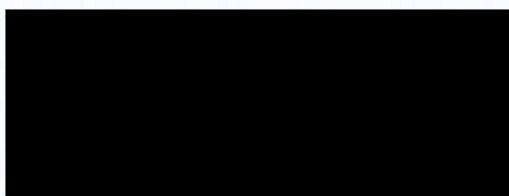


NPM No. 76-2015

13 October 2015



Re: Creation of Bids and Awards Committee

Dear [REDACTED]

This refers to your letter requesting our opinion relative to the creation of Bids and Awards Committee (BAC).

As represented, due to the Joint Venture Agreement entered into by San Carlos City Water District (SCCWD) with Primewater Infrastructure Corporation, majority of the employees of the former were absorbed by the latter, leaving the following seven (7) employees of SCCWD, thus:

1. General Manager (SG 26);
2. Division Manager (SG 22);
3. Senior Corporate Budget Analyst (15);
4. Senior Corporate Account Analyst (SG 15);
5. Executive Assistant (SG 14);
6. Driver (SG 4); and
7. Utility Worker (SG 3)

Considering this manpower complement, you are inquiring whether SCCWD may create its own BAC, and who are qualified to be designated as BAC Members.

We wish to clarify that Section 11.2.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 mandates that the Head of the Procuring Entity (HOPE) shall designate at least five (5) but not more than seven (7) members to the BAC of unquestionable integrity and procurement proficiency. Specifically, the BAC shall be composed of the following:

- (a) The Chairman, who is at least a third ranking permanent official of the Procuring Entity (PE);
- (b) An officer, who holds at least a fifth ranking permanent position, with knowledge, experience and/or expertise in procurement and who to the extent possible represents the legal or administrative area of the PE;

- (c) An officer, who holds at least a fifth ranking permanent position, with knowledge, experience and/or expertise in procurement who to the extent possible represents the finance area of the PE;
- (d) 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
- (e) A representative from the end user unit who has knowledge of procurement laws and procedures.

The term "permanent" refers to a *plantilla* position within the PE concerned. It does not make a distinction whether the person occupying the *plantilla* position is contractual, regular, or appointed, but rather the concern specifically refers to whether the position exists within the organizational structure of the procuring entity.¹ On the other hand, the HOPE and/or the approving authority shall in no case be the Chairman or a member of the BAC.²

It bears stressing, however, that though the General Manager is the first (1st) ranking permanent employee in the *plantilla* position of a local water district, s/he is not considered as the HOPE, unless duly authorized by the Board of Directors.³ In addition, the Commission on Audit (COA) Circular No. 2003-004⁴ prohibits the Chief Accountant and personnel of accounting units to be regular members of the Bids and Award Committees as it is also 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 the conflict of interest, as prohibited under the rules.

Based on the foregoing, for as long as at least five (5) employees of SCCWD satisfy the qualifications and none of the disqualifications mentioned, it can constitute its own BAC to undertake the functions specified in Section 12 of the IRR of RA 9184 in order to facilitate professionalization and harmonization of procurement procedures and standards.

It is worthy to emphasize at this juncture that there are two (2) kinds of members to the BAC, the "regular" and the "provisional" members, and the ranking requirement is necessary and applicable only to "regular" members. While provisional members need not possess a specific rank, it is imperative that the provisional BAC member occupies a *plantilla* position. Thus, to create a BAC, the HOPE may designate three (3) regular members, and two (2) provisional members.

However, in the event that SCCWD fails to constitute its BAC due to lack of personnel, Section 53.6 of the IRR of RA 9184 gives SCCWD the option to resort to alternative method of procurement, particularly Procurement Agent as a modality of Negotiated Procurement, to undertake its procurement activities. In the cited Section, in order to hasten project implementation, PEs, which may not have the proficiency or capability to undertake a particular procurement, as determined by the HOPE, may request other government agencies to undertake such procurement for them, or at their option, recruit and

¹ NPM No. 33-2011 dated 28 December 2011 citing NPM No. 24-2009 dated 22 May 2009.

² Section 11.2.5 of the IRR of RA 9184.

³ NPM No. 76-2012 dated 20 June 2012 citing NPM No. 054-2009 dated 14 October 2009.

⁴ Issued on July 30, 2003.

hire consultants to assist them directly and/or train their staff in the management of the procurement function.

In several opinions⁵, we expressed our view that the lack of capability to undertake procurement activities is exhibited in instances when the PE fails to or cannot properly constitute a BAC due to lack of personnel.

In this regard, it is our considered view that the SCCWD should first determine if based on the qualifications and prohibitions of its present employees, it can validly constitute a BAC in accordance with the provisions of RA 9184 and its IRR. In case it cannot properly constitute a BAC due to lack of personnel, it may engage the services of a Procurement Agent to undertake the procurement for them as sanctioned by Section 53.6 of the IRR of RA 9184.

We hope 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

⁵ NPM No. 38-2013 dated 22 April 2013 citing NPM Nos. Nos. 76-2012 (20 June 2012), 143-2012 (5 November 2012), and 26-2010 (13 August 2010).