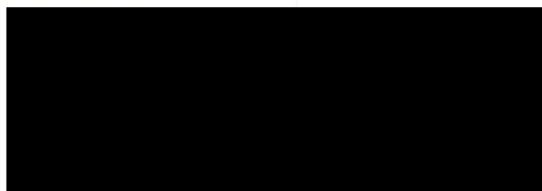


NPM No. 116-2015

3 November 2015



Re: Bids and Awards Committee (BAC) Composition

Dear [REDACTED]:

This is in response to your letter asking for clarification on whether the end user can at the same be a Bids and Awards Committee (BAC) member.

At the outset, we wish to emphasize that the end-user or its representative is a member of the BAC, only that his membership therein is provisional in nature

For your guidance, Section 11 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) provides for the composition of the BAC:

11.2 BAC Composition

11.2.2 The BAC for NGAs, departments, bureaus, offices, or instrumentalities of the GOP, including the judicial and legislative branches, constitutional commissions, SUCs, GOCCs, and GFIs shall be composed of the following:

Regular Members:

- a) Chairman, who is at least a third ranking permanent official of the procuring entity;
- b) An officer, who is at least fifth ranking permanent official, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the legal or administrative area of the procuring entity, provided that in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel;
- c) An officer, who is at least a fifth ranking permanent official, with knowledge, experience and/or expertise in procurement who, to

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the extent possible, represents the finance area of the procuring entity, provided that in the case of bureaus, regional officers and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel;

Provisional Members;


- 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. (Emphasis supplied)

Based on the afore-quoted provision, it is clear that the law itself created the distinction between a regular and a provisional member of the BAC. In Non-Policy Matter Opinion (NPM) No. 41-2009¹, we stressed that the BAC consists of both regular and provisional members. In the same NPM, we further emphasized that provisional members of the BAC are true members of the BAC, in the same manner that the regular members are.

Notwithstanding such clarification, the reservation appears to be caused by occasions where the regular BAC member is at the same time the end user member. In those cases, it is advisable that another representative of the end user unit be designated as provisional member to constitute and complete the BAC membership. It must be noted that the procurement law and its associated rules do not prohibit a regular member and an end-user member emanating from the same service, division or office in the procuring entity.

For clarity, 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 agency². This is consistent with the mandate under Section 11.2 of the IRR, as quoted above, that is, the BAC shall be composed of two types of members: regular and provisional.

In NPM No. 27-2012, dated March 9, 2012, we pointed out that the regular member is different from the provisional members as to their qualifications, thus:

We invite your attention to Section 11.2 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 which states that a regular member of the BAC is 'an officer who is at least a fifth ranking permanent officer, with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the legal or administrative area of the procuring entity, provided that in the case of bureaus, regional offices and sub-regional/district offices, BAC members shall be at least a third ranking permanent personnel.' In addition, the same section adds that a provisional member of the BAC is "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, the other, a representative from the end-user unit who has knowledge of procurement laws and procedures." 

¹ NPM No. 41-2009, dated August 06, 2009.

² NPM no. 60-2012, dated May 18, 2012.

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