

NPM No. 105-2015

2 November 2015



Re: Tax Clearance

Dear [REDACTED]:

We respond to your electronic mail dated 23 October 2015 inquiring on whether the submission of tax clearance is a requirement for the award of projects procured through Shopping and Negotiated Procurement (Small Value Procurement) in accordance with Sections 52 and 53.9 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

For purposes of determining the eligibility of bidders in competitive bidding, the Bids and Awards Committee shall require the documents prescribed in Sections 23.1 and 24.1 of the IRR of RA 9184, which include Tax Clearance.

The requirement to submit the bidder's Tax Clearance is based on Executive Order (EO) No. 398¹. Tax Clearance as defined under BIR Revenue Regulations (RR) No. 3-2005 refers to the clearance issued by the Accounts Receivable Monitoring Division (ARMD) attesting that the taxpayer has no outstanding Final Assessment Notice and/or delinquent account. Section 1 of EO 398 requires the submission of Tax Clearance issued by the BIR to prove full and timely payment of taxes of all persons desiring to enter into or participate in any contract with government.

However, as previously opined by this office, the revised IRR of RA 9184 is silent whether or not eligibility documents mentioned under Section 23.1 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 Biddings².

In case of procurement undertaken through any of the alternative methods of procurement provided in Rule XVI of the IRR of RA 9184, except Limited Source Bidding and Negotiated Procurement under Two Failed Biddings, wherein competitive bidding or a semblance thereof exists, the procuring entity has the discretion which requirements it shall

¹ 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.

² 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.

Accordingly, the procuring entity has the option to require the submission of the Tax Clearance for procurement projects conducted through Shopping and Small Value Procurement.

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-124

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