



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

**NPM No. 21-2013**

27 March 2013

**MS. ROSEMARY D. GABATAN**  
*President and Chief Operating Officer*  
**ALEXIS SECURITY AGENCY PROVIDER PHILS. CO., INC. (ALEXIS)**  
Unit 270E Crissant Condominium,  
Commonwealth Avenue, Old Balara, Quezon City

**Re: Tax Clearance Requirement**

Dear Ms. Gabatan:

We respond to your letter dated 12 February 2013, requesting our opinion on whether a bidder may merely submit a certification in lieu of a Tax Clearance as required under Section 34.2<sup>1</sup> of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, Alexis, Blue Army Security, and Superb Security participated in the public bidding for security services conducted by the Philippine Postal Corporation (PPC). Superb Security failed to comply with the technical documentary requirements, while Blue Army Security submitted a certification of clearance issued by the Revenue District Office (RDO) of the BIR where it is registered, instead of the required current/valid Tax Clearance as indicated in PPC's Bidding Documents. Alexis expressed its motion for disqualification against Blue Army Security, but members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) merely noted that the document will still be subject to evaluation and refrained from making any other comments. During the reading of the financial bid, Blue Army Security's bid was lower by Two Pesos & 34/100 (PhP 2.34) from Alexis's bid. It is within this context that Alexis inquires on the validity of PPC-BAC's acceptance of a certificate of clearance issued by the BIR-RDO.

For your guidance, 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. 398<sup>2</sup>. Section 1 of EO 398 requires the submission of Tax Clearance issued by the BIR to prove full and timely

<sup>1</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:

- 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.

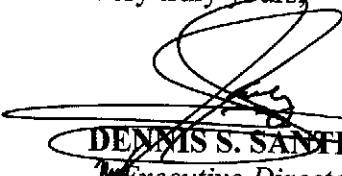

<sup>2</sup> Entitled "Directing Timely and Complete Payment of Taxes as a Precondition for Entering Into, and as a Continuing Obligation in Contracts with the Government, its Departments, Agencies and Instrumentalities" issued 12 January 2005.


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 (CED) attesting that the taxpayer has no outstanding Final Assessment Notice and/or delinquent account.<sup>3</sup>

Considering the foregoing, Tax Clearance requires under Section 34.2 of the IRR is that issued by the BIR-CED, which should be in the form defined in RR 3-2005. Thus, a certification issued by the RDO of the BIR is not 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 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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<sup>3</sup> NPM No. 06-2013 dated 25 January 2013.