

**APPROVING THE AMENDMENT OF SECTION 42.6 OF THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT (RA) NO. 9184, THE GUIDELINES ON PROCUREMENTS INVOLVING FOREIGN-DENOMINATED BIDS, CONTRACT PRICES AND PAYMENT USING LETTERS OF CREDIT (LC) AND CLAUSE 10.5 OF THE SPECIAL CONDITIONS OF CONTRACT (SCC) OF THE FIFTH (5<sup>TH</sup>) EDITION OF THE PHILIPPINE BIDDING DOCUMENTS (PBD) FOR THE PROCUREMENT OF GOODS**

**WHEREAS**, Republic Act (RA) No. 9184, otherwise known as the “Government Procurement Reform Act” and the 2016 revised IRR took effect on 26 January 2003 and 28 October 2016, respectively;

**WHEREAS**, Section 63.1 (b) of the 2016 revised IRR of RA No. 9184 mandates the Government Procurement Policy Board (GPPB) to formulate and amend public procurement policies, rules and regulations, and amend, the IRR of RA No. 9184, whenever necessary;

**WHEREAS**, the LC is a document issued by a bank to guarantee, on behalf of the procuring entity (PE) or buyer timely payment to the seller or exporter against the receipt of complying stipulated documents;

**WHEREAS**, Section 42.6 of the 2016 revised IRR of RA No. 9184 allows PEs to use LCs as payment in favor of local or foreign suppliers;

**WHEREAS**, the Technical Support Office (TSO) of the GPPB has received various queries as regards the practice of PEs using LCs as a form of payment to local suppliers;

**WHEREAS**, the Department of Budget and Management (DBM) has likewise forwarded issues and concerns over the said practice in view of the Budget Reform Program of the National Government that aims to strengthen and modernize cash management, and to improve monitoring and management of government funds maintained outside of the Treasury Single Account and the Modified Disbursement Scheme, among others;

**WHEREAS**, on 27 March 2019, the GPPB-TSO met with the DBM and Bureau of the Treasury (BTr) officials to discuss the proper use of LCs. During the said meeting, the BTr presented a draft circular limiting payment through issuance of LCs to foreign suppliers;

**WHEREAS**, the discussions made during the meeting prompted the GPPB-TSO to recommend limiting the payment for the procurement of goods through issuance of LCs to foreign suppliers;

**WHEREAS**, the GPPB-TSO, accordingly, proposed the amendment of Section 42.6 of the 2016 IRR of RA No. 9184; the Guidelines on Procurements Involving Foreign-Denominated Bids, Contract Prices and Payment Using Letter of Credit; and Clause 10.5 of the SCC of the PBDs for Goods;

**WHEREAS**, during the third (3<sup>rd</sup>) Regular Meeting of the Inter-Agency Technical Working Group (IATWG) held on 11 April 2019, the GPPB-TSO presented its recommendation and after due consideration, the IATWG resolved to recommend to the GPPB the proposed amendments, and further limit the use of LC to those issued by government servicing banks;

**WHEREAS**, during the 3<sup>rd</sup> Regular Meeting of the GPPB on 22 April 2019, after careful review and due deliberations, the Board approved the recommendation of the IATWG;

**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 amendment of Section 42.6 of the 2016 revised IRR of RA No. 9184, the Guidelines on Procurements Involving Foreign-Denominated Bids, Contract Prices and Payment Using Letter of Credit and Clause 10.5 of the SCC of the PBDs for the Procurement of Goods, a copy of which is attached as Annex "A", and made an integral part hereof.

This Resolution shall take effect fifteen (15) days following its publication.

**APPROVED** this 22<sup>nd</sup> day of April 2019 at Manila, Philippines.

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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**

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**DEPARTMENT OF ENERGY**

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**DEPARTMENT OF FINANCE**

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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**

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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**

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**DEPARTMENT OF TRANSPORTATION**

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**PRIVATE SECTOR REPRESENTATIVE**

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**DEPARTMENT OF INFORMATION AND  
COMMUNICATIONS TECHNOLOGY**



**ANNEX "A"**

**2016 revised Implementing Rules and Regulation (IRR)  
of Republic Act (RA) No. 9184**

Original	Amendment
<p>42.6. Procuring Entities may cause the issuance of the letter of credit in favor of a local or foreign suppliers: Provided , That no payment on the letter of credit shall be made until delivery and acceptance of the goods as certified to by the Procuring Entity in accordance with the delivery schedule provided for in the contract have been concluded: Provided, further , That the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and must be stated in the Bidding Documents.</p>	<p>42.6. Procuring Entities may cause the issuance of the letter of credit in favor of <del>A</del> <b>LOCAL OR</b> foreign suppliers: <i>Provided</i>, That the letter of credit shall be issued by a Government Servicing Bank: <i>Provided, further</i>, That the cost for the opening of letter of credit shall be for the account of the <del>local</del> <del>or</del> foreign supplier and must be stated in the Bidding Documents: <i>Provided, finally</i>, That <del>no</del> payment <b>SHALL BE CHARGED AGAINST ON</b> the letter of credit <del>shall be made until</del> <b>ONLY AFTER</b> delivery and acceptance of the goods as certified <del>to</del> by the Procuring Entity <del>in accordance with the delivery schedule provided for in the contract have been concluded</del>.</p>

