REPUBLIC OF THE PHILIPPINES

COMMISSION ON AUDIT

REGIONAL OFFICE NO. IV-B

NATIONAL GOVERNMENT SECTOR – CLUSTER 8

DENR MIMAROPA REGIONAL OFFICE

1515 L&S Building, Roxas Boulevard, Ermita, Manila

Office of the Auditor – Audit Team No. R4B-NGAS 8 Team-02

SUBJECT : Notice of Finality of Decision No. 2022-498 dated December 20, 2022 on the letter dated February 20, 2020 of Director Henry A. Adornado, Regional Executive Director, Department of Environment and Natural Resources (DENR) Regional Office No. IV-B, requesting reconsideration of COA Legal Retainer Review No. 2019-172 dated December 5, 2019 denying the requests for this Commission's written concurrence in the Contracts of Service entered into by and between the DENR-Provincial Environment and Natural Resources (PENRO) – Palawan and DENR-PENRO-Oriental Mindoro and seven private lawyers, for the period of July 1, 2019 to December 31, 2019

3rd Indorsement
November 9, 2023

Respectfully forwarded, for information, to Dir. Henry A. Adornado, Regional Executive Director, DENR Region 10, Cagayan de Oro City, the herein 2nd Indorsement dated October 16, 2023 of Dir. Felicidad S. Medrano, Assistant Regional Director, COA Regional Office No. IV-B, Quezon City, regarding the subject Notice of Finality of COA Decision No. 2022-498 partially granting the request for reconsideration and set aside LRR No. 2019-172 dated December 5, 2019.

ZYRINE C. ROSALES
State Auditor III
OIC-Audit Team Leader

REPUBLIC OF THE PHILIPPINES
COMMISSION ON AUDIT
Commonwealth Avenue, Quezon City

COMMISSION PROPER
OFFICE OF THE COMMISSION SECRETARIAT

No. 2023-365
October 3, 2023

NOTICE OF FINALITY OF DECISION

The REGIONAL EXECUTIVE DIRECTOR
Department of Environment and Natural Resources
Regional Office No. IV-B
MIMAROPA Region, 1515 L&S Building
Roxas Boulevard, Ermita. Manila 1000

Attention: **The Chief Accountant**
Department of Environment and Natural Resources
Regional Office No. IV-B

Reference: COA Decision No. 2022-498 dated December 20, 2022

COA Legal Retainer Review (LRR) No. 2019-172
dated December 5, 2019

Please be informed that COA Decision No. 2022-498 dated December 20, 2022 has become ***final*** pursuant to Section 9, Rule X of the 2009 Revised Rules of Procedure of the Commission on Audit, as modified under COA Resolution No. 2011-006 dated August 17, 2011. The said decision partially granted the request for reconsideration and set aside LRR No. 2019-172 dated December 5, 2019 as indicated in the dispositive portion.

JOEL S. ESTOLATAN
Director IV
Commission Secretary

Copy furnished:

The Director
Prosecution and Litigation Office
Legal Services Sector
This Commission

REPUBLIC OF THE PHILIPPINES
COMMISSION ON AUDIT
COMMONWEALTH AVENUE, QUEZON CITY

DECISION NO. 2022-498

DEC 20 2022

Subject: Letter dated February 20, 2020 of Director Henry A. Adornado, Regional Executive Director, Department of Environment and Natural Resources (DENR) Regional Office No. IV-B, requesting reconsideration of Commission on Audit Legal Retainer Review No. 2019-172 dated December 5, 2019 denying the requests for this Commission's written concurrence in the Contracts of Service entered into by and between the DENR-Provincial Environment and Natural Resources (PENRO)–Palawan and DENR–PENRO–Oriental Mindoro and seven private lawyers, for the period of July 1, 2019 to December 31, 2019

CERTIFIED TRUE COPY
ANDREANITA DEDICACION A. BERROYA
Board Secretary IV
Commission Secretariat

DECISION

FACTS OF THE CASE

Before this Commission is the letter dated February 20, 2020 of Mr. Henry A. Adornado, Regional Executive Director, Department of Environment and Natural Resources (DENR), MIMAROPA/Regional Office No. IV-B, requesting reconsideration of Commission on Audit (COA) Legal Retainer Review (LRR) No. 2019-172 dated December 5, 2019. The assailed COA LRR denied the requests[1] for written concurrence on seven Contracts of Service (COSs) entered into by the DENR–Provincial Environment and Natural Resources Office (PENRO)–Oriental Mindoro and PENRO–Palawan and Attys. Francis Rainier B. Umali, Jessa Ann Z. Gomez, Orlando A. Ba-alan, Fatima J. Bacuteng, Marieta B. Buenavista, Lysander L. Fetizanan, and Joseph Ryan C.

