



## RESOLUTION NO. 29-2014

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### **AMENDING SECTION 23.1(b) OF THE REVISED IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT (RA) NO. 9184 AND CLAUSES 12.1(a)(viii) AND 30.3 OF THE INSTRUCTIONS TO BIDDERS (ITB) OF THE PHILIPPINE BIDDING DOCUMENTS (PBDS) FOR INFRASTRUCTURE PROJECTS**

**WHEREAS**, Republic Act (RA) No. 9184, otherwise known as the “Government Procurement Reform Act” and its revised Implementing Rules and Regulations (IRR) took effect on 26 January 2003 and 2 September 2009, respectively;

**WHEREAS**, Section 63 of RA 9184 mandates the Government Procurement Policy Board (GPPB) to protect national interest in all matters affecting public procurement;

**WHEREAS**, Section 23.5.2.3 of the IRR of RA 9184 allows a bidder to participate in public bidding for infrastructure projects if he has been issued a license by the Philippine Contractors Accreditation Board (PCAB) to engage or act as a contractor in accordance with RA 4566<sup>1</sup>;

**WHEREAS**, Section 23.1(b) of the IRR of RA 9184 and Clause 12.1(a)(viii)<sup>2</sup> of the Instructions to Bidders (ITB) under the Philippine Bidding Documents (PBDs) for Infrastructure Projects requires the submission of a valid joint venture agreement (JVA) as Class “B” Eligibility Document, in case the joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners may be submitted; stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful;

**WHEREAS**, Clause 30.3(a)(i) of the ITB under the PBDs for Infrastructure Projects requires that if the bidder has submitted a notarized statement, a valid JVA shall be presented as a condition for the award of contract, within ten (10) calendar days from the issuance of the Notice of Award;

**WHEREAS**, Section 38 of RA 4566 provides that it is unlawful for any two or more licensees, each of whom has been issued a license to engage separately in the capacity of a contractor, to jointly submit a bid or otherwise act in the capacity of a contractor without first having secured an additional license for acting in the capacity of such a joint venture as provided for an individual, partnership or corporation;

**WHEREAS**, Joint Ventures (JVs) are required to secure a Special PCAB license in accordance with Section 3.5 of IRR of RA 4566;

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<sup>1</sup> An Act Creating the Philippine Licensing Board for Contractors, Prescribing its Powers, Duties and Functions, Providing Funds Therefor, and for Other Purposes.

<sup>2</sup> Renumbered as Clause 12.1(a)(viii) due to the amendments introduced by GPPB Resolution No. 21-2013 dated 30 July 2013, transferring the Tax Clearance as an Eligibility Document.

**WHEREAS**, Section 4.6 of the IRR of RA 4566 requires the submission of a JVA for the application of a Special PCAB License;

**WHEREAS**, on 24 February 2014, GPPB-TSO received a letter from PCAB informing the former that procuring entities allow JVs to bid without the required Special PCAB License, which is violative of Section 38 of RA 4566 and its IRR;

**WHEREAS**, upon initial presentation to the Board during its 6<sup>th</sup> GPPB and 5<sup>th</sup> Inter-Agency Technical Working Group (IATWG) Joint meeting on 31 October 2014, GPPB-TSO was directed to meet with PCAB to reconcile the seeming conflict between the provisions of the IRR of RA 9184 and RA 4566 relative to the submission of a sworn statement, in lieu of a JVA;

**WHEREAS**, during the meeting held on 20 November 2014, PCAB maintains the strict interpretation of Section 38 of RA 4566; PCAB cannot accept a notarized statement, in lieu of a JVA, as it cannot evaluate the qualifications of potential JVs. According to PCAB, they process and issue a Special PCAB license within five (5) days from the date of application;

**WHEREAS**, during the 7<sup>th</sup> GPPB and 6<sup>th</sup> IAWTG Joint Meeting on 5 December 2014, the GPPB-TSO presented the matter for the Board's consideration and recommended adoption of any of the following:

- a. **MAINTAIN** the present rule under **Section 23.1(b) of the IRR of RA 9184**, which allows, in the absence of a JVA, **duly notarized statements** from all potential JV partners stating that they will enter and abide by the conditions of the JVA in the instance that the bid is successful; or
- b. **AMEND Section 23.1(b)** of the IRR of RA 9184 and **Clauses 12.1(a)(viii) and 30.3(a)(i)** of the Instructions to Bidders (ITB), Philippine Bidding Documents (PBDs) for Infrastructure Projects, by **requiring only JVs as Class "B" document**.

