

MEMORANDUM

FOR : **ATTY. GINA V. WENCESLAO**
Assistant Secretary for GASSG

FROM : **DIVISION CHIEF OF LEGAL ASSISTANCE DIVISION, LEGAL SERVICE**

SUBJECT : **LEGAL OPINION ON THE CONDUCT OF FMS COMPETENCY PROFILING PLANNING WORKSHOP HELD ON AUGUST 12-16, 2024**

DATE : **14 OCTOBER 2024**

This pertains to the Routing and Tracking Slip from the Office of the Assistant Secretary for General Administration and Support Services Group (GASSG) seeking for opinion, thus:

"For LS,

Pls. draft an OPINION – this activity was conducted by FMS – part of this activity, procurement of meals worth Php 50,000.00 was not approved – no P.O. for that.

Pls comment/ opine on whether the payment of the honorarium will be affected or not by the above issue."

Records show that on 12-16 August 2024 at DSWD-CO Kalayaan Conference Room, the Financial Management Service (FMS) conducted an activity entitled "*FMS Personnel's Competency Profiling Planning Workshop*". During the activity, the FMS provided meals amounting to Fifty thousand pesos (P50,000.00). However, meals served during the activity were not procured accordingly.

This level will address the issues one by one.

Meals for the activity should undergo procurement process.

The 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (RA 9184) or "Government Procurement Reform Act", states:

Section 5. Definition of Terms

For purposes of this IRR, the following terms or words and phrases shall mean or be understood as follows:

r) **Goods.** Refer to all items, supplies, materials and general support services, except Consulting Services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind,

including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the Procuring Entity for such services. The term "related" or "analogous services" shall include, but is not limited to, lease of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity.

In the Government Procurement Policy Board Non-Policy Matter (GPPB-NPM) No. 124-2012 explained that catering services fall under the Goods category, to wit:

"Whether catering services fall under the Goods category.

Although x x x under Section 5(r) of the IRR shows that catering services is not among those expressly included as general support services, nonetheless, catering services fall under the classification of "related or analogous services" that are deemed necessary and essential to the operations of the Procuring Entity (PE). Accordingly, catering services fall under the category of Goods as provided in RA 9184 and its IRR, taking into consideration the nature, subject matter and purpose of the procurement activity."

Under the rules, the meals provided during the activity conducted by FMS are classified as catering services. Hence, the catering services must be procured pursuant to the 2016 Revised IRR of RA 9184 particularly under the Alternative Methods of Procurement (Small Value Procurement).

The payment of the honorarium will not be affected by the issue of failure to procure catering services.

The payment of the honorarium for the Resource Person in the FMS activity will not be affected because it is a separate and distinct transaction. In fact, the Department of Budget and Management (DBM) has issued guidelines regarding the payment of honoraria to lecturers, resource persons, coordinators, and facilitators involved in seminars, training programs, and similar activities. The guidelines apply to individuals from both national government agencies (NGAs) and the private sector, as determined by the relevant agency authorities in accordance with Budget Circular (BC) No. 2007-1¹, thus:

"2.0 Definitions

2.1 An honorarium is a form of compensation given as a token of appreciation or reward for gratuitous services on account of one's broad and superior knowledge or expertise in a specific field for which, going by custom, tradition or propriety, no fixed price is set.

X X X

¹ Guidelines on the Grant of Honoraria to Lecturers, Resource Persons, Coordinators, and Facilitators.

2.3 A resource person is any person who, by virtue of his/her expertise in a specific subject area, serves as speaker in seminars, conferences, symposia, training programs and similar activities.

4.0 Guidelines

X X X

4.3 Lecturers, resource persons, coordinators and facilitators from the private sector may be paid honoraria at such rates as may be determined by the agency authorities concerned and by using the above formulas as guides.”

From the definition above and operational guidelines, the financial or procedural implications of granting honoraria do not affect the procurement processes for catering services because they are entirely different, and each activity operates distinctly under its own set of rules or guidelines.

As to the grant of the honorarium, it must be in accordance with DBM BC No. 2007-1, to wit:

4.3 Lecturers, resource persons, coordinators and facilitators from the private sector may be paid honoraria at such rates as may be determined by the agencies authorities concerned and by using the above formula as guides. [Emphasis Supplied]

Further, may we direct you to Section 3 of Administrative Order (AO) No. 04 series 2022² which provides for the guidelines on the grant of honoraria to the private sector, thus:

3. In the determination of the honoraria rates, following rules shall be applied in the agreement with the service provider:

X X X

b. For service providers from the private sector (non-government), any of the following may be used:

- i. Former government employees – the honoraria rate may be based on either the last salary received or step 1 of the last position held upon a separation from service;
- ii. Monthly salary/ income or minimum “going” rate for said service (appropriate documents to support this shall be provided);
- iii. Step 1, SG-27 (Director III level)

Clearly, under the rules, a resource person in an office workshop may be paid honoraria, subject to the requirements of DBM and DSWD. Here, Ms. Ramonesa R. Ricardo is an independent consultant who was invited by FMS as Resource Person (RP) for their activity because (i) she has an extensive background in competency profile development and (ii) she has conducted similar workshops, and (ii) she has an expertise in government regulations to lead the sessions. Also, upon confirmation from Ms. Maria Glaiza B. Santos of FMS, the honoraria of the RP are based on the last position occupied by Ms. Ricardo prior to her separation from the service. Hence, the grant of honoraria to Ms. Ricardo as the RP in the FMS activity is in accordance with DBM BC No. 2007-1 and DSWD AO No. 4 s. 2022.

² Amendment to Administrative Order No. 10 series of 2019 (Guidelines on the Grant of Honoraria to Lectures, Resource Persons, Coordinators, and Facilitators in Seminars, Training Programs and other Similar Activities)

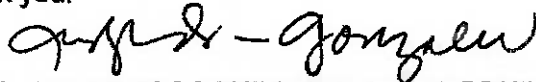
As to the computation of the honoraria, this level defers to the FMS, the computation or the formula to be used in determining the rate of honoraria as they have technical expertise on the financial matter.

Please note that this is based solely on the facts available to the Legal Service and issued without prejudice to the application of other laws, rules and regulations, and DSWD issuances.

For consideration.

Kindly fill out the attached Customer Feedback Form and return the same to Legal Service.

Thank you.



ATTY. MARIA CASSANDRA M. URBIZTONDO

MIN/L/10085