



APPROVING THE AMENDMENT TO SECTION 53.8 OF THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT (RA) NO. 9184

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

WHEREAS, Section 63 of RA No. 9184 and its 2016 revised IRR authorized the Government Procurement Policy Board (GPPB) to formulate public procurement policies, and rules and regulations, and amend its IRR, whenever necessary;

WHEREAS, to further improve our public procurement rules to make it efficient and effective, amendments to certain provisions of the 2016 revised IRR were proposed;

WHEREAS, Section 53.8 of the 2016 revised IRR of RA No. 9184 provides for the procurement modality involving Defense Cooperation Agreement (DCA), thus:

“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, the Department of National Defense (DND) proposed amendment to Section 53.8 of the 2016 revised IRR of RA No. 9184 to address issues in the procurement of major defense equipment or materiel and/or defense-related consultancy services applying the said provision;

WHEREAS, during the 1st Regular Meeting of the Inter-Agency Technical Working Group (IATWG) held on 27 February 2018, the proposal of the DND was presented but the members of the IATWG deferred its decision and set another meeting to further discuss said proposal;

WHEREAS, during a Special Meeting of the IATWG held on 05 March 2018, the following actions were proposed:

1. recraft the DND proposal in order (i) to qualify what is a fully implemented contract; (ii) to define what is satisfactory for the DND; (iii) to include “at least three (3) suppliers, if available”; and (iv) to separate the provision on DCA;
2. formalize the removal of the prior approval of the President;
3. include the provision of a list of suppliers for the “at least three (3) suppliers, if available” requirement; and

4. provide details on the operationalization of the Self-Reliant Defense Posture Program.

WHEREAS, in a letter dated 16 March 2018, the DND submitted to the GPPB-TSO a revised proposed amendment to Section 53.8 and its proposed Annex “J” as the implementing guidelines based on the discussions during the Special IATWG Meeting;

WHEREAS, taking into consideration the comments and suggestions of the IATWG members, the GPPB-TSO likewise developed and drafted its proposed amendment to Section 53.8 and forwarded the same to DND for its consideration, to wit:

Defense Cooperation Agreement and Defense Inventory Items. 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.

Where the Secretary of National Defense deemed necessary that the interests of the country shall be protected by procuring inventory-based items necessary to address compatibility, interoperability and sustainability with which the DND and its bureau has had a fully implemented a contract of the same item satisfactorily with any previous supplier or manufacturer.

WHEREAS, on 11 May 2018, representatives of the DND and GPPB-TSO met and agreed on the following:

1. retain the requirement of the President’s approval prior to resort to Section 53.8 of the 2016 IRR of RA No. 9184 on the premise that such requirement shall be interpreted as approval of the project and not approval of the method of procurement;
2. include its other bureaus in the coverage of the provision of Section 53.8 of the 2016 revised IRR of RA No. 9184;
3. remove the requirement for performance security in the first paragraph of the counter-proposal and transfer it to the second paragraph (Defense Inventory Items); and
4. withdraw the proposal to adopt Annex “J”.

The proposed amendment was accordingly revised:

Defense Cooperation Agreement and Defense Inventory Items. Upon prior approval by the President of the Philippines, and when the procurement for use by the DND and 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.

Where the Secretary of National Defense deemed necessary that the interests of the country shall be protected by procuring inventory-based items necessary to address compatibility, interoperability and sustainability from supplier or manufacturer with which the DND and its bureau has had a fully and satisfactorily implemented contract of the same item: *Provided, however*, That the performance by the supplier or manufacturer 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 3rd Regular Meeting of the IATWG on 17 August 2018, the members agreed to defer action on the proposal of the DND to amend Section 53.8 of the 2016 revised IRR of RA No. 9184 until the GPPB-TSO secures an opinion from the Office of the President;

WHEREAS, on 23 August 2018, Atty. Lamberto Santos of the Office of the Deputy Executive Secretary for General Administration conveyed, through telephone conversation, that the Office of the President (OP) will refrain from issuing any comments/inputs as the decision to revise provisions of the IRR of RA No. 9184 falls within the mandate of the GPPB and expressed further that the OP will issue comments only after the GPPB submitted its recommendation as to whether or not removal of the required approval of the President is a good policy decision;

WHEREAS, during the 4th Regular Meeting of the IATWG on 14 September 2018, the GPPB-TSO informed the members of the aforementioned position of the OP, and after consideration, the members of the IATWG agreed to endorse the joint DND and GPPB-TSO proposal;

WHEREAS, during the 4th Regular Meeting of the GPPB on 28 September 2018, the Board deferred action on the proposal and remanded the same to the IATWG for further revisions;

WHEREAS, during the 5th Regular Meeting of the IATWG on 15 November 2018, the final version of the proposed amendment was presented and the members of the IATWG endorsed the same for approval of the Board, to wit:

- a. ***Defense Cooperation Agreement.*** The DND may directly negotiate with a supplier, manufacturer or consultant when the procurement involves major defense equipment or materiel and/or defense-related consultancy services under the following conditions:
 - (1) 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 maintain diplomatic relations;
 - (2) The expertise or capability required is not locally available; and
 - (3) There is prior approval by the President of the Philippines.
- b. ***Defense Inventory-Based Items.*** The DND may directly negotiate with a supplier or manufacturer in procuring inventory-based items referring to major defense equipment or materiel as contemplated in Section 53.8(a) under the following conditions:

- (1) The Secretary of National Defense deemed it necessary in order to protect the interest of the country;
- (2) The supplier or manufacturer had fully and satisfactorily implemented a contract of the same item with the DND or its bureaus;
- (3) To address compatibility, interoperability and sustainability; and
- (4) The supplier or manufacturer shall provide a performance security in accordance with Section 39 of this IRR.”

