

GOVERNMENT PROCUREMENT POLICY BOARD

RESOLUTION NO. 05-2004

WHEREAS, Republic Act No. 9184 (“R.A. 9184”), entitled “An Act Providing for Modernization, Standardization and Regulation of the Procurement Activities of the Government and for other Purposes,” was signed into law on January 10, 2003, and took effect on January 26, 2003. On the other hand, its Implementing Rules and Regulations Part A (“IRR-A”) was approved on September 18, 2003 and took effect on October 8, 2003;

WHEREAS, one of the most contentious provisions in the IRR-A of R.A. 9184 which has elicited a number of queries from government agencies is Section 61.1, which explicitly provides that *all contracts shall be denominated and payable in Philippine currency, and this shall be stated in the bidding documents: Provided, however, That should the procuring entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening;*

WHEREAS, Republic Act No. 8183 (“R.A. 8183”), entitled “An Act Repealing Republic Act No. 529, As Amended,” hence, superseding the Uniform Currency Law, was enacted on June 11, 1996;

WHEREAS, Section 1 of R.A. 8183 provides that *all monetary obligations shall be settled in the Philippine currency which is the legal tender in the Philippines. However, the parties may agree that the obligation or transaction shall be settled in any other currency at the time of payment;*

WHEREAS, Section 61 of R.A. 9184 does not provide for the requirement that all contracts shall be denominated and payable in Philippine currency, as provided under the Section 61.1 of the IRR-A of R.A. 9184;

WHEREAS, the aforementioned provision of the IRR-A, which is an administrative regulation, conflicts with the aforementioned provision of R.A. 8183, which is a legislative enactment considering that the former restricts the parties to a government contract to the use of a uniform currency, which is the Philippine Peso; while the latter is liberal in granting the parties to a contract the freedom to stipulate on what currency to use for payment;

WHEREAS, Article 7 of the Civil Code of the Philippines embodies the basic principle that administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution;

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WHEREAS, the Supreme Court has consistently ruled that administrative regulations under legislative authority by a particular department must be in harmony with the provision of the law, and should be for the sole purpose of carrying into effect its general provisions, and that administrative rules cannot extend or amend an act of Congress;

WHEREAS, the quasi-legislative power of the Government Procurement Policy Board (“GPPB”) cannot be extended to amending or expanding the statutory requirements under Section 61 of R.A. 9184 or to embrace matters not covered by the said government procurement law;

WHEREAS, in view of the clear conflict between Section 61.1 of the IRR-A of R.A. 9184 and Section 1 of R.A. 8183, the GPPB considered the necessary amendment to Section 61.1 of the IRR-A of R.A. 9184 to conform to R.A. 8183, thereby harmonizing the provisions of the IRR-A of R.A. 9184 with such existing legislation;

WHEREAS, during the 3rd GPPB meeting held on April 28, 2004, the members of the Board discussed and considered to amend Section 61.1 of the IRR-A of R.A. 9184 to conform to R.A. 8183, Section 1, and endorse for approval to the President of the Republic of the Philippines, Her Excellency President Gloria Macapagal -Arroyo, the amendment thereto.

NOW, THEREFORE, for and in consideration of the foregoing, WE, the Members of the **Government Procurement Policy Board**, by virtue of the powers vested in US by law, hereby **RESOLVE**:

To endorse for approval to the President of the Republic of the Philippines, Her Excellency President Gloria Macapagal -Arroyo, the proposed amendment to Section 61.1 of the IRR-A of R.A. 9184, to conform to R.A. 8183, as follows:

For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB. All contracts shall be denominated and payable in Philippine currency, and this shall be stated in the bidding documents: Provided, however, That in the case of procurements of goods with a high import content, i.e. more than

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fifty percent (50%) of the contract cost, the procuring entity shall disaggregate the cost components into foreign and local costs, and may denominate and pay contract prices in foreign and Philippine currencies as stipulated in the bidding documents: Provided, further, That should the procuring entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening for purposes of bid evaluation.

This resolution shall take effect immediately.

APPROVED this 28th day of April, 2004 at Pasig City, Philippines

HON. EMILIA T. BONCODIN

Secretary
Department of Budget and
Management

HON. ROMULO L. NERI

Director General
National Economic and Development
Authority

HON. EDILBERTO C. DE JESUS

Secretary
Department of Education

HON. VICENTE S. PEREZ, JR.

Secretary
Department of Energy

HON. JUANITA D. AMATONG

Acting Secretary
Department of Finance

HON. MANUEL M. DAYRIT

Secretary
Department of Health

HON. JOSE D. LINA, JR.

Secretary
Department of Interior and Local
Government

HON. EDUARDO R. ERMITA

Secretary
Department of National Defense

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HON. FLORANTE M. SORIQUEZ

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Department of Public Works and
Highways

HON. ESTRELLA F. ALABASTRO

Secretary

Department of Science and Technology

HON. CESAR V. PURISIMA

Secretary

Department of Trade and Industry

HON. LEANDRO R. MENDOZA

Secretary

Department of Transportation and
Communication

HON. FIORELLO R. ESTUAR

Private Sector Representative