

DSWD OPINION NO. 53 S. 2024

DRN: LS-L-LO-24-05-91629-C

MEMORANDUM

FOR : **ATTY. JOSEPH J.M. MALELANG**
Head, Legal Section, DSWD Field Office (FO) CARAGA

FROM : **THE ASSISTANT SECRETARY FOR GENERAL**
ADMINISTRATION AND SUPPORT SERVICES GROUP (GASSG)
AND CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE

SUBJECT : **RESPONSE TO REQUEST FOR LEGAL OPINION AND**
ASSISTANCE ON COA AUDIT OBSERVATION MEMORANDUM
NO. 2024-012 DATED FEBRUARY 23, 2024

DATE : **10 June 2024**

This refers to your MEMORANDUM¹ in relation to the Audit Observation Memorandum No. 2024-012 dated 23 February 2024 issued by the Commission on Audit (COA) – Regional Office No. XIII (COA-RO13), seeking clarification on the following:

- 1. Whether or not the practice of DSWD FO CARAGA allowing the BAC Chairperson and Members as the approving officers of the disbursement voucher for the procurement transaction is a violation of RA No. 9184?*
- 2. Whether or not the approving officer of the disbursement voucher prohibited to be a BAC Chairperson and Members?*
- 3. If yes, what are remedies available to FO CARAGA considering that there are few plantilla positions who may be qualified to become the chairperson and members of the BAC.*
- 4. What do you recommend or suggest as to the composition of the BAC Committee?*

The above queries came about after the COA-RO13 issued Audit Observation Memorandum No. 2024-012 and assessed that the Procurement transactions totaling Php 8,670,363.24 were approved by the BAC Chairperson, Vice-Chairperson and member contrary to Section 11 of the Republic Act No. 9184 (RA No. 9184) and its Implementing Rules and Regulations (IRR). COA-RO13 concluded that the practice by FO – CARAGA in allowing the **BAC Chairperson and Members to act as approving officers** in the disbursement vouchers for **procurement transactions** is a clear violation of the aforesaid law and its IRR. COA-RO13 recommended that you re-evaluate the BAC Composition as well as its policy on the delegation of authority in approving transactions to ensure compliance to the said law and its IRR.

As your query is related to an actual audit observation, please be informed that the comments and opinion herein rendered should not be treated in any manner as the official response of your office to the findings and observations made by COA-RO13. The responses to your queries are limited to the information provided.

¹ Attached as Annex "A"

Approving officer of the disbursement voucher is prohibited to be a BAC Chairperson and/or a Member, except when Accounting Unit is the End-User

In response to the first two (2) questions, we quote in full **Section 11.2.5, Rule V of the IRR of RA No. 9184**, to wit:

11.2.5. In no case shall the HoPE and/or the approving authority be the Chairperson or a member of the BAC.

The Government Procurement Policy Board (GPPB), in its **Non-Policy Matter (NPM) No. 057-2016**, expanded the term “**approving authority**”, to wit:

xxx. The term “**approving authority**” in Section 11.2.5 of the IRR and the Generic Procurement Manual includes a person who undertakes payment since the approval contemplated therein also includes approval of disbursements. Therefore, it is important for the procuring entity to make determination whether the official designated as the approving authority for the subject contracts is also the same officer who has the authority to approve payment for the same contracts. In both instances, said official cannot be appointed as the BAC Chairman to avoid conflict of interest and to maintain the integrity of the procurement process and contract implementation. (Emphasis and Underline Supplied)

This opinion was also in consonance with **COA Circular No. 2003-004²** which explicitly states:

“On the other hand, the Chief Accountant and the personnel under him are tasked to approve the voucher in payment of such goods and services procured and of the infrastructure prosecuted and to certify to availability of funds for the project subject of the bidding. xxx.

Pursuant to the authority vested in this Commission [COA] xxx, it is hereby directed that the Chief Accountant and the **personnel of the Accounting Unit of any agency of the government are prohibited from being regular members of the agency's Bid & Awards Committee** as contemplated under the Implementing Rules and Regulations of RA 9184. However, **they may serve as provisional members when the Unit is the end-user of the items, subject of the bidding.**” (Emphasis Supplied)

The aforesaid provisions have been crafted for purposes of averting possible conflict of interest, affording check and balance, and ensuring that the **procurement and payment functions are segregated**, in keeping with the rules and principles of good internal control.³

Minimum Qualifications of BAC Chairperson and BAC Members

In your Memorandum, you mentioned that COA-RO13 recommended that the FO-CARAGA re-evaluate its BAC composition to ensure compliance with RA 9184 and its IRR.

