



## RESOLUTION NO. 07-2014

### ADOPTING AN OFFICIAL POSITION RELATIVE TO THE PROPOSED AMENDMENT OF SECTION 53 OF REPUBLIC ACT (RA) NO. 9184 THROUGH SENATE BILL NO. 1657

**WHEREAS**, the Government Procurement Policy Board - Technical Support Office (GPPB-TSO) received a request for the issuance of a position paper on Senate Bill (SB) No. 1657 entitled “*An Act Amending Section 53 of Republic Act No. 9184, otherwise known as the “Government Procurement Reform Act”, and for other Purposes*”, introduced during the 16<sup>TH</sup> Congress and sponsored by the Honorable Senator Antonio “Sonny” F. Trillanes IV;

**WHEREAS**, SB No. 1657 seeks to amend Section 53 of RA 9184, introducing another modality of Negotiated Procurement, thus:

f) In the case of procurement for the use by the Armed Forces of the Philippines (AFP) involving Major Defense Equipment and Materiel, when the capability required is not available locally and when the Secretary of National Defense has determined that in view of security and other strategic considerations, including confidentiality, interoperability, and/or the existence defense partnerships, the procurement by the AFP of the abovementioned equipment should be exempted from the requirement of public bidding under this Act: *Provided that*, said determination is supported by the approval by the President and concurred in by both Chairmen of the National Defense and Security Committees of the Senate and the House of Representatives, *Provided, further*, that the performance by the supplier of its obligations under the procurement contract shall be covered by Section 39 of this Act: *Provided, finally* that major defense equipment and materiel shall refer to aircraft, vessels, tanks, armored vehicles, high tech communication equipment, radar systems, sophisticated weapons systems and high-powered firearms not otherwise locally available.

**WHEREAS**, the proposed SB No. 1657 seeks to strike a balance between openness and transparency of the procurement process, on the one hand, and protection of the core security concerns of the procuring state, on the other;

**WHEREAS**, SB No. 1657 recognizes that although the country’s current procurement procedures encourage transparency of the procurement of public goods, the procurement of major defense equipment and materiel involves a higher level of risks, and thus requires a further layer of protection from possible security threats;

**WHEREAS**, Section 53.8 of the IRR of RA 9184 identifies Defense Cooperation Agreement as a modality of Negotiated Procurement, to wit:

**Defense Cooperation Agreement.** Upon prior approval by the President of the Philippines, and when the procurement for use by the AFP involves major defense equipment or materiel and/or defense-related

consultancy services, when the expertise or capability required is not available locally, and the Secretary of National Defense has determined that the interests of the country shall be protected by negotiating directly with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations: Provided, however, That the performance by the supplier of its obligations under the procurement contract shall be covered by a performance security in accordance with Section 39 of this IRR.

**WHEREAS**, during the 1<sup>st</sup> Joint Meeting of the Inter-Agency Technical Working Group (IATWG) and GPPB on 4 February 2014, the GPPB-TSO made the following comments and/observations on SB No. 1657:

- a. Competitive bidding is the primary mode of procurement which should be resorted to in the event that any of the alternative methods of procurement as prescribed by RA 9184 cannot be justified;
- b. Competition brings about acquisition of best quality goods and equipment at the best price;
- c. RA 9184 was enacted to address the inefficiencies in public procurement, which existed prior to the enactment of the law. Allowing more exceptions to public bidding would defeat the purpose for which RA 9184 was enacted;
- d. Allowing an alternative method exclusively for the AFP would defeat the principle of streamlining the procurement process.

**WHEREAS**, during the 2<sup>nd</sup> Regular GPPB Meeting on 8 April 2014, the GPPB-TSO presented SB No. 1657 and recommended the issuance of a Position Paper on the basis of the following comments and/or observations:

- a. Competitive Bidding as the primary mode of procurement provides better quality goods at the best price for the government; and,
- b. Since the revised IRR already contains a provision on Defense Cooperation Agreement (DCA) which is similar, if not identical, to that found in SB No. 1657; the rationale behind the proposed Bill is already addressed by Section 53.8 of the IRR of RA 9184, thus the amendment of RA 9184 is no longer necessary.

**WHEREAS**, the GPPB discussed the salient features of SB No. 1657 and agreed to adopt the foregoing recommendations and comments of the GPPB-TSO.

**NOW, THEREFORE**, for and in view of all the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the issuance of a Position Paper *vis-à-vis* SB No. 1657, adopting in toto the recommendations of the GPPB-TSO.

1. Competitive Bidding as the primary mode of procurement provides better quality goods at the best price for the government;
2. Since the revised IRR already contains a provision on Defense Cooperation Agreement (DCA) which is similar, if not identical, to that found in SB No. 1657; thus, the matter is already addressed by Section 53.8 of the IRR of RA 9184 and need not be addressed through an amendment of RA 9184.

This Resolution shall take effect immediately.

**APPROVED** this 8<sup>th</sup> day of April 2014 at Pasig City, Philippines.

<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF BUDGET AND MANAGEMENT</b></p>	<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY</b></p>
<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF EDUCATION</b></p>	<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF ENERGY</b></p>
<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF FINANCE</b></p>	<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF HEALTH</b></p>
<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT</b></p>	<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF NATIONAL DEFENSE</b></p>
<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS</b></p>	<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF SCIENCE AND TECHNOLOGY</b></p>
<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF TRADE AND INDUSTRY</b></p>	<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS</b></p>
<p>(Sgd.)</p> <hr style="border: 0.5px solid black;"/> <p><b>PRIVATE SECTOR REPRESENTATIVE</b></p>	

Attested by:

(Sgd.)

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**DENNIS S. SANTIAGO**  
*Board Secretary, GPPB*  
*Executive Director, GPPB-TSO*