



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

NPM No. 06-2013

25 January 2013


MS. SANDRA M. MARTINEZ
Chairperson, Bids and Awards Committee (BAC)
INTRAMUROS ADMINISTRATION
5th Floor Palacio del Gobernador,
corner Gen. Luna and Aduana Sts., Intramuros, Manila

Re: Tax Clearance under Section 34.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184

Dear Ms. Martinez:

We respond to your letter requesting for clarification regarding the submission of Tax Clearance during the post-qualification stage as required under Section 34.2¹ of RA 9184 and its IRR.

It is represented that Intramuros Administration conducted public bidding where the winning bidder failed to submit its Tax Clearance as required in Section 34.2 of the IRR of RA 9184. In lieu, thereof, the bidder presented an official receipt and a certification from the Bureau of Internal Revenue (BIR) that the Tax Clearance will be released on a specific date past the deadline for submission. Thereafter, the BAC of Intramuros Administration post-disqualified the said bidder and forfeited the bid security. Upon filing its request for reconsideration, the bidder submitted the Tax Clearance, but this request was subsequently denied by the BAC. It is within this context that Intramuros Administration raises the following issues:

1. Whether the BAC may accept a certification issued by the BIR that the Tax Clearance is being processed to be released on a certain date, in lieu of the required Tax Clearance in Section 34.2 of the IRR;
2. Whether the BAC may exercise its discretion in extending the deadline for submission of Tax Clearance on the basis of the BIR certification; and, 

¹ 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:

- 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.

3. Whether the BAC has the discretion to not strictly follow the rule under Section 34.2 of the IRR on the forfeiture of bid security and disqualification of the bidder upon its failure to submit the requirements or a finding against the veracity of the documents.

As discussed in a previous opinion² issued by this office, the requirement under Section 34.2 of the IRR of RA 9184 for the submission of Tax Clearance is based on Executive Order (EO) No. 398³. Section 1 of EO 398 requires the submission of Tax Clearance issued by the 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 (RR) 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.

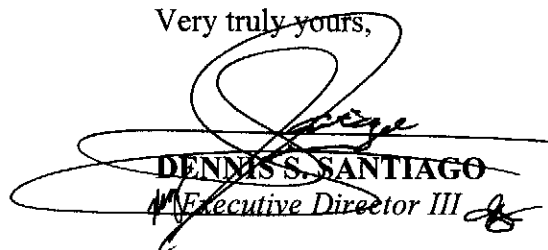
Considering the foregoing, there is no doubt that EO 398 specifically requires the submission of Tax Clearance issued by the BIR, which should be in the form defined in RR 3-2005. Thus, a certification stating that the Tax Clearance is being processed and will be later released is not in compliance with Section 34.2 of the IRR of RA 9184.

Anent your second and third queries, we wish to inform you that Section 34.2 of the IRR of RA 9184 is mandatory, and not discretionary, and this is clear from the wordings of the provision. Hence, there must be compliance with the documentary requirements enumerated in Section 34.2 of the IRR before a bidder may be considered post-qualified. Based on this provision, the inability of the bidder to **submit the requirements on time, or if there is a finding against the veracity of the submitted documents**, would necessarily result to forfeiture and disqualification. The intention of the rule is clear, that is, to forfeit the bid security and disqualify the bidder for failure to comply with Section 34.2 of the IRR.

Based on the foregoing, it is our opinion that the bidder should submit its Tax Clearance requirement described in EO 398 and RR 3-2005 to be able to comply with Section 34.2 of the IRR of RA 9184. Moreover, the strict observance of Section 34.2 of the IRR of RA 9184 is mandatory, and is not subject to the discretion of the Procuring Entity.

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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² NPM 02-2013 dated 14 January 2013.

³ 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.