



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

NPM No. 139-2012

5 November 2012.

HON. ALFREDO V. MISAJON
Office-In-Charge – Assistant Commissioner
BUREAU OF INTERNAL REVENUE (BIR)
Room 301, BIR National Office Building,
Quezon City

Re: Printing of Fuson Stamps

Dear Assistant Commissioner Misajon:

We respond to your letter dated 8 October 2012 seeking advice on whether the Implementing Guidelines on Agency-to-Agency Agreements¹ (Guidelines) apply to BIR's engagement of the services of APO Production Unit (APO) for the Printing of Secured Fuson Stamps² (Project) to be affixed on each manufactured pack of cigars and cigarettes.

As represented, in an effort to implement the second paragraph of Section 8(A)³ of the 1997 National Internal Revenue Code (NIRC), the BIR is pursuing the Project by engaging the services of APO, a recognized government printer (RGP), for the printing, design and development of fuson stamps with ordering, distribution and monitoring system at no cost to the BIR. As early as February 2012, BIR undertook activities in pursuit of the Project, which include identifying and authorizing APO to handle the aforementioned printing requirements. The agreement being considered was for APO to print secured fuson stamps; keep these in their custody; offer these for sale to cigar and cigarette manufacturers; and, properly account for its distribution in order to facilitate the collection of excise tax by the BIR. It is in this context that BIR is seeking advice on the applicability of the Guidelines.

We wish to clarify that the applicability of the Guidelines rests on the fact that the transaction involves government procurement where there is disbursement of public funds in exchange for an item or a service. Hence, the contemplated arrangement between BIR and APO will be covered by the Guidelines if the latter is engaged to print the fuson stamps and, afterwards, deliver it to the former; for which, BIR will have to pay APO through an identified budget, *i.e.* the Approved Budget for the Contract. This, however, is not the case as represented, since the BIR will not pay anything to APO, and instead will allow APO to recoup and recover its investment through the sale of the fuson stamps to Cigarette and Tobacco Manufacturers. *AB*

¹ GPPB Resolution 18-2007 dated 31 May 2007.

² Means a custom-printed multi-colored decal heat-fused to the receiving surface, such as cellophane or polypropylene of each cigar and cigarette package. Source: http://www.bir.gov.ph/lumangweb/tax_excise.html last accessed on 29 October 2012.

³ Internal revenue stamps, whether of a bar code or fuson design, shall be firmly and conspicuously affixed on each pack of cigars and cigarettes subject to excise tax in the manner and form as prescribed by the Commissioner, upon approval of the Secretary of Finance.

We note that the subject transaction is borne from the duty of the Commissioner of the BIR under the NIRC to provide, prescribe and distribute the requisite internal revenue stamps, among others. The Commissioner is mandated to cause the printing of the internal revenue stamps, strip stamps and labels with adequate security features.⁴ From the NIRC provision, we can infer that the BIR, through the Commissioner, has the authority to identify the appropriate printer in pursuit of its mandate, and it is considering APO for such responsibility.

Given this undertaking, and considering the attending circumstances and the contemplated arrangements between the BIR and APO, the relationship that arises from this transaction is more akin to a Principal-Agent relationship described under Article 1868⁵ of the New Civil Code (NCC) of the Philippines. In a Contract of Agency, one binds oneself to render some service or to do something in representation or on behalf of another, with the latter's consent or authority. The following are the elements of Agency: (1) the parties' *consent*, express or implied, to establish the relationship; (2) the *object*, which is the execution of a juridical act in relation to a third person; (3) the *representation*, by which the one who acts as an agent does so, not for oneself, but as a representative; (4) the *limitation* that the agent acts within the scope of his or her authority.⁶ As the Principal, BIR authorizes APO, its Agent, to print the necessary secured fusion stamps, offer these for sale to Cigarette and Tobacco Manufacturers, and monitor and account for its distribution. The arrangement between BIR and APO shows that the former does not intend to transfer its function to the latter; rather, BIR is merely engaging APO as its Agent for the purpose of performing its mandate.

All told, we are of the view that the arrangement being pursued by BIR and APO involves more of a Principal-Agent relationship, which is outside the ambit of Republic Act 9184 and its revised Implementing Rules and Regulations, rather than the acquisition of services from another Agency of the government rightfully contemplated under an Agency-to-Agency procurement setup. In this regard, the engagement of APO need not be governed by the Guidelines. However, we strongly suggest that, since custody over the secured fusion stamps will remain with APO, the BIR should set well-defined parameters to monitor its proper printing, distribution, including its design, security and custody, well in accordance with the terms and conditions for the implementation of the Project clearly specified in their contractual arrangements.

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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⁴ Section 8(A) of the National Internal Revenue Code of 1997, first paragraph.

⁵ By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

⁶ Tuazon v. Heirs of Bartolome Ramos, G.R. No. 156262, July 14, 2005.