² Prohibition for the Chief Accountant and personnel of Accounting Units to be regular members of the Bid & Awards Committee

³ GPPB NPM No. 05-2010, 03 February 2010

For your guidance, we invite your attention to the following pertinent provisions of the RA 9184 and its IRR.

On BAC Composition:

“11.2 BAC Composition

11.2.1 The HoPE shall designate **at least five (5) but not more than seven (7) members** to the BAC of unquestionable integrity and procurement proficiency.

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) **Chairperson**, who is **at least a third (3rd) ranking permanent official** of the Procuring Entity;

b) An officer, who is at least a fifth (5th) ranking permanent official, or if not available, an officer of the next lower rank 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 (3rd) ranking permanent personnel or if not available, an officer of the next lower rank**;

c) An officer, who is at least a fifth (5th) ranking permanent official, **or if not available, an officer of the next lower rank** with knowledge, experience and/or expertise in procurement who, to the extent possible, represents the finance 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 (3rd) ranking permanent personnel or if not available, an officer of the next lower rank**;

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 or implementing unit who has knowledge of procurement laws and procedures, subject to existing laws, rules and regulations.

The Chairperson and the Vice-Chairperson shall also be designated by the HoPE. Moreover, the Vice-Chairperson shall be a regular member of the BAC. For purposes of this IRR, **the term “permanent” shall refer to a plantilla position within the Procuring Entity concerned**. (Emphasis and Underline Supplied)

The term “**plantilla position**” has been repeatedly clarified in various Non-Policy Matter (NPM) opinions issued by the GPPB, and to expound on the matter, we cite the following issuances:

GPPB NPM No. 160-2012 dated 21 December 2012:

The term "permanent" refers to a *plantilla* position within the PE concerned. Hence, it is the *plantilla* of the agency that will define whether the position qualifies for regular BAC membership, and the **determination of ranking should take into consideration the hierarchy of the *plantilla* positions present in the PE**, and not whether an official has been appointed/designated/seconded and currently assumed or occupied the identified *plantilla* position.

GPPB NPM No. 83-2015 dated 13 October 2015 also provides:

We wish to stress that 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.

With regard to composition of BAC at the Regional level, **GPPB NPM No. 099-2017** dated 29 December 2017 explains:

Pursuant to Section 11.2.2 of the 2016 IRR, BAC in the regional offices shall be composed of three (3) regular members: a) Chairperson, who must be at least third (3rd) ranking permanent official of the Procuring Entity; b) An officer from the legal or administrative area of the procuring entity who shall be at least third (3rd) ranking permanent personnel or if not available, an officer of the next lower rank; and c) An officer from the finance area of the Procuring entity, who shall be at least third (3rd) ranking permanent personnel or if not available, an officer of the next lower rank. In addition, two (2) provisional members who has technical expertise relevant to the procurement at hand, and a representative from the end-user or implementing unit who has knowledge of procurement laws and procedures.

Under the referenced rules, only the three (3) regular members are required to be the third ranking permanent official. The BAC Chairperson shall be a 3rd ranking permanent official. On the other hand, insofar as the two (2) regular members representing the legal or administrative and finance areas of the agency are concerned, if a third ranking personnel is not available, the HoPE may designate personnel of the next lower rank, a fourth (4th) ranking personnel. **This gives rise to a situation where only the Chairperson is a third ranking permanent official and the two other regular members 4th ranking. The provisional members have no ranking requirement, it is enough that they are officials and personnel of the Procuring Entity holding a permanent *plantilla* position.**

GPPB NPM No. 099-2017 likewise reiterated its previous opinion on the determination of ranking positions based on approved *plantilla* positions:

In this regard, the determination of the ranking positions based on the approved *plantilla* position lies within the concerned procuring entity. Reckoning from the highest position in the *plantilla*, the procuring entity may identify which positions are qualified for membership in the BAC. Among the factors that may be considered in establishing the ranking are the organizational

structure, salary grade allocation, nature of work, degree of responsibility, and classification and functional relationship of positions.

