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CIRCULAR 01-2016

11 March 2016

TO : Heads of Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units

SUBJECT : Reaffirmation of the Non-Acceptability of Provisionary Tax Clearance for Purposes of Bidding

1.0 Purpose

This Circular is being issued to reiterate the non-acceptability of Provisionary Tax Clearance issued by the Bureau of Internal Revenue for purposes of Competitive bidding.

2.0 Coverage

All Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government-Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units.

3.0 Non-Acceptability of the Provisionary Tax Clearance

- 3.1 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.
- 3.2 Section 34.2(a) of the revised Implementing Rules and Regulations of Republic Act (RA) No. 9184 requires a bidder to submit its Tax Clearance within three (3) calendar days from receipt of notice that it has the Lowest Calculated Bid or Highest Rated Bid.
- 3.3 Government Procurement Policy Board (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.
- 3.4 BIR Operations Manual No. 12-07-001 as amended by BIR Revenue Memorandum Circular 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 or the Supreme Court.
- 3.5 During the 1st GPPB and IATWG Joint Meeting held on 4 February 2014, the Board through Resolution No. 1-2014 resolved not to accept Provisionary Tax Clearance for purposes of bidding as it is not practical and feasible for government procurement. It also directed the GPPB-TSO to inform the Department of Finance and Bureau of Internal Revenue of the Board's position regarding non-acceptability of Provisionary Tax Clearance.
- 3.6 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. The issuance of a "Provisionary Tax Clearance" is no longer mentioned.
- 3.7 On 11 March 2016, the GPPB resolved to issue a Circular to reaffirm, subject to clarification with the BIR, the position of the GPPB **NOT TO ACCEPT** Provisionary Tax Clearance, and that as per EO No. 398, only an actual Tax Clearance shall be accepted for purposes of procurement.
- 3.8 In the meeting of GPPB-Technical Support Office and BIR held on 4 April 2016, Assistant Commissioner James H. Roldan clarified that Provisionary Tax Clearance will no longer be issued, and that the actual Tax Clearance applies to all types of procurement.

4.0 This Circular shall take effect immediately.

5.0 For guidance and compliance.

(SGD)
FLORENCIO B. ABAD
Chairperson