

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. 079-2004

June 3, 2004 Postmaster

HON. DATU PAX S. MANGUDADATU
Governor
Office of the Provincial Governor
Province of Sultan Kudarat
Isulan, Sultan Kudarat

REGISTRY RECEIPT
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NO. **JUN 4 2004**
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Re : Designation of the Provincial Administrator as Member of the Bids and Awards Committee

Dear Gov. Mangudadatu:

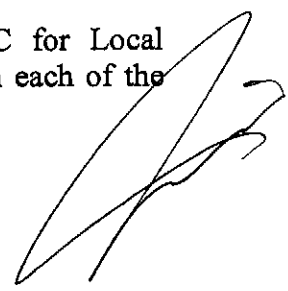
This refers to your letter dated May 18, 2004, which we received on May 19, 2004, requesting for clarification on the proper interpretation of the provisions of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act 9184 ("R.A. 9184"), specifically Section 11 thereof on the composition of the Bids and Awards Committee ("BAC").

This concern was raised in view of the letters of the Provincial State Auditor of Sultan Kudarat to your office questioning the membership of the Provincial Administrator in the BAC of the Province of Sultan Kudarat. It is the State Auditor's contention that although the Provincial Administrator is a *plantilla* position, it is nevertheless a coterminous position and therefore not permanent in nature. Moreover, the State Auditor maintains that being an approving officer of the province, the Provincial Administrator is prohibited from being designated as member of the BAC under Section 11 of the IRR-A of R.A. 9184. The issue therefore is as follows:

Whether or not the Provincial Administrator may be designated as member of the BAC.

Provincial Administrator as Member of the BAC

Section 11.2.2 of the IRR-A of R.A. 9184 provides that the BAC for Local Government Units ("LGUs") shall be composed of one (1) representative from each of the regular offices under the Office of the Local Chief Executive, to wit:



Local Government Units

The BAC shall be composed of one (1) representative each from the regular offices under the Office of the Local Chief Executive such as, but not limited to the following: Office of the Administrator, Legal Office, Engineering Office, General Services Offices. The end user office shall always be represented in the BAC. The Chairman of the BAC shall be at least a third ranking permanent official of the procuring entity. The members of the BAC shall be personnel occupying *plantilla* positions of the procuring entity concerned.

Moreover, Section 11.2.1 of the said IRR-A clarifies that the term "permanent" shall be understood to refer to a *plantilla* position within the procuring entity. The term "permanent" does not refer to whether the person holding the *plantilla* position is contractual, regular, appointed, or coterminous; rather, the term specifically refers to whether or not the position exists within the organizational structure of the procuring entity.

For this reason, any person holding a position within the organizational structure of any of the regular offices under the Office of the Local Chief Executive of the Local Government Unit, regardless of the person's employment status, may be designated by the Local Chief Executive as member of the BAC.

It should be noted, however, that R.A. 9184 and its IRR-A under Sections 11 and 11.2.5 respectively, prohibits membership of the head of the procuring entity and/or the approving authority in the BAC. This prohibition is clearly not limited to heads of procuring entities but extends to those positions which have the authority to approve contracts so as to prevent any possible abuse of power or authority. In this regard, if a position is espoused with the power to approve or disapprove contracts, any person holding such position cannot be designated as a member of the BAC.

In view of the foregoing, we are of the opinion that the Provincial Administrator may be designated as member of the BAC considering that it is a *plantilla* position in the LGU. However, in the event the Provincial Administrator exercises or is given the authority to approve or disapprove contracts, it can no longer be designated as member of the BAC.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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May 19, 2004

MR. RAMON T. DEL CASTILLO JR.
Provincial Administrator
Office of the Provincial Governor
Province of Sultan Kudarat

Dear Mr. Castillo:

This refers to your letter dated May 18, 2004, which we received through facsimile on even date, addressed to the Executive Director Jose Martin C. Syquia, requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, particularly, the composition of the Bids and Awards Committee.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


ATTY. REYNALDO H. BICOL JR.
Procurement Management Officer V

