October 12, 2018

BIR RULING NO. 1242-18

Sec. 8, RA 8436, as amended by Sec. 12; RA 9369; BIR Ruling No. 16-2018; BIR Ruling No. 139-2016 & BIR Ruling No. 390-2015

Commission on Elections
Intramuros, Manila

Attention: *Mr. Jose M. Tolentino, Jr.*
Executive Director

Gentlemen :

This refers to your letter dated April 27, 2018, requesting for confirmation of the tax exemption of the Commission on Elections (COMELEC) relative to its purchases of goods and services from local and foreign sources for use in the May 13, 2019 Automated National and Local Elections.

As represented, the COMELEC, as principal government agency mandated by the 1987 Constitution to enforce and administer all laws and regulations regarding the conduct of regular and special elections as well as other political exercises such as recall, plebiscite, referendum and recall, will conduct the mid-term Automated National and Local Elections on May 13, 2019.

Anent said May 13, 2019 elections, the COMELEC will be procuring goods and services from foreign and local sources starting July 1, 2018. The list of goods and services that have been procured and/or to be procured by the COMELEC in relations to the May 13, 2019 elections are as follows:

1. Optical Mark Reader or Optical Scan with Election Management System and other related requirements;

2. Ballots and other ballot related goods and services;

3. Ballots printing facilities;

4. Ballot boxes;

5. Technical Support;

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6. Laptop for Canvassing and Consolidation Systems (CCS) and printer;

7. Central Server, Transparency Server, Back-up Server, Web Server and other equipment needed in Election Results Transmission Solutions, Management and Services (ERTSMS);

8. Deployment Services;

9. Warehousing Services;

10. SD Card, USB key for CCS and other CCS items, marking pens, thermal paper, batteries;

11. National Technical Support Center;

12. Election Day Computerized Voter's List (EDCVL) Printing;

13. Automated Election System (AES) groups/committees and election supplies and materials (accountable and non-accountable); and

14. Other automated elections-related goods and services as the COMELEC may deem necessary;

15. Election Results Transmission Solutions, Management and Services (ERTSMS);

16. Election Management System (EMS);

17. Machines and Systems for the Voter Registration and Verification System (VRVS);

18. Technical Server for VRVS; and

19. Printing Services for Election Day Computerized Voter's List * (EDCVL).

In reply, please be informed that Section 12 of Republic Act (RA) No. 9369, amending Section 8 of RA 8436, provides as follows:

> "*SECTION 12.* ***Procurement of Equipment and Materials***. — *To achieve the purpose of this Act, the Commission is authorized to procure, in accordance with existing laws, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities and other services, from local or foreign sources* ***free from taxes and import duties****, subject to accounting and auditing rules and regulations. With respect to the May 10, 2010 elections and succeeding electoral exercises, the system procured must have demonstrated capability and been successfully used in a prior electoral exercise here or abroad. Participation in the 2007 pilot exercise shall not be conclusive of*

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the system's fitness. (Emphasis supplied)

xxx xxx xxx"

In view of the foregoing, this Office confirms that the COMELEC is exempt from the 12% value-added tax (VAT) on its local purchases of goods and services as well as VAT on its importation of goods that will be used in the automated national and local elections. Accordingly, the suppliers/sellers of goods and services to the COMELEC cannot shift or pass on any VAT to COMELEC on the latter's purchases of goods and services that will be used in the May 13, 2019 Automated National and Local Elections. Moreover, importation by COMELEC of goods that will be used in the aforesaid automated elections is also exempt from VAT.

It must be emphasized, however, that the exemption of the COMELEC from VAT is limited only to its purchases and/or importation of goods and services enumerated above during the period beginning July 2018 until completion of the post-election activities; provided further, that the aforesaid purchases and/or importation of goods and services will be used in, or directly related to, the conduct of the May 13, 2019 automated elections. Any purchase of goods and services not related thereto will be subject to the 5% final VAT in accordance with Section 114 (C) of the Tax Code of 1997, as amended, and as implemented by Section 4.114 (2) (a) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 13-2018, to wit:

> "SEC. 4.114-2. **Withholding of VAT on Government Money Payments** . . . — (a) The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods and/or of services which are subject to the value-added tax imposed in Secs. 106 and 108 of this Code, deduct and withhold a final value-added tax at the rate of five percent (5%) of the gross payment thereof.
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> xxx xxx xxx"

Anent the issue on who shall receive or enjoy the tax savings arising from the grant of VAT exemption, the COMELEC and its suppliers must resort to their contracts to resolve the same or seek the guidance of the Government Procurement Policy Board (GPPB) on the matter as this Office has no jurisdiction to rule on the same.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY

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