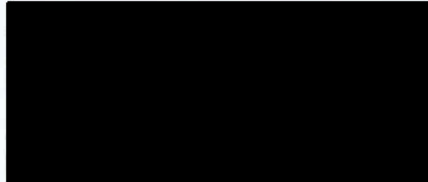


**NPM No. 77-2015**

13 October 2015



**Re: Tax Clearance; PhilGEPS Posting**

Dear :

This is in response to your electronic mail dated 13 August 2015, inquiring on the following issues, viz.:

- (1) Whether the submission of tax clearance is a requirement for the procurement of goods undertaken through Shopping and Small Value Procurement under Sections 52 and 53.9 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, respectively; and
- (2) Whether the posting in the Philippine Government Electronic Procurement System (PhilGEPS) for procurement conducted through Shopping and Small Value Procurement is mandatory.

### Tax Clearance

Tax Clearance is one of the Class "A" legal eligibility documents prescribed in Sections 23.1 (for procurement of goods and infrastructure projects) and 24.1 (for consulting services) of the IRR of RA No. 9184. It is a mandatory requirement for determining the eligibility of bidders in competitive bidding. The requirement of Tax Clearance submission is based on Executive Order (EO) No. 398<sup>1</sup>.

However, as previously opined by this office, the revised IRR of RA 9184 is silent on whether or not the eligibility documents mentioned under Section 23.1 and 24.1 must be submitted when resorting to any of the alternative methods of procurement, except those where competitive bidding or a semblance thereof is still present, such as in Limited Source Bidding and Negotiated Procurement under Two Failed Biddings<sup>2</sup>.

Hence, in the case of procurement undertaken through any of the alternative methods of procurement provided for in Rule XVI of the IRR of RA 9184, except wherein competitive bidding or a semblance thereof exists, the Procuring Entity has the discretion which requirements it shall

<sup>1</sup> 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.

<sup>2</sup> NPM No. 142-2012 dated 22 October 2012.

prescribe to ascertain that it is entering into a contract with a technically, legally and financially capable supplier, contractor or consultant.

Simply put, for alternative methods of procurement, except those above-mentioned, the submission of a Tax Clearance as part of eligibility requirements rests upon the sound discretion of the Procuring Entity in case of procurements undertaken through Shopping and Small Value Procurement.

### **PhilGEPS Posting**

While advertisement and posting are mandatory requirements for procurements undertaken through competitive bidding, Section 54.2 of the IRR of RA 9184 provides that advertisement or posting may be dispensed with in case of procurement under any of the alternative methods. However, posting of the invitation or request for submission of price quotation is still required for the following alternative modalities:

1. Shopping under Section 52.1(b) and Small Value for Procurement with ABCs more than PhP 50,000.00<sup>3</sup>
2. Negotiated Procurement under Sections 53.1 (Two-Failed Biddings)<sup>4</sup>;
3. Section 53.9 (Small Value Procurement)<sup>5</sup>;
4. Section 53.11 (NGO Participation)<sup>6</sup>; and
5. Limited Source Bidding<sup>7</sup>.

Thus, PhilGEPS posting is still mandatory for procurement projects conducted through Shopping under Section 52.1(b) and Small Value Procurement when the respective ABCs are more than Fifty Thousand Pesos (PhP 50,000.00).

It is worthy to emphasize that Section 54.3 of the IRR of RA 9184 directs the BAC, in all instances of alternative methods of procurement, through its Secretariat, to post, for information purposes, the notice of award in the PhilGEPS website, the website of the PE concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the procuring entity. As an exception, Section 3(i) of the Guidelines for Shopping and Small Value Procurement states that these posting requirements is not required for contracts awarded through Shopping and Small Value Procurement with an ABC equal to Fifty Thousand Pesos (PhP50,000.00) and below.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular 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*

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<sup>3</sup> Section 3d, Guidelines for Shopping and Small Value Procurement.

<sup>4</sup> Section 54.2, IRR.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> Section 4.8, Guidelines on Pre-selection Procedure in the conduct of Limited Source Bidding.