[1] An undated letter and letters dated September 9, 2019 and September 17, 2019.

Apasan (referred to herein as the seven private lawyers) for the period of July 1, 2019 to December 31, 2019 for lack of written approval from the Office of the Solicitor General (OSG). The request is submitted to this Commission for resolution pursuant to Section 3,[2] Rule VIII of the 2009 Revised Rules of Procedure of the COA.

In the request for reconsideration, Dir. Adornado submitted the OSG's approval of the deputation of the seven private lawyers,[3] including their respective contracts and other supporting documents. Acting on said request, the COA Legal Affairs Office (LAO), Legal Services Sector (LSS), this Commission, in its 2nd Indorsement dated February 18, 2022, inquired from the audit team of the DENR–PENRO Oriental Mindoro and Palawan if the transactions pertaining to the hiring of the seven private lawyers were disallowed in audit and whether appeals of the persons liable were made thereto; and, if no disallowance had been issued, requested comments and recommendations from the Audit Team Leader (ATL), Supervising Auditor, and the Cluster Director on the request for concurrence.

The ATLs of the DENR–PENRO–Oriental Mindoro and Palawan, in their letters dated May 2, 2022 and May 10, 2022, respectively, informed LAO that no Notice of Disallowance was issued relative to the Contracts of Service entered into by the DENR–PENRO–Oriental Mindoro and Palawan and the seven private lawyers.

ISSUE

The issue to be resolved is whether the request for reconsideration of LRR No. 2019-172 may be given due course.

DISCUSSION

This Commission partially gives due course to the request for reconsideration in light of the issuance of COA Circular No. 2021-003 dated July 16, 2021, exempting national government agencies (NGAs) and government-owned or controlled corporations (GOCCs) from the requirement of prior written concurrence from this Commission under COA Circular Nos. 86-255[4] dated April 2, 1986 and 95-011[5] dated December 4, 1995 and COA Memorandum No.

---

[2] *Hiring of Legal Retainer* – A request for concurrence of the Commission in the hiring of legal retainer shall be filed with the Office of the General Counsel who shall evaluate the same and issue the written concurrence or denial thereof in behalf of the Commission. A request for reconsideration or appeal therefrom shall be cognizable by the Commission Proper.

[3] OSG letters dated July 22, 2019, August 30, 2019, and October 3, 2019.

[4] Inhibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases.

[5] Prohibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases.

ANDREANITA DELICADINA A. DIMAANO
Board Secretary IV
Commission Secretariat

2016-010 dated March 22, 2016. COA Circular No. 2021-003 exempts the engagement of (1) lawyers under COS or Job Order (JO) contracts and (2) legal consultants, subject to the conditions under Item 4.0 of said Circular.

Item 4.1 of COA Circular No. 2021-003 provides the conditions for the exemption of NGAs and GOCCs from the requirement of COA's prior written concurrence for lawyers under COS or JO contracts, viz:

a) The engagement is covered by a contract between the government agency and the lawyer, under a COS or JO contract arrangement, not to exceed one (1) year, renewable at the option of the head of the NGA or GOCC, but in no case to exceed the term of the head;

b) The engagement shall have the written approval of the OSG in the case of NGAs, or the Office of the Government Corporate Counsel (OGCC) in the case of GOCCs;

c) The duties and responsibilities to be assigned to the lawyer are similar to those ordinarily performed by lawyers employed by the government agency or GOCC and holding attorney, legal officer, or other lawyer positions in the *plantilla*;

d) The government agency or GOCC does not have any *plantilla* positions or does not have sufficient *plantilla* positions to support its current requirement for legal services;

e) The lawyer meets the minimum eligibility and qualification standards imposed by the Civil Service Commission (CSC) for comparable positions in the government;

