



Republic of the Philippines  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**



**NPM No. 010-2016**

21 March 2016

[REDACTED]

**Re: Tax Clearance Certificate**

Dear [REDACTED]

This refers to your letter, requesting opinion on whether the DND-SBAC can allow the submission by the bidder of a substitute document in lieu of a Tax Clearance Certificate of its subcontractor.

As represented, the DND-SBAC required the submission of a Tax Clearance Certificate of the subcontractors during the first stage bidding of the Long Range Patrol Aircraft (LPRA) acquisition project of the Philippine Air Force in accordance with Instruction to Bidders (ITB) Clause 8.2 of the Philippine Bidding Documents (PBD) for the Procurement of Goods. However, instead of submitting the subcontractor's Tax Clearance Certificate, one bidder submitted a Sworn Affidavit to the effect that the same certificate was already released to another representative of a different bidder for the LPRA project. Hence, an opinion is requested on whether the DND-SBAC may allow the submission of a substitute document considering that the Bureau of Internal Revenue (BIR) can only issue one copy of Tax Clearance Certificate or whether the DND-SBAC can reverse its previous stand that a notarized Affidavit is not sufficient to declare the bidder eligible to bid.

The submission of Tax Clearance as an eligibility requirement under Sections 23.1(a)(iii) and 24.1(a)(iii) of the IRR of RA 9184 is based on Executive Order (EO) No. 398 dated 12 January 2005, which requires the submission of a Tax Clearance issued by the BIR to prove full and timely payment of taxes of all persons desiring to enter or participate in any contract with the government. Tax Clearance as defined under BIR Revenue Regulations (RR) No.01-2016, dated February 10, 2016, refers to the clearance issued by the Accounts Receivable Monitoring Division (ARMD) (formerly Collection Enforcement Division) attesting that the taxpayer has no delinquent account and has satisfied all other criteria for the issuance of Tax Clearance as prescribed under the said regulations.

Clearly, the submission of a sworn affidavit in lieu of the Tax Clearance required under BIR RR No. 01-2016 cannot be considered in compliance with Sections 23.1(a)(iii) and 24.1(a)(iii) of the IRR of RA 9184. As we have previously opined,<sup>3</sup> the Tax Clearance is now

<sup>3</sup> NPM 129-2014, dated 17 November 2014.

included as part of the Class "A" legal eligibility documents, its non-submission is a ground for ineligibility, and the eventual disqualification of the bidder. Relative thereto, the Procuring Entity may require the submission of Tax Clearance by subcontractors under ITB Clause 8.2. Thus, "[s]ubcontractors must comply with the eligibility criteria and the documentary requirements specified in the Bid Data Sheet (BDS). In the event that any subcontractor is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the Goods shall be disallowed.

From the foregoing, a bidder's subcontractor who presented a Sworn Affidavit, in lieu of a tax clearance during the submission of bids, shall be ineligible under ITB Clause 8.2, and the subcontracting by the principal bidder of such portion shall be disallowed. Consequently, the principal bidder may still be declared eligible, but the portion it intends to subcontract shall be disallowed for failure to comply with the submission of the required Tax Clearance. As a result, the principal bidder would have to bid for that component proposed to be subcontracted.

We hope this opinion issued by 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.)

~~DENNIS S. SANTIAGO~~

*Executive Director V* 