

NPM No. 013-2019

29 May 2019

REBECCA P. GEAMALA
Regional Director
**Department of Social Welfare and
Development (DSWD) Field Office VII**
M.J. Cuenco Avenue Cor. Gen. Maxilom Ave.,
Brgy. Carreta, Cebu City

Re: Creation of Separate Bids and Awards Committee (BAC)

Dear Regional Director Geamala:

This refers to your letter,¹ seeking clarification and guidance as to the creation of separate BACs in the procurement of goods for various food items for the DSWD's Supplementary Feeding Program (SFP).

As represented, with the issuance of DSWD Memorandum Circular No. 3 series of 2019, otherwise known as the "Revised Procedures on the Implementation of the Supplementary Feeding Program based on the Amended Administrative Order No. 04, series of 2016," the DSWD Field Offices shall handle the procurement of goods for various food items for the SFP for all local government units across all regions of the country. In light of this, your Office plans to create (3) three separate BACs mainly due to the high volume of items to be procured for the different programs, project and activities to include, but not limited to the SFP.

Section 11 of Republic Act No. 9184, requires each procuring entity (PE) to establish a single BAC for its procurement. Alternatively, separate BACs may be formed, as may be deemed fit by the head of procuring entity (HoPE), where the number and complexity of the items to be procured shall so warrant and for decentralized and lower level offices.

Thus, as a general rule, each procuring entity shall establish a single BAC in order to enhance the professionalization and harmonization of the procurement procedures and processes within the agency. The law, nonetheless, provides an exemption which was further explained under Section 11.1.2 of the 2016 revised Implementing Rules and Regulations (IRR), where the HoPE is given the discretion to create separate BACs in order to expedite the procurement process for practical intents and purposes, as where the number and complexity of the items to be procured shall so warrant. In which case, the HoPE may create BACs according to the (i) geographical location of end-user or implementing units; or (ii) nature of procurement.

It is evident above that the volume or the number of items to be procured is among the valid considerations of the HoPE in the creation of separate BACs. The law and the rules expressly provide that the HoPE when he/she deems necessary may create separate BACs. Hence, it is the HoPE who must determine this and exercise his/her authority under the said legal bases to create separate BACs.

¹ Dated 12 April 2019 and received on 15 April 2019.

Further, the HoPE shall ensure that each of the BAC created shall have at least three (3) regular members, who must be at least a third (3rd) ranking permanent official of the PE and; at least two (2) provisional members, who is at least an officer having technical expertise relevant to the procurement at hand and a representative from the end-user unit who has knowledge of procurement laws and procedures as provided in Section 11.2.2 of the IRR. The term "permanent", as used herein, refers to a plantilla position within the PE concerned.

In sum, it is the HoPE who is authorized by the law and the rules to determine if the above-instances justifying the creation of separate BACs exist, the Government Procurement Policy Board or its Technical Support Office cannot supplant the same with the issuance of a legal opinion, as doing so would encroach upon or interfere with the exercise of a function exclusively granted to the HoPE.

The above opinion was made on the basis of the particular facts presented and circumstances availing, and may not, therefore, be applicable given a different set of facts and circumstances.

Sincerely yours,



ROWENA CANDICE M. RUIZ
Executive Director V