f) The compensation of the lawyer shall be the same as the salary of the comparable position in the government agency or GOCC, with no other entitlements except for a premium of up to twenty percent (20%) which may be paid monthly, as lump sum, or in tranches (i.e., mid-year and at the end of the year) as may be stated in the contract. Comparable position is determined based not solely on salary grade but also on the duties and responsibilities of the positions and level of position in the organizational structure or *plantilla* of the agency. Positions may be considered to be comparable if they belong to the same occupational grouping and the duties and responsibilities of the positions are similar and/or related to each other (CSC Memorandum Circular No. 03, s. 2014); and

CERTIFIED TRUE COPY
ANDREANITA DEDICACION A. DELOS SANTOS
Board Secretary IV
Commission Secretariat

g) The lawyer is not employed or engaged by any private entity or other government agency or GOCC for the duration of the contract.

The last paragraph of Item 4.0 of said COA Circular further states that all pending appeals from or requests for reconsideration of LRRs, among others, issued on the ground of lack of COA's written concurrence shall be granted after a finding by this Commission of the existence of the abovementioned conditions.

This Commission finds that the DENR complied with the conditions provided under Item 4.1 of COA Circular No. 2021-003.

First, the engagement of the seven private lawyers is covered by COSs between them and the DENR–PENRO–Oriental Mindoro and Palawan, for a period of six months from July 1 to December 31, 2019.

Second, the engagement has the written approval of the OSG, as follows:

OSG Approval	Name of Lawyer	Approved Period
Letter dated July 22, 2019	Atty. Orlando A. Ba-alan Atty. Jessa Ann Z. Gomez Atty. Fatima J. Bacuteng Atty. Marieta B. Buenavista	July 20, 2019 to December 31, 2019
Letter dated August 30, 2019	Atty. Lysander L. Fetizanan Atty. Francis Rainer B. Umali	August 24, 2019 to December 31, 2019
Letter dated October 3, 2019	Atty. Joseph Ryan C. Apasan	August 24, 2019 to December 31, 2019

Third, the DENR MIMAROPA does not have sufficient *plantilla* positions to support its current requirement for legal services. The DENR-PENRO Oriental Mindoro and Palawan and the rest of the DENR-PENROs in the same region have no legal counsels to render immediate legal services needed by the PENROs. Although the DENR MIMAROPA has an existing Legal Division, its small number of lawyers with regular *plantilla* positions cannot deliver the extent of legal assistance needed by all the PENROs. The regular *plantilla* positions of the DENR MIMAROPA Legal Division as of December 31, 2019 and the positions currently occupied are as follows:

Item No.	Position Title and Salary Grade	Name of Incumbent
OSEC-DENRB-ATY5-58-2014	Attorney V – 25	Flores, Gandhi Gagni
OSEC-DENRB-ATY4-9-2014	Attorney IV – 23	Rosales, Robert Hermitaño
OSEC-DENRB-ATY3-10-2014	Attorney III – 21	Malupeng, Carla Rose Rodriguez
OSEC-DENRB-ATY3-27-1998	Attorney III – 21	Vicente, Glaiza Kaye Conde

CERTIFIED TRUE COPY
ANDREANITA BERNACIOLA-HERRERA
Board Secretary IV
Commission Secretariat

OSEC-DENRB-ATY3-29-1998	Attorney III – 21	None
OSEC-DENRB-ATY2-12-2014	Attorney II – 18	Abiog, Lillibeth Mary Elvisa Setias
OSEC-DENRB-ATY2-15-1998	Attorney II – 18	None
OSEC-DENRB-ATY2-17-1998	Attorney II – 18	None
OSEC-DENRB-LEA2-10-2014	Legal Assistant II – 12	Almojuela, Yvette Trumata
OSEC-DENRB-LEA2-15-1998	Legal Assistant II – 12	Vasquez, Ricardo Jr. Enerio
OSEC-DENRB-ADAS1-58-2014	Administrative Assistant I – 07	Moreno, Leizel Fetalcurin

Thus, the DENR MIMAROPA created and authorized the hiring of the seven private lawyers for the DENR–PENRO–Oriental Mindoro and Palawan through COSs.

