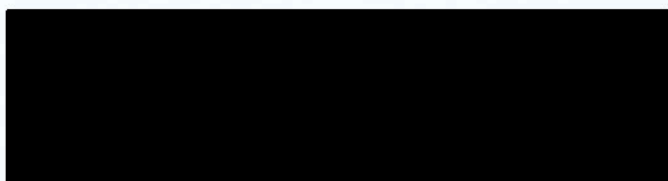


NPM No. 28-2015

8 October 2015



Re: Removal of Bids and Awards Committee (BAC) Members

Dear [Redacted]

This is in response to your letter dated 11 September 2015¹ seeking clarification on the fixed term of the BAC members under Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR).

As represented, you, together with your fellow members, inquired with the Head of the Procuring Entity (HOPE) on the reasons for your removal from the BAC. However, you did not receive any response from the HOPE. It is in this context that the following issues are raised:

1. It is lawful for BAC members to be removed within the fixed term of one (1) year from the date of appointment without justifiable cause?
2. How wide is the discretionary power of the Head of the Procuring Entity in terms of designation, appointment and revocation of BAC members?

Authority to Designate BAC Members

It is noted that assignment to the BAC is in the nature of a designation, in addition to the regular duties of the subject official². The authority to designate necessarily entails the exercise of judgment and discretion.

Under Section 11.2.1 of the IRR of RA 9184, the HOPE shall designate at least five (5) but not more than seven (7) members to the BAC of *unquestionable integrity and procurement proficiency*. Moreover, the BAC members must occupy the *prescribed ranking* in accordance with Sections 11.2.2 and 11.2.3 of the IRR of RA 9184.

Accordingly, the HOPE has the discretion as to who will be designated as BAC members, provided that the same shall possess the qualifications prescribed under Sections 11.2.1, 11.2.2 and 11.2.3 of the IRR of RA 9184.

¹ Received on 21 September 2015.

² Generic Procurement Manual, Volume 1, pg. 15.

The HOPE's Power to Remove BAC members

The power to designate or appoint also includes the power of removal. In *Binamira v. Garucho*³, the Supreme Court held that:

Designation may also be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office. That is the common understanding of the term. **However, where the person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced at will by the appointing authority.** In this sense, the designation is considered only an acting or temporary appointment, which does not confer security of tenure on the person named.

However, Section 11.2.6 of the IRR of RA 9184 has provided limitations on the HOPE's exercise of power of removal. It reads:

Unless sooner removed for a cause, the members of the BAC shall have a fixed term of one (1) year reckoned from the date of appointment, renewable at the discretion of the Head of the Procuring Entity. Upon expiration of the terms of the current members, they shall continue to exercise their functions until new BAC members are designated. In case of resignation, retirement, separation, transfer, re-assignment, removal, or death, the replacement shall serve only for the unexpired term: *Provided, however,* That in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension. For justifiable causes, a member shall be suspended or removed by the Head of the Procuring Entity.

From the foregoing provision, the HOPE's power of removal is qualified by the phrase "for a cause" during the fixed term of the BAC member. Accordingly, as the IRR has fixed the term of the BAC member to one (1) year counted from the date of his designation, he may only be removed by the HOPE for valid and justifiable causes during the said period.

We hope this opinion issued by 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 SANTIAGO~~

Executive Director V

skp 

³ G.R. No. 92008, July 30, 1990.