Based on the established ranking of positions, the procuring entity may designate any personnel occupying at least a third ranking position as its BAC Chairperson. However, the designation of the BAC Chairperson is subject to the disqualifications provided in Section 11.2.5 of the Implementing Rules and Regulations of Republic Act 9184 and Commission on Audit Circular 2003-004, i.e., Head of the Procuring Entity, Approving Authority, and Chief Accountant and its staff.

Recommendations to Queries No. 3 and 4

In view of the foregoing, the Legal Service respectfully submits the following recommendations to ensure compliance with the procurement laws:

1. As already mentioned, we should be strictly guided by the rule that in no case shall the HoPE and/or the Approving Authority be the Chairperson or a Member of the BAC as explicitly provided under **Section 11.2.5, Rule V of the IRR of RA No. 9184**, to wit:

11.2.5. In no case shall the HoPE and/or the approving authority be the Chairperson or a member of the BAC.

2. The law prescribes for certain minimum rankings of officials and personnel to be qualified as BAC Chairperson and Member. Based on the organizational structure and plantilla positions at the Regional level, the following are the first ranking to fifth ranking officials/employees:

1 st Ranking	Regional Director (RD)
2 nd Ranking	Assistant Regional Director for Operations (ARDO) Assistant Regional Director for Administration (ARDA)
3 rd Ranking	Division Chief (DC)
4 th Ranking	Assistant Division Chief (ADC)
5 th Ranking	Section Head

Therefore, you may consider all the possible qualified *plantilla* positions at the Field Office as the BAC Chairman and Members, except for the Regional Director as he/she is already the designated HoPE.

	Minimum Qualification	Qualified Officials/Employees
BAC Chairperson	at least third (3 rd) ranking permanent official	ARDO ARDA DC
BAC Regular Member	at least a third (3 rd) ranking permanent personnel or if not available, an officer of the next lower rank	ARDO ARDA DC ADC
BAC Provisional Member	no ranking required	All employees occupying plantilla positions.

		<p>Contract of Service Workers and Job Orders are not qualified.</p> <p>As an exception, personnel of the Accounting Unit may be allowed as a Provisional Member only when the Accounting Unit is the end-user.</p>
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3. What the law prohibits is the situation wherein the HoPE and/or the approving authority is a Chairperson or Member of the BAC. To avoid this situation, the FO may consider delegating the approval of contracts/disbursement/payments to another qualified official so that the approving authority officer is not the BAC Chair/Member who participates in the selection of the bidding supplier / construction / service provider if the FO.

DSWD Administrative Order (AO) No. 16, series of 2019, or the "2019 Delegation and Delineation of Authority", as amended by AO No. 12, series of 2023, enumerated the personnel who have been authorized to approve Disbursement Vouchers at the Field Office, to wit:

Description		FIELD OFFICE Approving Authority
	Payment of salaries, wages, allowances, compensation and other personnel services, including payment of overtimes services, cost of services of MOA workers and mandatory remittances, regardless of amount	ARDA
	Payment of fixed regular expenditures for utilities and services such as power, water, telephone, gasoline, oil and lubricants, courier, janitorial and security services and rental, regardless of amount	Administrative Division Chief; ARDA
Grants	Up to P1M	DC Concerned
	>P1M to P5M	ARD Concerned
	>P5M to P100M	RD
	>P100M	Secretary
Others	Up to P1M	DC Concerned
	>P1M to P5M	ARD Concerned
	>P5M to P50M	RD
	>P50M to P100M	ASEC for Community Engagement (ACE)
	>P100M	Secretary

The table shows the financial matters wherein ARDs and DCs have been designated as the Approving Authority for disbursements vouchers (DVs).


Thus, on matters that the concerned ARDA or DC is the authorized approving authority under the AO, he or she must no longer be designated as the BAC Chairman or Member for the same matters. Other qualified personnel as mentioned above, must be considered to avoid conflict and to ensure compliance with RA 9184.

We hope that we have satisfactorily addressed your concerns.

Lastly, kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

For your guidance.

Thank you.



ATTY. GINA V. WENCESLAO

MCMUG/JAV/RTV/10066

Approved by:



ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASG

CF: Regional Director MARI-FLOR A. DOLLAGA-LIBANG
DSWD FO CARAGA