

**NPM No. 45-2013**

7 June 2013

**MS. FRANCIS MARIE N. PALOMO**

*Head, Bids and Awards Committee (BAC) Secretariat*

**PROCUREMENT SERVICE (PS)**

**DEPARTMENT OF BUDGET AND MANAGEMENT (DBM)**

PS Complex, RR Road, Cristobal St.,

Paco, Manila

**Re: Foreign Partner in Joint Venture**

Dear Ms. Palomo:

We respond to your letter dated 27 February 2013 referring to this office the clarification letter of Accel Prime Technologies, Inc. (APTI) dated 22 February 2013, relative to the documentary legal requirements for foreign partners participating in public bidding as a Joint Venture (JV).

As represented, PS-DBM concluded the pre-bid conference for the *Supply, Delivery, Installation, Configuration, Testing and Commissioning of Information Technology Equipment* for the Department of Education on 20 February 2013, where APTI was one of the prospective bidders. In its letter, APTI manifested to PS-DBM that foreign companies transacting in the Philippines temporarily should no longer be required to submit a Tax Clearance issued by the Bureau of Internal Revenue (BIR) as it is not considered to be "doing business". In lieu of this requirement, APTI proposes the submission of equivalent documents issued in the country of origin of the foreign corporation.

For reference, Section 24.1(b) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provides that each partner in a JV venture shall submit the legal eligibility documents. The legal eligibility documents pertain to the documentary requirements under Section 24.1(a) and (b), and later prior to the post-qualification of the Lowest Calculated bidder, those in Section 34.2 of the IRR of RA 9184. The IRR is clear on what type of documents are required to be submitted during the bid submission and the post qualification stages. The purpose in requiring the submission of legal eligibility documents at different stages is to facilitate eligibility checking and avoid preemptory disqualification of bidders for non-compliance or non-submission of legal eligibility documents. As mentioned in our previous opinion<sup>1</sup>, the other eligibility documents that were required under IRR Part A have not been totally discarded but merely transferred for submission to a later period in the procurement process, that is, during the post-qualification stage.<sup>2</sup>

<sup>1</sup> NPM No. 06-2010 dated 4 February 2010.

<sup>2</sup> NPM No. 09-2012 dated 12 January 2012.

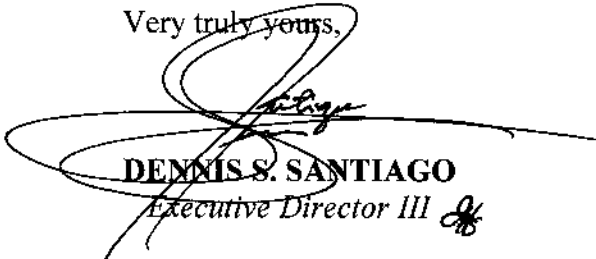

In addition, we wish to inform you that the requirement under Section 34.2 of the IRR of RA 9184 for the submission of Tax Clearance is based on Executive Order (EO) No. 398<sup>3</sup>. Section 1 of EO 398 requires the submission of Tax Clearance issued by the BIR to prove full and timely payment of 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 (CED) attesting that the taxpayer has no outstanding Final Assessment Notice and/or delinquent account.<sup>4</sup>

As regards the Tax Clearance form applicable to foreign corporations required under BIR RR 3-2005<sup>5</sup>, please be advised that the CED of the BIR issues Delinquency Verification Certificates to Non-Resident Foreign Corporations (NRFC)/ Non-Resident Aliens Not Engaged in Trade or Business (NRANETB) attesting to the fact that the taxpayer has no outstanding Final Assessment Notice and/or delinquent account. Hence, for NRFC and NRANETB, a Delinquency Verification Certificate may be submitted as a form of Tax Clearance.

Based on the foregoing, we are of the view that each member of a JV, whether a domestic or foreign corporation, is required to comply with the requirements in Section 34.2 of the IRR of RA 9184, which includes the submission of Tax Clearance. For NRFC and NRANETB, a Delinquency Verification Certificate attesting to the fact that the taxpayer has no outstanding Final Assessment Notice and/or delinquent account may be submitted as a form of Tax Clearance.

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* 

//LSD3

<sup>3</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.

<sup>4</sup> NPM 06-2013 dated 25 January 2013.

<sup>5</sup> Dated 17 February 2005.

