



RESOLUTION NO. 34-2014

APPROVING THE REMOVAL OF ANNEX “I” OF THE REVISED IRR OF RA 9184

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, RA 5183¹ prohibits award of contract to any bidder not a citizen of the Philippines or which is not a corporation or association at least sixty percent (60%) of the capital of which is owned by a Philippine citizen, except citizens corporations, or associations of a country the laws of which grant similar rights or privileges to citizens of the Philippines;

WHEREAS, RA 9184 adopts as a general principle the preference for Filipino Nationals in the award of Government’s procurement contracts;

WHEREAS, in light of the principles of economic exchange and expansion of trade and exports with other countries on the basis of equality and reciprocity, with due regard to the government’s initiatives in the prohibition and/or regulation of monopolies and other situations that restrain trade and fair competition, qualified foreign nationals were allowed to participate in the public procurement of goods, infrastructure projects and consultancy services;

WHEREAS, the GPPB issued the Guidelines in the Determination of Eligibility of Foreign Suppliers, Contractors, and Consultants to Participate in Government Procurement Projects² (Guidelines);

WHEREAS, the Guidelines governs procurement of goods, infrastructure projects, and consulting services and was formulated to clarify procurement policy on the eligibility of foreign bidders to participate in domestically-funded public procurement opportunities;

WHEREAS, the Guidelines states that in the procurement of goods, a supplier, manufacturer and/or distributor who is a citizen, corporation or association of a country whose laws or regulations grant reciprocal rights or privileges allowing Filipino nationals to participate in public procurement in their country, is allowed to participate in government procurement projects;

WHEREAS, the Guidelines provides that procuring entities shall confirm reciprocity from the list of countries maintained by the Department of Foreign Affairs (DFA) and as shown in the GPPB website;

¹ An Act Regulating the Award of Contracts for the Supply to, or Procurement by, any Government-owned or Controlled Corporation, Company, Agency, or Municipal Corporation of Materials, Equipment, Goods and Commodities, and Providing Penalty for the Violation thereof.

² GPPB Resolution 18-2005 dated 12 September 2005, as amended by GPPB Resolution No. 03-2011 dated 28 January 2011.

WHEREAS, Section 7.2 of the Guidelines also states that pending the issuance of the list or in case the foreign bidder's country is not in said list, the bidder claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos shall submit a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item/product;

WHEREAS, Section 23.5.1.2(b) of the revised IRR of RA 9184 allows foreign bidders to participate in the bidding for the supply of goods when the foreign supplier is a citizen, corporation or association of a country included in the Annex "I" to be issued by the GPPB, the laws of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines;

WHEREAS, Annex "I" of the revised IRR would have been the list of countries providing reciprocal rights on matters pertaining to eligibility of Filipino bidders in public procurement in foreign jurisdictions;

WHEREAS, on 28 January 2011, the GPPB directed its Technical Support Office (TSO) to seek assistance from the DFA to research on the latest applicable laws on the matter;

WHEREAS, on 23 April 2012, the checklist of information to determine the existence of reciprocity between the Philippines and a foreign country was discussed. The online checklist prepared by the DFA was routed to various Philippine Posts. The DFA then consolidated all the submitted responses, and forwarded the same to the GPPB and its TSO.

WHEREAS, on 3 December 2012, the DFA transmitted the printouts of the completed online survey forms from the first ten (10) reporting Posts, followed by three (3) more on 10 June 2013.

WHEREAS, on 15 February 2013, the Inter-Agency Technical Working Group (IATWG) recommended to establish an Inter-Agency Committee to assist the GPPB-TSO on making the initial list of countries;

WHEREAS, on 9 July 2014, the GPPB-TSO and the DFA discussed the available data, and on 24 July 2014, they collated the available materials on the matter;

WHEREAS, on 29 September 2014, during the first IATWG Meeting for the issue on reciprocity, the GPPB-TSO agreed to assess the relevant information on foreign procurement obtained through a survey form to be disseminated by the DFA to the Philippine Posts or the embassies/consulates of the different foreign countries in the Philippines;

WHEREAS, several years after this issue was presented to the GPPB and IATWG, no list has been developed to constitute Annex "I" of the IRR of RA 9184, despite the coordinated efforts between GPPB-TSO and the DFA. There is difficulty in gathering the necessary, sufficient, and accurate data and information in preparing the list of countries granting reciprocal rights to Filipinos to participate in public procurement in the foreign jurisdiction. In addition, in some countries, reciprocity does not mean full reciprocity, but only partial reciprocity;

WHEREAS, no list was developed although much effort was engaged to prepare the list, such as through the survey made by the DFA in various foreign posts; the collation of foreign countries' laws pertaining to procurement; and, review of foreign procurement laws by the GPPB-TSO, but these efforts proved fruitless due to scant resources gathered and the confirmation of their applicability. In addition, DFA claims that it does not have the mandate to compare foreign procurement laws with Philippine procurement law and determine reciprocity; and, GPPB-TSO, cannot, by itself, verify the authenticity and validity of foreign procurement laws submitted by the bidders;

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 the following:

(1) **AMEND** Section 23.5.1.2(b) of the IRR of RA 9184 by removing reference to Annex "I", to read as follows:

b) When the foreign supplier is a citizen, corporation or association of a country, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines;

(2) **AMEND** Section 7.2 of the Guidelines in the Determination of Eligibility of Foreign Bidders to read as follows:

7.2 The bidder claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos shall submit a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement for the same item/product.

This Resolution shall take effect immediately.

APPROVED this 16th day of December 2014 at Pasig City, Philippines.

(Sgd.)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(Sgd.)

DEPARTMENT OF EDUCATION

(Sgd.)

DEPARTMENT OF ENERGY

(Sgd.)

DEPARTMENT OF FINANCE

DEPARTMENT OF HEALTH

(Sgd.)

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

(Sgd.)

**DEPARTMENT OF NATIONAL
DEFENSE**

(Sgd.)

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

(Sgd.)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

(Sgd.)

**DEPARTMENT OF TRADE AND
INDUSTRY**

(Sgd.)

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

(Sgd.)

PRIVATE SECTOR REPRESENTATIVE

Attested by:

(Sgd.)

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