



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 02-2016

18 March 2016

THE BIDS AND AWARDS COMMITTEE (BAC)
PROVINCIAL GOVERNMENT OF NUEVA ECIIJA
Palayan City, Nueva Ecija

Re: Continuing Validity of Tax Clearance

Dear Madame/Sir:

This refers to your email requesting for an opinion on whether a Tax Clearance, which was valid at the time of bid opening, should be renewed by the bidder if it has expired prior to the award of the contract.

Sections 23.1(a)(iii) and 24.1(a)(iii) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 direct bidders to submit a Tax Clearance issued by the Bureau of Internal Revenue (BIR) as one of the legal eligibility documents. This is in accordance with the mandate of Executive Order (EO) No. 398¹, S. 2005, which requires bidders to observe timely and complete payment of taxes as a precondition for entering into contracts with the Government.

Section 1 of EO 398 requires the submission of a Tax Clearance to prove full and timely payment of taxes by the bidder in order to participate in a bidding activity, while Section 2 directs Procuring Entities (PEs) to exert all efforts in determining that the bidder is free and clear from all tax liabilities before entering into a contract. Consequently, BIR Revenue Regulation (RR) No. 3-2005², as amended by BIR RR No. 1-2016³, the implementing rule for EO 398, was issued with the objective of ensuring that only tax compliant entities are allowed to enter into contracts with government, such that, "part of the submission for the bid/offer to be accepted for evaluation is the Tax Clearance from the BIR."⁴

In view of the foregoing, EO 398 requires that a bidder should not have any tax liability with the Government from the time of submission of its bid up to the time of contract award. Accordingly, bidders are required to secure and submit a valid Tax Clearance issued

¹ 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, (12 January 2005).

² Rules and Regulations Implementing EO 309 and Requiring Timely and Complete Payment of Taxes as a Precondition for Entering Into and as a Continuing Obligation in Contracts with Government, (16 February 2005).

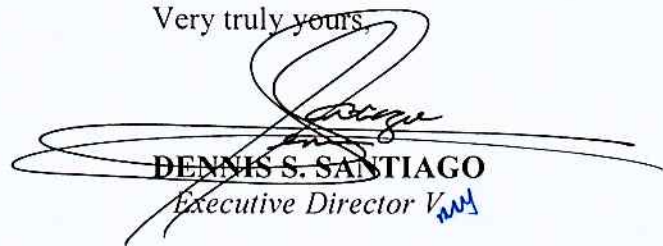
³ Dated 10 February 2016.

⁴ Section 2.2, BIR RR No. 3-2005.

by the BIR as proof of compliance with the requirements of EO 398. In the event that the submitted Tax Clearance expires prior to award of contract, the bidder is obligated to renew and update its Tax Clearance.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director *VNS*

sd3