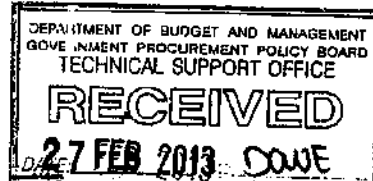


Republic of the Philippines  
Department of Budget and Management  
PROCUREMENT SERVICE  
BIDS AND AWARDS COMMITTEE



27 February 2013

**DIR. DENNIS SANTIAGO**  
Executive Director  
GPPB-Technical Support Office  
Ortigas Center, Pasig



Dear Dir. Santiago:

This pertains to the recently concluded Prebid Conference for the Supply, Delivery, Installation, Configuration, Testing and Commissioning of IT Equipment for Department of Education (DepEd) dated 20 February 2013.

The DBM-PS Bids and Awards Committee would like to refer to your good office the letter-clarification received from one of the prospective bidders for the abovementioned bidding activity, Accel Prime Technologies, Inc. (APTI), dated 22 February 2013 particularly on the question raised regarding the documentary requirement for foreign partner in a joint venture.

A copy of the letter from APTI is attached herewith.

Thank you very much.

Very truly yours,

*Francis Marie N. Palomo*  
**FRANCIS MARIE N. PALOMO**  
Head, DBM-PS BAC Secretariat



# Accel Prime Technologies Inc.

Unit 405 PM Bldg., No. 26 N. Domingo St. cor. Gilmore St., Quezon City  
Telephone numbers : +63 2 741-4933 to 35 Fax Number : +63 2 721 0052

**BAC13-070**

22 February 2013

**DEPARTMENT OF BUDGET  
AND MANAGEMENT  
PROCUREMENT SERVICE**  
2nd Floor PS Complex,  
Cristobal Street, Paco Manila

<b>BAC ACTION</b>	
Date:	2/26/13
Refer to end-user & GPPB-TAO	
Chairman	[Signature]
Vice-Chairman	[Signature]
Member	[Signature]
Member	[Signature]

Attention : **ROMMEL D. RIVERA**  
Chairman

Subject : **VARIOUS ISSUES RAISED IN  
PUBLIC BIDDING NO. 13-021 FOR THE  
SUPPLY, DELIVERY, INSTALLATION, CONFIGURATION,  
TESTING AND COMMISSIONING OF I.T. EQUIPMENT**

Gentlemen:

Our Company **ACCEL PRIME TECHNOLOGIES INC.** ["the Company"] is writing to reiterate our suggestions and other issues raised during the pre bidding conference held on 20 February 2013 for public bidding no. 13-021.

### 1. JOINT VENTURE AGREEMENT - DOCUMENTARY REQUIREMENTS

As was raised during the pre bidding conference, we inquired as to the requirements needed such as tax clearance and tax registration in case the Company would wish to enter into a Joint Venture with a Foreign Company to meet the requirements of P.B. 13-021.

We manifested that foreign companies who transacts in the Philippines temporarily, should not be required to submit a tax clearance obtained with the Bureau of Internal Revenue ("BIR").

It is our position that since the foreign entity is simply doing a temporary business arrangement with a Filipino company, it is the Joint Venture Partner who should be responsible in submitting documents issued by the BIR. The foreign partner need not submit a tax clearance certificate as it is not considered "doing business" in the Philippines.

In lieu of the documentary requirements set forth in 29.2 of the BDS, may we request if it is possible for the foreign partner to submit **EQUIVALENT** documents issued in their country of incorporation, such as the tax clearance certificate issued by their taxing jurisdiction.

2013 Feb 26 11:13



### Accel Prime Technologies Inc.

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		utilize the Gigabit connections between PC's. <b><u>Hence the newer model RJ45 (Gigabit) must be the standard requirement.</u></b>
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Wherefore, considering the above mentioned premises, we would like to pray of this Honorable Bids and Awards Committee, to consider the following:

1. Relaxation on the rule of submission of documents for a Foreign Joint Venture Partner;
2. Relaxation or elimination on the rule of Submission of ISO 14024:1999 or PES, to avoid the Non-Competition in P.B. 13-021; and
3. As discussed during the pre bid, to maintain as the minimum specification for the access terminal RJ45 (Gigabit) connection as this is an advantage to the Government due to faster connection between Host PC and Access device.

Sincerely Yours,

**FERDINAND C. AGUILA**  
President.