**WHEREAS**, the Board thoroughly discussed the matter, and, after careful deliberation, favorably approved GPPB-TSO's second recommendation.

**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 confirm, adopt and approve, as **WE** hereby confirm, adopt and approve to following:

1. **REQUIRE** the submission of **Joint Venture Agreement** as Class B Eligibility Document in the Procurement of Infrastructure Projects;
2. **AMEND Section 23.1(b)** of the IRR of RA 9184, as shown in **Annex "A"** hereof;
3. **AMEND Clauses 12.1(a)(viii) and 30.3(a)(i)** of the Instructions to Bidders (ITB), Philippine Bidding Documents (PBDs) for Infrastructure Projects, as shown in **Annex "B"** hereof.

This Resolution shall take effect after fifteen (15) days following the publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified true copies of this Resolution.

**APPROVED** this 5<sup>th</sup> day of December 2014 at Pasig City, Philippines.

(Sgd.)

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**DEPARTMENT OF BUDGET AND  
MANAGEMENT**

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**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

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**DEPARTMENT OF EDUCATION**

(Sgd.)

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**DEPARTMENT OF ENERGY**

(Sgd.)

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**DEPARTMENT OF FINANCE**

(Sgd.)

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**DEPARTMENT OF HEALTH**

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**DEPARTMENT OF THE INTERIOR  
AND LOCAL GOVERNMENT**

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**DEPARTMENT OF NATIONAL  
DEFENSE**

(Sgd.)

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**DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS**

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

(Sgd.)  
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**DEPARTMENT OF TRANSPORTATION  
AND COMMUNICATIONS**

(Sgd.)

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**PRIVATE SECTOR REPRESENTATIVE**

Attested by:

(Sgd.)

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**DENNIS S. SANTIAGO**  
*Board Secretary, GPPB*



**REVISED IMPLEMENTING RULES AND REGULATIONS (IRR)  
OF REPUBLIC ACT (RA) NO. 9184**

ORIGINAL	AMENDED
<p>Section 23.1(b)</p> <p>Class “B” Document Valid joint venture agreement (JVA), in case the joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security. Each partner of the joint venture shall submit the legal eligibility documents. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance.</p>	<p>Section 23.1(b)</p> <p>Class “B” Document <b><i>For goods,</i></b> valid joint venture agreement (JVA), in case the joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful shall be included in the bid. Failure to enter into a joint venture in the event of a contract award shall be ground for the forfeiture of the bid security. Each partner of the joint venture shall submit the legal eligibility documents. The submission of technical and financial eligibility documents by any of the joint venture partners constitutes compliance. <b><i>For infrastructure projects, JV bidders shall submit a JVA in accordance with RA 4566 and its IRR.</i></b></p>

**PHILIPPINE BIDDING DOCUMENTS (PBDS)  
 INSTRUCTIONS TO BIDDERS (ITB)  
 FOR INFRASTRUCTURE PROJECTS**

ORIGINAL	AMENDED
<i>Clause 12.1(a)(viii)</i>	
<p>Class “B” Document            If applicable, valid Joint Venture Agreement (JVA) <u>or, in lieu thereof, duly notarized statements from all potential joint venture partners stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful</u> shall be included in the bid.</p>	<p>Class “B” Document  <u>If applicable, valid Joint Venture Agreement (JVA) shall be included in the bid.</u></p>
<i>Clause 30.3(a)(i)</i>	
<p>30.3 Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:</p> <p>(a) Submission of the following documents within the prescribed period from receipt by the Bidder of the notice that it has the Lowest Calculated and Responsive Bid:</p> <p>(i) <u>Valid JVA, if applicable, within ten (10) calendar days;</u></p> <p>(ii) Valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders, within thirty (30) calendar days, if allowed under a Treaty, International or Executive Agreement mentioned in ITB Clause 12.1(a)(iv);</p> <p>(b) Posting of the performance security in accordance with ITB Clause 32;</p> <p>(c) Signing of the contract as provided in ITB Clause 31; and</p> <p>(d) Approval by higher authority, if required.</p>	<p>30.3 Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:</p> <p>(a) Submission of the following documents within the prescribed period from receipt by the Bidder of the notice that it has the Lowest Calculated and Responsive Bid:</p> <p>(i) <u>Valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders, within thirty (30) calendar days, if allowed under a Treaty, International or Executive Agreement mentioned in ITB Clause 12.1(a)(iv);</u></p> <p>(b) Posting of the performance security in accordance with ITB Clause 32;</p> <p>(c) Signing of the contract as provided in ITB Clause 31; and</p> <p>(d) Approval by higher authority, if required.</p>