



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

**NPM No. 65-2013**

27 June 2013

**MS. FELISA A. BUYOC**  
*BAC Chairperson*  
**METRO KALIBO WATER DISTRICT (MKWD)**  
C. Laserna St. Kalibo, Aklan

**Re: Optional Submission of Tax Clearance in Negotiated Procurement (Two Failed Biddings)**

Dear Ms. Buyoc:

This refers to your letter, seeking our opinion on whether the Bids and Awards Committee (BAC) of MKWD may validly allow the optional submission of Tax Clearance for the two (2) projects being procured through Negotiation Procurement under Section 53.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 (Two Failed Biddings).

It is represented that competitive bidding for two (2) projects of MKWD, namely: (1) Supply and Delivery of 3,090 Liters Gasoline; and (2) 7,637 Liters Diesel Fuel for Replenishment of Stocks failed twice. Although MKWD resorted to Negotiated Procurement (Two Failed Biddings) for the aforesaid projects after two failed biddings, still no bidder is interested in directly negotiating with the former due to the difficulty in complying with the mandatory requirement of submitting a tax clearance from the BIR, a post-qualification requirement under Section 34.2 of the IRR of RA 9184. It is in this context that you are seeking our opinion on whether MKWD may validly allow the optional submission of Tax Clearance in Negotiated Procurement under Section 53.1 of the IRR of RA 9184.

Please be informed that Executive Order No. 398, series of 2005, as implemented by Revenue Regulation No. 03-2005, and Revenue Memorandum Circular No. 16-2005, is couched in no uncertain terms, in that:

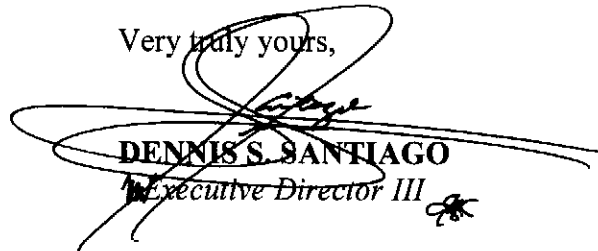
[A]ll persons, natural or judicial, local or foreign, desiring to enter into or participate in any contract with the government, its departments, bureau, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government, financial institutions and local government units, shall, as a pre-condition, submit, along with their proposal and/or bid, a copy of their latest income and business tax returns duly stamped and received by the Bureau of Internal Revenue, and duly validated with tax payment made thereon.

Accordingly, MKWD should require the submission of a Tax Clearance when it resorts to Negotiated Procurement (Two Failed Biddings) under Section 53.1 of the IRR of RA 9184, and indicate this requirement in its invitation to negotiate to prospective suppliers, contractors, and consultants, who must provide said document upon submission of their proposals or quotations; otherwise disqualification is in order.

Moreover, even if a Tax Clearance is not initially included as one of the eligibility documents in the invitation to negotiate by the PE for Negotiated Procurement (Two Failed Biddings), the latter could still require the mandatory submission of the same as it is necessary in determining the legal and financial capability of the prospective suppliers, contractors, and consultants to undertake the procurement at hand.

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*