Fourth, the seven private lawyers meet the minimum eligibility and qualification standards imposed by the CSC for comparable positions in the DENR Legal Division, as may be gleaned from the contracts.

Fifth, the monthly compensation of P47,779.00 for each of the seven private lawyers is approximately the same as the salary of an Attorney III with salary grade 21 in the DENR MIMAROPA Legal Division, with no other entitlements as stated in the contracts.

Finally, the seven private lawyers were not employed or engaged by any private entity or other government agency or GOCC for the duration of the contracts. Such fact was not alleged in the request for reconsideration and in the lawyers' Personal Data Sheets (PDSs) except for Attys. Umali, Gomez, and Buenavista, who stated in their PDSs that they were still connected to law firms during the period of engagement. The Audit Team is directed to verify this information and the nature of Attys. Umali, Gomez, and Buenavista's connections to their respective law firms, whether as an employee, associate lawyer, or partner, in the conduct of post-audit of payments to the private legal counsels.

Notwithstanding the exemption from the requirement of COA's written concurrence, any disbursement made to the seven private lawyers shall still be subject to post-audit based on existing COA rules and regulations and to applicable rules and regulations issued by the CSC and other government agencies, as mandated in Item 4.0 of COA Circular No. 2021-003.

However, with regard to the following provisions of the COSs, this Commission finds the same contrary to law, rules, and regulations, due to the following reasons:

CERTIFIED TRUE COPY
ADELFANTA DEDICACION A. DE VERA
Board Secretary IV
Commission Secretariat

1) Attendance at Seminars

The COSs stated that the private lawyers shall be entitled to attendance at seminars. Such stipulation is improper since said incentive/privilege is applicable only to government employees pursuant to CSC-COA-DBM Joint Circular No. 1[6] dated June 15, 2017. Attendance at seminars, whether conducted by private or public entities, shall be at the personal expense of private lawyers.

2) Travel Expenses

The seven private lawyers shall only be entitled to reimbursement of actual travel expenses incurred for rendering legal services under Section 2 of the contracts, subject to the rates prescribed under Executive Order No. 77.[7]

RULING

WHEREFORE, the request for reconsideration of Director Henry A. Adornado, Regional Executive Director, Department of Environment and Natural Resources (DENR), Regional Office No. IV-B, is hereby **PARTIALLY GRANTED**. Accordingly, COA Legal Retainer Review No. 2019-172 dated December 5, 2019 is hereby **SET ASIDE.**

The Contracts of Service entered into by the DENR–Provincial Environment and Natural Resources Office of Oriental Mindoro and Palawan and Attys. Francis Rainier B. Umali, Jessa Ann Z. Gomez, Orlando A. Ba-alan, Fatima J. Bacuteng, Marieta B. Buenavista, Lysander L. Fetizanan, and Joseph Ryan C. Apasan are hereby **EXEMPTED** from the requirement of COA's written concurrence pursuant to COA Circular No. 2021-003, subject to post-audit by this Commission.

COMMISSION ON AUDIT
OFFICE OF THE COMMISSION SECRETARIAT

GAMALIEL A. CORDOBA
Chairperson

ROLAND CAFÉ PONDOC
Commissioner

MARIO G. LIPANA
Commissioner

[6] Rules and Regulations Governing Contract of Service and Job Order Workers in the Government.
[7] Prescribing Rules and Regulations and Rates of Expenses and Allowances for Official Local and Foreign Travels of Government Personnel.

CERTIFIED TRUE COPY
ANGELANITA BELEN-CATA A. BELEN-OTA
Board Secretary IV
Commission Secretariat

Attested by:

BRESILO R. SABALDAN
Director IV
Commission Secretary

Copy furnished:

Director Henry A. Adornado
Regional Executive Director
Department of Environment and Natural Resources
MIMAROPA Region
1515 L&S Building, Roxas Boulevard
Ermita, Manila

The Audit Team Leader
The Supervising Auditor
Audit Team No. R4B-28
DENR-Provincial Environment and Natural Resources Office–Oriental Mindoro
Suqui, Calapan City, Oriental Mindoro

CPCN 2022-530

CERTIFIED TRUE COPY
ANDREANITA BERNACION A. BERNOVA
Board Secretary IV
Commission Secretariat