

# GOVERNMENT PROCUREMENT POLICY BOARD

## RESOLUTION NO. 02-2004

**WHEREAS**, Republic Act No. 9184 (“R.A. 9184”) entitled “An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes,” otherwise known as the “Government Procurement Reform Act” was enacted into law on January 10, 2003, and took effect on January 26, 2003;

**WHEREAS**, Section 75 of R.A. 9184 provides that the Government Procurement Policy Board (“GPPB”) and the members of the Joint Congressional Oversight Committee (“JCOC”) shall formulate the necessary rules and regulations for the proper implementation of its provisions, to wit:

*Section 75. Implementing Rules and Regulations and Standard Forms. – Within sixty (60) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the GPPB, jointly with the members of the Oversight Committee created under Section 74 hereof. The said rules and regulations shall be approved by the President of the Philippines. For a period not later than thirty (30) days upon the approval of the implementing rules and regulations, the standard forms for Procurement shall be formulated and approved;*

**WHEREAS**, pursuant to Section 75 of R.A. 9184, the GPPB and JCOC drafted the Implementing Rules and Regulation Part A (“IRR-A”) of R.A. 9184 and endorsed the same for the approval and signature of Her Excellency, the President of the Philippines, through Joint Resolution No. 01-2003 of the GPPB and the JCOC, dated July 11, 2003;

**WHEREAS**, the IRR-A of R.A. 9184 was approved and signed by Her Excellency on September 18, 2003 and took effect on October 8, 2003;

**WHEREAS**, in conformity with the Constitution and laws giving preference to Filipinos, Section 23.11.1 of the IRR-A of R.A. 9184, prescribes Filipino ownership/equity requirement as one of the eligibility criteria for entities that wish to participate in the procurement of goods by the government, while at the same time allowing foreign suppliers to participate in the procurement of goods in certain instances, as provided in the last paragraph thereof, to wit:

*However, when the goods to be procured are not available from local sources, as provided in this Section, at the prescribed minimum specifications of the appropriate Government authority and/or ABC of the procuring entity, as certified by the head of the procuring entity, or when there is a need to prevent situations that defeat competition or restrain trade, the said procuring entity may invite foreign suppliers, manufacturers and/or distributor to participate in the procurement of the said goods. The GPPB shall promulgate the necessary guidelines for this provision.*

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**WHEREAS**, Section 23.11.1 of the IRR-A of R.A. 9184 is not a self-executing provision and the GPPB is mandated by law to promulgate the necessary guidelines that will set down the standards, parameters and conditions in which said provision may be applied;

**WHEREAS**, pending the promulgation of the implementing guidelines for Section 23.11.1 of the IRR-A of R.A. 9184, it is deemed necessary to promulgate the interim guiding standards that shall be observed in permitting foreign suppliers, manufacturers and/or distributors to participate in the procurement of goods, specifically in a situation where the goods to be procured are not available from local sources, which is presently being experienced by some government agencies thereby hampering their operations to the detriment of the general public;

**WHEREAS**, during the second GPPB meeting, held on March 10, 2004, the members discussed and agreed to adopt the provisional guidelines for Section 23.11.1 of the IRR-A of R.A. 9184.

**NOW, THEREFORE**, for and in consideration of the foregoing, **WE**, the Members of the **Government Procurement Policy Board**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to adopt the provisional guidelines for Section 23.11.1 of the IRR-A of R.A. 9184 set forth hereunder, to wit:

In the procurement of goods not available from domestic sources, the procuring entity may invite foreign suppliers, manufacturers and/or distributors to participate in the procurement process, provided that the following standards and conditions are observed:

- 1) The head of the procuring entity shall certify that the goods intended to be procured are not available from domestic sources;
- 2) The unavailability of the goods sought to be procured from domestic sources must be confirmed by the Department of Trade and Industry (“DTI”);
- 3) The procurement of the unavailable goods must be through a competitive or public bidding as prescribed by R.A. 9184 and its IRR-A; and
- 4) The foreign citizen/entity who wish to participate in the procurement of goods must prove that the laws, rules and regulations of his/its country of origin grants reciprocal rights and privileges to Filipino citizens with respect to the procurement of goods by its government, pursuant to Republic Act No. 5183 (“R.A. 5183”).

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These provisional guidelines shall apply to all branches, constitutional commissions and offices, agencies, departments, bureaus, offices, and instrumentalities of the Government, including government-owned and/or controlled corporations (“GOCCs”), government financial institutions (“GFIs”), state universities and colleges (“SUCs”), and local government units (“LGUs”).

This resolution shall take effect immediately.

**APPROVED** this 10<sup>th</sup> day of March, 2004 at Pasig City, Philippines

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**HON. EMILIA T. BONCODIN**

Secretary  
Department of Budget and  
Management

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**HON. ROMULO L. NERI**

Director General  
National Economic and Development  
Authority

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**HON. EDILBERTO C. DE JESUS**

Secretary  
Department of Education

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**HON. VICENTE S. PEREZ, JR.**

Secretary  
Department of Energy

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**HON. JUANITA D. AMATONG**

Acting Secretary  
Department of Finance

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**HON. MANUEL M. DAYRIT**

Secretary  
Department of Health

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**HON. JOSE D. LINA, JR.**

Secretary  
Department of Interior and Local  
Government

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**HON. EDUARDO R. ERMITA**

Secretary  
Department of National Defense

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**HON. FLORANTE M. SORIQUEZ**

Secretary  
Department of Public Works and  
Highways

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**HON. ESTRELLA F. ALABASTRO**

Secretary  
Department of Science and Technology

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**HON. CESAR V. PURISIMA**

Secretary  
Department of Trade and Industry

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**HON. LEANDRO R. MENDOZA**

Secretary  
Department of Transportation and  
Communication

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**HON. FIORELLO R. ESTUAR**

Private Sector Representative