

NPM No. 065-2017

21 December 2017

MS. LEIZL REBULDAD

Member, Bids and Awards Committee Secretariat


SOUTHERN PHILIPPINE MEDICAL CENTER

J.P. Laurel Avenue, Bajada,
Davao City, Philippines 8000

Re: Expired Tax Clearance in the PhilGEPS Platinum Certificate -

Dear Ms. Rebuldad:

This refers to your electronic mail inquiring whether the submission of a valid PhilGEPS Platinum Certificate showing an expired Tax Clearance is allowed, although no valid Tax Clearance was attached or submitted. In this regard, you ask whether it is allowed for the bidder to just submit its valid Tax Clearance during Post-Qualification.

The submission of Tax Clearance is imposed by virtue of Executive Order (EO) No. 398¹, series of 2005, to prove full and timely payment of taxes by the bidder desiring to participate in bidding activities of the government. Its submission, together with all the eligibility requirements pursuant to Section 23.1, alongside Sections 8.5.2² and 23.3³ of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Government Procurement Reform Act, is a mandatory requirement that must be complied with by the prospective bidders, such that failure to submit any of the documents or submission of an otherwise incomplete or patently insufficient⁴ document will have the bidder declared failed using a non-discretionary "pass/fail" criterion. 

¹ 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, dated 12 January 2005.

² Section 8.5.2. All bidders shall upload and maintain in PhilGEPS a current and updated file of the following Class "A" eligibility documents under Sections 23.1(a) and 24.1(a):

- a) Registration Certificate;
- b) Mayor's/Business Permit or its Equivalent Document;
- c) Tax Clearance;
- d) Philippine Contractors Accreditation Board (PCAB) license and registration; and
- e) Audited Financial Statements.

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These documents shall be accompanied by a Sworn Statement in a form prescribed by the GPPB stating that the documents submitted are complete and authentic copies of the original, and all statements and information provided therein are true and correct. Upon receipt of the said documents, the PhilGEPS shall process the same in accordance with the guidelines on the Government of the Philippines – Official Merchants Registry (GoP-OMR)

³ Section 23.3. To facilitate determination of eligibility, the BAC of a Procuring Entity shall use the contents of the PhilGEPS electronic registry of manufacturers, suppliers, distributors, contractors, and/or consultants, in accordance with Section 8.5.2 of this IRR.


⁴ Section 30.1, 2016 IRR of RA 9184.

In this regard, we would like to emphasize that for purposes of complying with the eligibility requirements, the Tax Clearance, and all other eligibility documents, must be valid and existing at the time it is submitted to the BAC, that is, on or before the deadline for the submission of bids. Thus, an expired Tax Clearance shown in Annex A of the PhilGEPS Platinum Certificate shall not be considered as sufficient compliance, without the new and valid Tax Clearance attached in the bid submitted by the bidder.

As provided in GPPB Resolution No. 26-2017⁵ and GPPB Circular No. 07-2017⁶, deferring the implementation of the mandatory submission of the PhilGEPS Certificate of Registration and Membership under Platinum Category, the bidder is allowed to submit either Class "A" Documents or the PhilGEPS Certificate of Registration, or a combination thereof. Thus, the bid would have been considered compliant under GPPB Circular No. 07-2017 had the bidder attached its new and valid Tax Clearance together with the submitted PhilGEPS Platinum Certificate. The belated submission of the Tax Clearance during the post-qualification shall be considered a modification or improvement of the bid, which is not allowed under the rules. Thus, Section 26 of the 2016 Revised IRR provides that "[B]id modifications received after the applicable deadline shall not be considered and shall be returned to the bidder unopened."

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

~~DELLY S. SANTIAGO~~
Executive Director 

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⁵ Approving the Issuance of a Circular on the Deferment of the Implementation of the Mandatory Submission of Philippine Government Electronic Procurement System (PhilGEPS) Certificate of Registratin and Membership in Competitive Bidding, dated 31 July 2017.

⁶ Deferment of the Implementation of the Mandatory Submission of PhilGEPS Certificate of Registration and Membership, dated 31 July 2017.