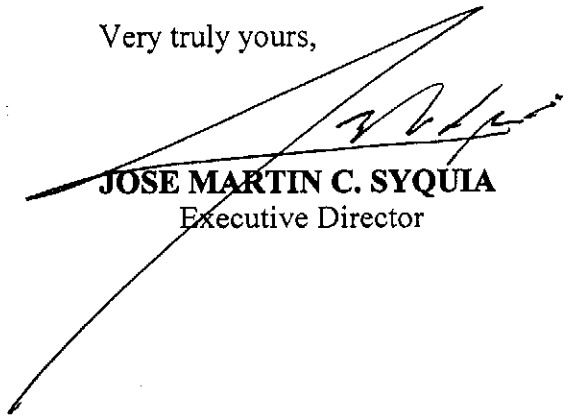
4. An officer who has technical expertise relevant to the procurement at hand, and, to the extent possible, has knowledge, experience and/or expertise in procurement; and
5. A **representative from the end user unit** who has knowledge of procurement laws and procedures. (Emphasis Supplied)

x x x x

With the aforequoted provision and citing paragraph 3 of COA Circular No. 2003-004 as above-quoted, it is clear that the Assistant General Manager for Finance or any other official or employee under this Office, is not prohibited to serve as a provisional member of the BAC when the said Office is the end user of the items, subject of the ensuing bidding, provided that the said official or employee possesses the required knowledge of procurement laws and procedures.

With the foregoing, we trust that our opinion provided the MIAA 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