



RESOLUTION NO. 09-2016

APPROVING THE ISSUANCE OF A POSITION PAPER ON THE PROPOSED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10752, OTHERWISE KNOWN AS THE RIGHT-OF-WAY ACT

WHEREAS, Republic Act (RA) No. 10752 entitled “*An Act Facilitating the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects*”, otherwise known as “*The Right-of-Way Act*” was approved on 7 March 2016;

WHEREAS, Section 5(a) of RA 10752 provides that to determine the appropriate price offer¹, the implementing agency may engage the services of a government financial institution with adequate experience in property appraisal, or an independent property appraiser accredited by the Bangko Sentral ng Pilipinas (BSP) or a professional association of appraisers recognized by the BSP to be procured by the implementing agency under the provisions of Republic Act No. 9184, otherwise known as the “Government Procurement Reform Act” and its implementing rules and regulations pertaining to consulting services;

WHEREAS, Section 13 of RA 10752 mandates that a committee shall prepare, in consultation with key stakeholders, the Implementing Rules and Regulations (IRR) for the proper implementation of the law within sixty (60) days from its approval;

WHEREAS, prior to enactment of RA 10752, the Government Procurement Policy Board (GPPB) issued Resolution No. 17-2015, dated 16 July 2015, approving the issuance of a position paper on the proposed amendment to its precursor law, RA 8974 entitled *An Act to Facilitate the Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects and for Other Purposes* and recommending that the procurement of independent property appraisers or professional association of appraisers should not be limited to those accredited and/or recognized by the BSP, as this defeats the principle of competition in government procurement;

WHEREAS, on 4 May 2016, in view of the recommendation of the Honorable Secretary Emmanuel L. Caparas of the Department of Justice (DOJ) and Honorable OIC-Governor Vicente Aquino of the BSP, the GPPB-TSO was invited to attend the 3rd Technical Working Team (TWT) Meeting for the Preparation of the IRR of RA 10752;

WHEREAS, during the 3rd TWT Meeting, the GPPB-TSO made the following comments and observations on the draft IRR of RA 10752:

1. While RA 10752 governs the acquisition of Right-of-Way (ROW) site and location, it expressly states that for the procurement of Independent Property Appraiser (IPA), RA 9184 shall apply;
2. The proposal to specify only Competitive Bidding and Small Value Procurement as the applicable methods of procurement in the engagement

¹ As compensation price to be paid to the property owner concerned.

of IPA unnecessarily restrains the Implementing Agencies (IAs) from applying other applicable alternative methods of procurement. Hence, it was recommended to have a general statement that the procurement of IPAs shall be undertaken in accordance with the provisions of RA 9184 and its IRR;

3. BSP Accreditation/Recognition should not be a limitation on the eligibility of IPAs to participate in the bidding as RA 9184 and its IRR is explicit on the eligibility criteria for procurement purposes;
4. Similar to the engagement of government printers, there must be rules allowing competition among qualified Government Financial Institutions (GFIs) to act as appraisers so that IAs will not simply negotiate with any GFI of its choice;
5. IAs shall be provided with guidance on when they shall engage GFIs and when they will procure the services of an IPA; and
6. Verify whether the membership standing of an IPA to the National Association of Real Estate Service Practitioner per RA 9646 or "*Real Estate Service Act of the Philippine*" will have an effect on his license to practice his profession.

WHEREAS, during the 7th GPPB and 5th Inter Agency Technical Working Group (IATWG) Joint Meeting on 10 May 2016, the GPPB-TSO presented the above-mentioned comments and observations, as well as the proposed text on procurement-related provisions of the IRR of RA 10752;

WHEREAS, the GPPB noted that based on the representation of some TWT members during its meeting on 4 May 2016, it is the intention of RA 10752 that in the determination of appropriate price offer, engagement of GFIs is preferred over the procurement of IPAs so as to facilitate the acquisition of ROW site or location; hence, it was recommended that such preference be reflected in the IRR of RA 10752;

WHEREAS, the GPPB adopted the comments and observations of the GPPB-TSO as well as the proposed text on procurement-related provisions of the IRR of RA 10752, subject to the recommendation that the IRR of RA 10752 should reflect the preference of engagement of GFIs over the procurement of IPAs in the determination of appropriate price offer.

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 on the proposed IRR of RA 10752, attached as Annex "A", containing the comments and observations of the GPPB-TSO and the recommendation of the GPPB.

This Resolution shall take effect immediately.

APPROVED this 10th day of May 2016 at Pasig City, Philippines.

(SGD)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

(SGD)

DEPARTMENT OF EDUCATION

DEPARTMENT OF FINANCE

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

(SGD)

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

(SGD)

**DEPARTMENT OF TRADE AND
INDUSTRY**

(SGD)

PRIVATE SECTOR REPRESENTATIVE

Attested by:

(SGD)

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

(SGD)

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

DEPARTMENT OF ENERGY

DEPARTMENT OF HEALTH

**DEPARTMENT OF NATIONAL
DEFENSE**

(SGD)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

(SGD)

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**