



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 026-2016

23 March 2016

[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]

Re: Bidder presented BIR Receipt instead of Tax Clearance

Dear [REDACTED]

This is in connection with your letter requesting for opinion on whether it is valid to issue a Notice of Award considering that the bidder presented the Tax Clearance during the Post-Qualification stage.

Per your letter, the bidding for the rehabilitation of various roads in your Municipality was conducted last February 9, 2016. One of the bidder, which was also declared as the Lowest Calculated Bidder (LCB), submitted a BIR receipt dated February 3, 2016, in lieu of the Tax Clearance, since the latter's application for tax clearance is still on-process. Further, when the post-qualification was conducted by the Technical Working Group on February 11, 2016, the winning bidder presented an original copy of the BIR receipt, and it was only on February 17, 2016 when the Tax Clearance was released by the BIR to the winning bidder. Hence, this query.

At the outset, we wish to inform you that GPPB Resolution No. 21-2013 dated 30 July 2013¹, has amended Section 34.2(a) of the IRR of RA 9184, which transferred the submission of Tax Clearance requirement as an legal eligibility document. Thus, under Sections 23.1(a)(iii) and 24.1(a)(iii) of the IRR of RA 9184, a bidder shall submit a Tax Clearance Certificate as part of its legal eligibility documents.² It is a mandatory requirement for determining the eligibility of bidders in competitive bidding. This requirement of Tax Clearance submission is based on Executive Order (EO) No. 398³, which requires the submission of Tax Clearance issued by the Bureau of Internal Revenue to prove full and timely payment of taxes of all persons desiring to enter into or participate in any contract with government. Tax Clearance as defined under BIR Revenue Regulations (RR) No. 3-2005 refers to the clearance issued by the Collection Enforcement Division

¹ Published in Malaya Business Insight on 21 March 2014.

² NPM 128-2015 dated 27 November 2015

³ 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.

(CED) attesting that the taxpayer has no outstanding Final Assessment Notice and/or delinquent account⁴.

Considering the foregoing, there is no doubt that EO 398 specifically requires the submission of Tax Clearance issued by the BIR which should be in the form defined in RR 3-2005⁵. Hence, the submission of other documents, in your case the submission of the BIR Official Receipt in lieu of the Tax Clearance requirement, 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,⁶ since the Tax Clearance is now 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. Thus, the winning bidder who presented the photocopy of the Official Receipt from the BIR during the submission of bids, as well as the original Official Receipt during the Post-Qualification may be disqualified for failure to submit the original Tax Clearance as defined under EO 398.

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.)

DENNIS S. SANHAGO
Executive Director V¹⁰

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⁴ NPM 021 – 2013, dated March 27, 2013.

⁵ NPM 006 – 2013, dated January 25, 2013

⁶ NPM 129-2014, dated 17 November 2014.