WHEREAS, during the 6th Regular Meeting of the GPPB held on 04 December 2018, after careful review and due deliberation, the Board approved the proposed amendments to Section 53.8 of the 2016 revised IRR of RA No. 9184 subject to the revisions agreed upon of the members of the Board, thus:

“53.8 Defense Cooperation Agreement; Defense Inventory-Based Items.

a. *Defense Cooperation Agreement.* The DND may directly negotiate with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations when the procurement involves major defense equipment or materiel and/or defense-related consultancy services subject to the following conditions:

1. The Secretary of National Defense has determined that the interests of the country shall be protected thereby;
2. The expertise or capability required is not available locally; and
3. The defense equipment or materiel and/or defense-related consultancy services to be procured under this modality is included in the Armed Forces of the Philippines Modernization Program previously approved by the President of the Philippines.

b. *Defense Inventory-Based Items.* The DND may directly negotiate with a supplier or manufacturer in procuring inventory-based items, which pertain to major defense equipment or materiel as contemplated in Section 53.8(a) subject to the following conditions:

1. The Secretary of National Defense has determined that the interest of the country shall be protected thereby;
2. Resort to direct negotiation will address compatibility, interoperability and sustainability;
3. The supplier or manufacturer had fully and satisfactorily implemented a contract of the same item with the DND or any of its major services, attached agencies or other offices; and
4. The supplier or manufacturer shall provide a performance security in accordance with Section 39 of this IRR.”

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 to Section 53.8 of the 2016 Revised IRR of RA No. 9184 to read as follows:

“53.8 Defense Cooperation Agreement; Defense Inventory-Based Items.

- a. ***Defense Cooperation Agreement.*** The DND may directly negotiate with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations when the procurement involves major defense equipment or materiel and/or defense-related consultancy services subject to the following conditions:
1. The Secretary of National Defense has deemed it necessary in order to protect the interest of the country;
 2. The expertise or capability required is not locally available; and
 3. The defense equipment or materiel and/or defense-related consultancy services to be procured under this modality is included in the Armed Forces of the Philippines Modernization Program previously approved by the President of the Philippines.
- b. ***Defense Inventory-Based Items.*** The DND may directly negotiate with a supplier or manufacturer in procuring inventory-based items, which pertain to major defense equipment or materiel as contemplated in Section 53.8(a) subject to the following conditions:
1. The Secretary of National Defense has determined that it is necessary to negotiate directly with a supplier or manufacturer in order to protect the interest of the country;
 2. Resort to direct negotiation will address compatibility, interoperability and sustainability;
 3. The supplier or manufacturer had fully and satisfactorily implemented a contract of the same item with the DND or any of its bureaus or attached agencies; and
 4. The supplier or manufacturer shall provide a performance security in accordance with Section 39 of this IRR.”

This Resolution shall take effect immediately.

APPROVED this 4th day of December 2018 at Pasig City, Philippines.

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**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

SGD

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

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DEPARTMENT OF FINANCE

DEPARTMENT OF HEALTH

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**DEPARTMENT OF INFORMATION AND
COMMUNICATION TECHNOLOGY**

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**DEPARTMENT OF NATIONAL
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DEPARTMENT OF TRANSPORTATION

PRIVATE SECTOR REPRESENTATIVE

2016 REVISED IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT
 (RA) NO. 9184

EXISTING PROVISION	AMENDMENT
<p>Section 53.8</p> <p>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.”</p>	<p>“53.8 Defense Cooperation Agreement; Defense Inventory-Based Items.</p> <p>a. Defense Cooperation Agreement. The DND may directly negotiate with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations when the procurement involves major defense equipment or materiel and/or defense-related consultancy services subject to the following conditions:</p> <ol style="list-style-type: none"> 1. The Secretary of National Defense has deemed it necessary in order to protect the interest of the country; 2. The expertise or capability required is not locally available; and 3. The defense equipment or materiel and/or defense-related consultancy services to be procured under this modality is included in the Armed Forces of the Philippines Modernization Program previously approved by the President of the Philippines. <p>b. Defense Inventory-Based Items. The DND may directly negotiate with a supplier or manufacturer in procuring inventory-based items, which pertain to major defense equipment or materiel as contemplated in Section 53.8(a) subject to the following conditions:</p> <ol style="list-style-type: none"> 1. The Secretary of National Defense has determined that it is necessary to negotiate directly with a supplier or manufacturer in order to

	<p>protect the interest of the country;</p> <ol style="list-style-type: none">2. Resort to direct negotiation will address compatibility, interoperability and sustainability;3. The supplier or manufacturer had fully and satisfactorily implemented a contract of the same item with the DND or any of its bureaus or attached agencies; and4. The supplier or manufacturer shall provide a performance security in accordance with Section 39 of this IRR.”
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