



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 01-2013

14 January 2013

BRIGADIER GENERAL GERARDO D. JAMORABO

Chairman, Bids and Awards Committee (BAC)

PHILIPPINE AIR FORCE (PAF)

ARMED FORCES OF THE PHILIPPINES

Colonel Jesus Villamor Air Base, Pasay City

Re: Filing of Tax Returns either Manually or through Electronic Filing and Payment System (EFPS)

Dear BGen Jamorabo:

We respond to your letter dated 29 August 2012 seeking our opinion on whether the PAF may allow the submission of manually filed tax returns or strictly require the submission of tax returns filed through the EFPS pursuant to Republic Act (RA) 9184 and its revised Implementing Rules and Regulations (IRR).

It is represented that the PAF-BAC informed 911 Alarm in writing on 16 August 2012 that it allows the submission of tax returns filed manually or through EFPS in order to foster competition. Nonetheless, 911 Alarm insists that EFPS filing is mandatory under Executive Order (EO) No. 398¹, BIR issuances such as Revenue Regulations (RR) No. 3-2005² and Revenue Memorandum Circular (RMC) No. 16-2005³, and Government Procurement Policy Board (GPPB) Circular No. 02-2005⁴.

As discussed in an opinion⁵ issued by this office, Section 4.1⁶ of RR 3-2005, as reiterated in GPPB Circular 02-2005, expressly mandates the submission of tax returns through the EFPS. On the other hand, Bid Data Sheet (BDS) Clause 29.2(b)⁷ of the Philippine Bidding Documents (PBDs) for the Procurement of Goods provide the Procuring Entity (PE)

¹ Issued 12 January 2005.

² Rules and Regulations Implementing Executive Order No. 398 (EO 398) and Requiring Timely and Complete Payments of Taxes as a Precondition for Entering Into and as a Continuing Obligation in Contracts with Government issued 16 February 2005.

³ Issued 19 April 2005.

⁴ Issued 28 April 2005.

⁵ NPM No. 166-2012 dated 28 December 2012.

⁶ Effective 1 April 2005, all prospective participants to any government procurement of goods and services are mandated to file their income and business tax returns and other required information electronically using the Electronic Filing and Payment System.

⁷ Specify whether the Bidders have option to submit manually filed tax returns or tax returns filed through the Electronic Filing and Payment System (EFPS).

NOTE: The latest income and business tax returns are those within the latest six months preceding the date of bid submission.

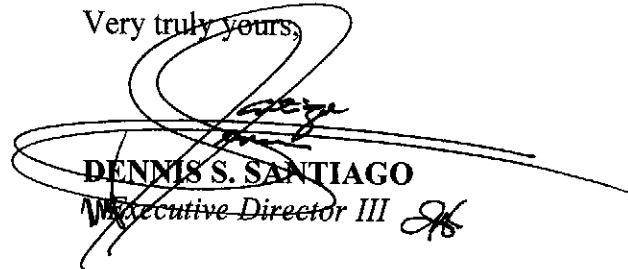
an option to allow bidders to submit manually filed tax returns in lieu of EFPS-filed tax returns.

The BDS Clause 29.2(b), however, clearly provides that the option of allowing submission of manually filed tax returns should be exercised by the PE by specifying so in the Bidding Documents. If the PE does not elect such option and maintains the provision of the BDS unchanged, the general rule should apply, *i.e.*, only EFPS-filed tax returns are allowed – “A thing not being excepted, must be regarded as coming within the purview of the general rule” as expressed in the maxim *exceptio firmat regulam in casibus non exceptis*.⁸

Accordingly, we opine that PAF may afford its bidders the option to submit tax returns filed either manually or through the EFPS by specifying such alternative in the BDS. In the absence of a provision in the BDS or a failure to specify the option for the bidder to submit tax returns filed manually, bidders must submit tax returns filed through EFPS.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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⁸ Hodge v. Municipal Board of Iloilo, 19 SCRA 28 (1967).