



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

**NPM No. 02-2013**

14 January 2013

**MS. MELANIE CALAMBA-PAGKALIWAGAN**  
*Executive Assistant II*  
*Office of the President*  
**UNIVERSITY OF SOUTHEASTERN PHILIPPINES (USEP)**  
F. Inigo St., Obrero, Davao City

**Re: Tax Clearance Requirement**

Dear Ms. Pagkaliwagan:

We respond to your electronic mail dated 24 September 2012, requesting opinion in the submission of Tax Clearance as one of the requirements under Section 34.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

It is represented that USEP conducted public bidding for the procurement of an Integrated Information System (IIS) with an Approved Budget for the Contract (ABC) of Three Million Five Hundred Thousand Pesos (PhP 3,500,000.00). Prince Technologies Corporation (PTC) is the sole bidder, which is also the same IIS provider of other private and public Higher Education Institutes. On the technical side, PTC has the experience and expertise to deliver the task as evidenced by a systems demonstration made before USEP's Technical Working Group (TWG). Nonetheless, USEP is concerned that instead of the latest Tax Clearance, PTC submitted the following documents:

1. Tax clearance certificate valid until 31 December 2009;
2. Application for tax clearance dated 8 March 2012;
3. Bureau of Internal Revenue (BIR) Collection Enforcement Division (CED) Delinquency Verification as of 19 September 2012;
4. Letter of Mr. Carlos Delos Santos, PTC President dated 25 August 2011 for the Regional Director of BIR Region 8, Makati City<sup>1</sup>;
5. Delinquency Verification Slip with an Indorsement from OIC-Revenue District Officer Danilo G. Lino of BIR Muntinlupa City<sup>2</sup>; and
6. Other supporting documents.

As discussed in a previous opinion<sup>3</sup> issued by this office, the requirement under Section 34.2<sup>4</sup> of the IRR of RA 9184 for the submission of Tax Clearance is based on

<sup>1</sup> Stating his protest on the improper and invalid issuance of the warrant of distraint and/or levy issued to PTC.

<sup>2</sup> Stating that the taxpayer has no pending tax liabilities based on the inventory of pending cases submitted by the Revenue Officers dated 31 December 2011.

<sup>3</sup> NPM 025-2012 dated 12 August 2012.

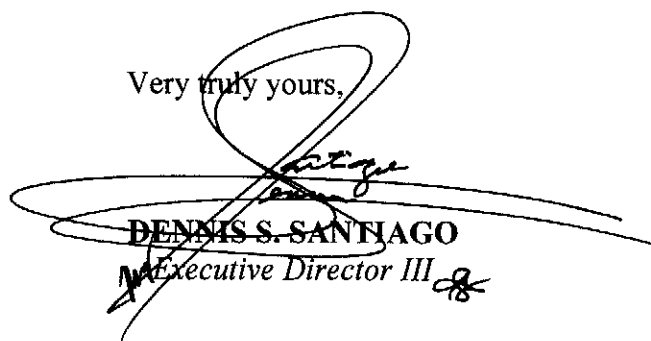
<sup>4</sup> Within three (3) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Bid or Highest Rated Bid, the bidder shall submit the following documentary requirements to the BAC:

Executive Order (EO) No. 398<sup>5</sup> (or Tax Clearance Form 17.4B). Section 1 of EO 398 requires the submission of Tax Clearance issued by the Bureau of Internal Revenue (BIR) to prove full and timely payment of taxes of all persons desiring to enter into or participate in any contract with government. Tax Clearance as defined under BIR Revenue Regulations No. 3-2005 refers to the clearance issued by the Collection Enforcement Division attesting that the taxpayer has no outstanding Final Assessment Notice and/or delinquent account. In addition, the Government Procurement Policy Board has issued Circular No. 02-2005 on 28 April 2005 to enforce compliance with EO 398.

Based on the foregoing, it is clear that EO 398 specifically requires the submission of Tax Clearance issued by the BIR. Hence, we are of the view that the submission of the enumerated documents in lieu of the Tax Clearance requirement cannot be considered in compliance with Section 34.2 of the IRR of RA 9184.

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 situations 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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- a) Tax clearance;
  - b) Latest income and business tax returns;
  - c) Certificate of PhilGEPS Registration; and
  - d) Other appropriate licenses and permits required by law and stated in the Bidding Documents.

Failure to submit the above requirements on time or a finding against the veracity of such shall be ground for the forfeiture of the bid security and disqualify the bidder for award.

<sup>5</sup> Entitled "Directing Timely and Complete Payment of Taxes as a Precondition for Entering Into, and as a Continuing Obligation in Contracts with the Government, its Departments, Agencies and Instrumentalities" issued 12 January 2005.