**Guidelines on Procurements Involving Foreign-Denominated Bids,  
Contract Prices and Payment Using Letters of Credit  
or Appendix 16 of the IRR of RA No. 9184**

Original	Amendment
<p>7.0 PAYMENTS USING LETTERS OF CREDIT</p> <p>7.1. For procurement projects fully utilizing domestic funds, where the goods will be supplied by a local or foreign supplier, the procuring entity, may open LCs or similar instruments in favor of such local or foreign supplier.</p>	<p>7.0 PAYMENTS USING LETTERS OF CREDIT</p> <p>7.1. For procurement projects fully utilizing domestic <b>OR FOREIGN</b> funds, where the goods will be supplied by a <del>LOCAL OR</del> foreign supplier, the procuring entity may open LCs or similar instruments in favor of such <del>local or</del> foreign supplier <b>FROM A GOVERNMENT SERVICING BANK. PAYMENT/S SHALL BE MADE ON THE LETTER OF CREDIT ONLY AFTER DELIVERY AND ACCEPTANCE OF THE</b></p>

	<b>GOODS AS CERTIFIED BY THE PROCURING ENTITY.</b>
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**5<sup>th</sup> Edition of the Philippine Bidding Documents  
for the Procurement of Goods**

<b>Original</b>		<b>Amendment</b>	
<i>Special Conditions of Contract</i>		<i>Special Conditions of Contract</i>	
GCC Clause		GCC Clause	
10.5	<p><i>State "Payment using LC is not allowed."</i></p> <p style="text-align: center;"><i>or</i></p> <p><i>If payment using LC is allowed, state "The amount of provisional sum is _____ Pesos (PhP _____)." [Note: The provisional sum shall not exceed 10% of the ABC, and shall form part of the ABC].</i></p>	10.5	<p><i>State "Payment using LC is not allowed."</i></p> <p style="text-align: center;"><i>or</i></p> <p><i>If payment using LC is allowed, state "The amount of provisional sum is _____ Pesos (PhP _____)." [Note: The provisional sum SHALL NOT EXCEED 10% OF THE ABC, AND shall form part of the ABC. <b>PAYMENT USING LC MAY ONLY BE ALLOWED FOR FOREIGN SUPPLIERS.]</b></i></p>

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**CIRCULAR 05-2019**

22 April 2019

**TO : Heads of Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions and Local Government Units**

**SUBJECT : Payment through Issuance of Letters of Credit from Government Servicing Banks (GSBs) in favor of Foreign Suppliers**

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**1.0 PURPOSE**

This Circular is issued to inform all procuring entities (PEs) that the use of Letters of Credit to guarantee payment of government procurement contracts shall only be made in favor of foreign suppliers and covering those issued by Government Servicing Banks pursuant to Government Procurement Policy Board Resolution No. 12-2019.

**2.0 SCOPE**

All Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government-Owned and/or Controlled Corporations, Government Financial Institutions and Local Government Units.

**3.0 DEFINITION OF TERMS**

3.1 **Letter of Credit** – a document issued by a bank to guarantee, on behalf of the procuring entity or buyer, timely payment to the seller or exporter against the receipt of complying stipulated documents.

3.2 **Government Servicing Banks** – authorized government servicing banks, such as the Land Bank of the Philippines, Development Bank of the Philippines, Philippine Veterans Bank, to which Department of Budget and Management (DBM) issues the Notices of Cash Allocation for crediting to the Modified Disbursement System sub-accounts of NGAs.<sup>1</sup>

**4.0 GENERAL CONSIDERATIONS IN USING LETTERS OF CREDIT**

4.1 PEs may only use Letters of Credit issued by a GSB to guarantee the timely payment for the goods delivered by a foreign supplier in accordance with GPPB Resolution No. 12-2019.<sup>2</sup>

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<sup>1</sup> Section 5.8 of DBM Circular Letter No. 23-2016, dated 23 December 2013.

<sup>2</sup> Dated 22 April 2019.

4.2 In accordance with Section 42.6 of the 2016 revised Implementing Rules and Regulations, Clause 10.5 of the General and Special Conditions of Contract of the 5<sup>th</sup> Edition of the Philippine Bidding Documents for the Procurement of Goods and GPPB Resolution No. \_-2019, PEs may cause the issuance of Letters of Credit subject to the following conditions:

- a.) the letter of credit shall be issued by a GSB;
- b.) the letter of credit shall be made in favor of a foreign supplier;
- c.) the cost for the opening a letter of credit shall be for the account of the foreign supplier which must be stated in the bidding documents; and
- d.) no payment shall be charged against the letter of credit until delivery and acceptance of the goods as certified by the PE.

5.0 For guidance and compliance.

6.0 This Circular shall take effect fifteen (15) days following its publication.

**SGD**

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**LAURA B. PASCUA**  
*Alternate Chairperson*