



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

NPM No. 48-2013

27 June 2013

MS. NANCY E. SANTOS
Head, Bids and Awards Committee (BAC) Secretariat
SOCIAL SECURITY SYSTEM (SSS)
East Avenue, Diliman,
Quezon City

Re: Validity of Tax Clearance Certificate

Dear Ms. Palomo:

We respond to your letter dated 10 June 2013, seeking our opinion on whether a bidder with the Lowest Calculated Bid (LCB) whose Tax Clearance Certificate was valid at the time it was submitted together with the other eligibility documents but expired during bid evaluation, may still be post-qualified considering its bid is lower by Two Million Two Hundred Twelve Thousand Two Hundred Twenty One & 60/100 Pesos (PhP2,212,221,60) from the bidder with the 2nd LCB.

It is represented that GPV Printing Ventures, Co. (GPV) participated in a procurement project of SSS and submitted a valid Tax Clearance Certificate together with the eligibility documents prior to the deadline for submission of bids. Although GPV submitted the required post-qualification documents to SSS, only a BIR receipt for renewal was submitted in lieu of a renewed/valid Tax Clearance Certificate. It is in this context that our opinion is sought on whether GPV may be post-qualified for having submitted a BIR receipt (for renewal of Tax Clearance) in lieu of a valid Tax Clearance.

Post-Qualification Documentary Submission

For your guidance, Section 34 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184 lays down the procedure to be followed by the Procuring Entity (PE) in conducting post-qualification, among which is the requirement that the bidder with the LCB submits the enumerated documentary requirements¹, including a Tax Clearance, within three (3) calendar days from receipt of the notice from the BAC.

As discussed in a previous opinion², bidders are not precluded from submitting the post-qualification documents during the submission of bids. However, it is prudent for the PE to request for the latest and current legal documents during post-qualification to ascertain, validate and verify the authenticity and currency of the documents and establish the eligibility and responsiveness of the bidder.³

¹ (a) Tax Clearance; (b) Latest business and income tax returns; (c) Certificate of PhilGEPS Registration; and (d) Other appropriate licenses and permits required by law and stated in the Bidding Documents.

² NPM No. 09-2012 dated 12 January 2012.

³ NPM No. 152-2012 dated 14 December 2012.

Requirement of Tax Clearance

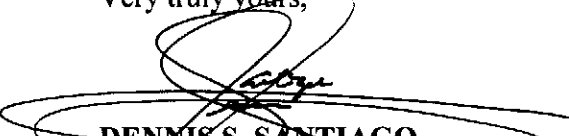
The requirement under Section 34.2 of the IRR of RA 9184 for the submission of Tax Clearance is based on Executive Order No. (EO) 398⁴, Series of 2005. Section 1 of EO 398 requires the submission of Tax Clearance issued by the BIR to prove full and timely payment of taxes of all persons desiring to enter into or participate in any contract with government, and to show that said taxpayer has no final assessment or delinquent account with the BIR. 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.⁵

The use of the word “shall” in Section 34.2 of the IRR of RA 9184 makes the submission of the documentary requirements mandatory within the specified period. The word “shall” means ought to, must, obligation used to express a command or exhortation used in laws, regulations or directives to express what is mandatory. In common or ordinary parlance, the term “shall” is a word or command, which has a compulsory meaning, and is generally imperative or mandatory, unless the contrary intention appears.⁶ Hence, a BIR receipt for renewal of Tax Clearance will not suffice in lieu of a valid Tax Clearance requirement since substitution is not allowed under Section 34.2 of the IRR of RA 9184. A Tax Clearance must be the document submitted by the bidder within three (3) calendar days from receipt of the notice from the BAC that it was determined as the LCB.

In sum, the submission of a Tax Clearance under Section 34.2 of the IRR of RA 9184 is mandatory, and no substitute document, such as a BIR receipt for renewal of Tax Clearance, shall be accepted. The Tax Clearance must be valid and existing at the time it is submitted to the BAC and must be submitted within three (3) calendar days from receipt of the notice from the BAC that the bidder has the LCB. Failure to comply with the requirement for the submission of a valid Tax Clearance shall be a ground for post-disqualification of the bidder.

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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⁴ 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.

⁵ NPM 06-2013 dated 25 January 2013.

⁶ NPM NO. 70-2012 dated 7 June 2012 citing Baranda vs. Gustilo, 165 SCRA (1988) and Gonzales vs. Chavez, 205 SCRA 816 (1992).