



## RESOLUTION NO. 05-2016

### RESOLUTION ON THE REAFFIRMATION OF THE NON-ACCEPTABILITY OF PROVISIONARY TAX CLEARANCE ISSUED BY THE BUREAU OF INTERNAL REVENUE

**WHEREAS**, Republic Act (RA) No. 9184, otherwise known as the “Government Procurement Reform Act” and its revised Implementing Rules and Regulations (IRR) took effect on 26 January 2003 and 2 September 2009, respectively;

**WHEREAS**, Section 63(b) of RA 9184 mandates the Government Procurement Policy Board (GPPB) to formulate and amend, when necessary, the IRR and the corresponding standard forms for Procurement;

**WHEREAS**, Section 1 of Executive Order (EO) No. 398 mandates a tax payer to submit a Tax Clearance from the Bureau of Internal Revenue (BIR) to prove full and timely payment of taxes before it enters to contract with Government;

**WHEREAS**, Section 34.2(a) of the revised IRR of RA 9184 requires a bidder to submit its tax clearance within three (3) days from receipt of notice that it has the Lowest Calculated Bid or Highest Rated Bid;

**WHEREAS**, GPPB Resolution No. 21-2013, dated 30 July 2013, amended Section 34.2(a) of the revised IRR of RA 9184 and prescribed the submission of tax clearance as part of Class “A” eligibility requirements;

**WHEREAS**, BIR Operations Manual (OM) No. 12-07-001 as amended by BIR Revenue Memorandum Circular (RMC) No. 58-2013 allowed the issuance of Provisionary Tax Clearance for Bidding Purposes in two (2) instances, thus:

- (1) Taxpayer availed a Tax Amnesty Program but is still awaiting issuance of the Authority to Cancel Assessment (ACTA) by the Regional Office, and
- (2) Taxpayer’s case is still pending final resolution by the Court of Tax Appeals (CTA) or the Supreme Court (SC);

**WHEREAS**, during the 5<sup>th</sup> Inter-Agency Technical Working Group (IATWG) Meeting held on 11 October 2013, the IATWG agreed to recommend to GPPB the following:

- a. Consider the submission of a “Provisionary Tax Clearance for bidding purposes” as sufficient compliance with the post-qualification requirement under Section 34.2 of the IRR of RA 9184;
- b. Issue a CIRCULAR informing stakeholders that the “Provisionary Tax Clearance” issued by the BIR is considered sufficient for purposes of compliance with Section 34.2 of the IRR; and

- c. Write a letter to the BIR requesting for changes relative to the Provisionary Tax Clearance;

**WHEREAS**, during the 7th Regular GPPB Meeting held on 25 October 2013, the Board discussed the foregoing recommendation of the IATWG and agreed to defer its resolution pending the report of the Department of Finance (DOF) on the use/acceptability of Provisionary Tax Clearance for purposes of bidding. The Board likewise instructed the GPPB-TSO to inform bidders and procuring entities that the Provisionary Tax Clearance is not yet an acceptable form until the Board makes a resolution on whether the same may be considered for purposes of bidding;

**WHEREAS**, on 21 January 2014, GPPB-TSO received a letter from Commissioner Kim Henares addressed to DOF discussing BIR's rationale on the issuance of Provisionary Tax Clearance;

**WHEREAS**, on 29 January 2014, DOF wrote GPPB-TSO informing the latter that DOF does not support the use of Provisionary Tax Clearance in place of a regular Tax Clearance, to ensure that bidders are clearly updated in their tax payments.

**WHEREAS**, during the 1<sup>st</sup> GPPB and IATWG Joint Meeting held on 4 February 2014, the Board took note of the positions of DOF and BIR on the matter and issued Resolution No. 1-2014 resolving not to accept a Provisionary Tax Clearance for purposes of bidding as it is not practical and feasible for government procurement process;

**WHEREAS**, as an offshoot of the letter-request received by the GPPB-TSO, a meeting was held between the representatives of BIR and GPPB-TSO on 20 January 2015, to discuss the matter of the acceptability of Provisionary Tax Clearance. During the same meeting, the GPPB-TSO was informed that the BIR is revisiting the provisions of Revenue Regulation (RR) No. 3-2005 and other rules and regulations affected by GPPB Resolution No. 1-2014.

**WHEREAS**, on 15 February 2016, the GPPB-TSO received a copy of BIR RR No. 01-2016, entitled "Amending Certain Provisions of Revenue Regulations No. 3-2005," dated 10 February 2016 thru Assistant Commissioner James H. Roldan. Section 5, Item 3.4 of the said Revenue Regulation defines Tax Clearance as a clearance issued by the Accounts Receivable Monitoring Division (ARMD) (formerly Collection Enforcement Division) attesting that the taxpayer has no delinquent account and has satisfied all other criteria for the issuance of Tax Clearance as prescribed under item 4.4.2.

**WHEREAS**, BIR RR No. 1-2016 provides, among others, for the criteria for the issuance of Tax Clearance that is valid for a period of six (6) months from the date of issuance. It is noteworthy that the issuance of a "Provisionary Tax Clearance" is no longer mentioned.

**WHEREAS**, on 11 March 2016, the GPPB resolved to issue a circular to reaffirm, subject to clarification with BIR, the position of the GPPB that, as per EO 398, only a Tax Clearance shall be accepted for purposes of procurement.

**NOW, THEREFORE**, for and in view of all the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE**

hereby confirm, adopt, and approve the position **NOT TO ACCEPT** Provisionary Tax Clearance but only a Tax Clearance shall be accepted for purposes of government procurement in accordance with Executive Order No. 398. A GPPB Circular shall be issued for this purpose for the guidance of procuring entities, prospective bidders and all other stakeholders.

This Resolution shall take effect immediately.

**APPROVED** this 11<sup>th</sup> day of March 2016 at Pasig City, Philippines.

(SGD)

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**DEPARTMENT OF BUDGET AND  
MANAGEMENT**

(SGD)

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**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

(SGD)

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**DEPARTMENT OF EDUCATION**

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**DEPARTMENT OF ENERGY**

(SGD)

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**DEPARTMENT OF FINANCE**

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**DEPARTMENT OF HEALTH**

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**DEPARTMENT OF THE INTERIOR  
AND LOCAL GOVERNMENT**

(SGD)

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**DEPARTMENT OF NATIONAL  
DEFENSE**

(SGD)

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**DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS**

(SGD)

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

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**DEPARTMENT OF TRANSPORTATION  
AND COMMUNICATIONS**

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**PRIVATE SECTOR REPRESENTATIVE**

Attested by:

(SGD)

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**DENNIS S. SANTIAGO**  
*Board Secretary, GPPB*  
*Executive Director, GPPB-TSO*