

NPM No. 113-2017

29 December 2017

MS. DOLORES L. APILIS
Auditor
COMMISSION ON AUDIT
apilisdolly8509@gmail.com

Re: Bids and Awards Committee (BAC) -

Dear Ms. Apilis:

This refers to your electronic mail (e-mail) inquiring as to who can act on the procurement process of HSDC when the agency has no approved *plantilla*, and all its personnel are employed under “Contracts of Service”.

Section 11.1.1 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, the Government Procurement Reform Act, provides that “[e]ach procuring entity shall establish in its head office a single BAC to undertake the functions specified in Section 12 of this IRR in order to facilitate professionalization and harmonization of procedures and standards.” Section 11.1.2 of the IRR, on the other hand, provides that, the BAC may be organized either according to: (a) geographical location of PMO or end-user units of the procuring entity; or (b) by nature of procurement.”

In terms of the number of members in the BAC, Section 11.2.1 of the IRR provides that the HOPE shall designate at least five (5) but not more than seven (7) members of unquestionable integrity and procurement proficiency to the BAC.¹ Provisional members are designated to sit in the BAC for a particular procurement activity, while regular members sit in all the procurement activities of the agency. It bears stressing, however, that all members of the BAC, whether regular or provisional, must occupy a *plantilla* position in the procuring entity.²

We wish to stress that the term “permanent” refers to a *plantilla* position within the procuring entity (PE) concerned. The *plantilla* position contemplated by the rules may be occupied by a contractual, regular, designated or appointed official or personnel. The nature and tenure of employment is inconsequential. Rather, the concern specifically refers to whether such position is included in the list of authorized positions created by the Department of Budget and Management, and whether said position is existing within the organizational structure of the procuring entity concerned.³

¹ NPM No. 26-2013, dated 27 March 2013.

² Non-Policy Matter (NPM) No. 18-2006 dated 6 April 2006.

³ NPM 33-2007 citing NPM 25-2004 dated 6 August 2007.

Accordingly, the personnel occupying a *plantilla* position included in the list of authorized positions created by the Department of Budget and Management, and existing within the organizational structure of the HSDC, even if employed on a contractual basis, may serve as BAC members.

In the absence of such capacity to constitute the BAC, *i.e.* no *plantilla* position in the list of authorized positions created by the Department of Budget and Management, and existing within the organizational structure of the HSDC, the rule on procurement agent found in Section 7.3.3 of the 2016 revised IRR may then be applied, thus:

7.3.3. In order to hasten project implementation, Procuring Entities which may **not have the proficiency or capability to undertake a particular procurement**, as determined by the HoPE concerned, may outsource the procurement tasks by:

- a) **Requesting other GoP agencies to undertake such procurement for them**, through the execution of a memorandum of agreement containing specific arrangements, stipulations and covenants, in accordance with government budgeting, accounting and auditing rules
- b) ...
- c) ...

In sum, if HSDC cannot validly constitute its own BAC due to lack of *plantilla* positions, it is allowed to request other government agencies to procure on its behalf.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

~~DENNIS S. SANTIAGO~~
Executive Director V