



RESOLUTION NO. 05-2012

AMENDING SECTIONS 55.3 AND 55.4 OF THE REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184 ON THE AMOUNT OF THE NON-REFUNDABLE PROTEST FEE AND FOR OTHER PURPOSES

WHEREAS, Section 63(b) of the revised Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 9184 authorizes the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend, whenever necessary, the IRR;

WHEREAS, Section 55 of R.A. 9184 provides, in part, that “decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR”;

WHEREAS, Section 55.3 of the revised Implementing Rules and Regulations (IRR) of R.A. 9184 provides that the non-refundable protest fee shall be in an amount equivalent to no less than one (1%) of the ABC;

WHEREAS, there is a need to rationalize the amount of the non-refundable protest fees to strike a balance between the institution and filing of valid protests and the deterrence of filing vexatious and frivolous ones;

WHEREAS, consistent with the policy of providing an effective protest mechanism for those participating in government procurement activities, Section 55.4 of the IRR of R.A. 9184 must be amended to *include* a provision requiring a sworn certification against forum shopping apart from the verified position paper filed for the Protest;

WHEREAS, the importance of the rationalization of protest fees was taken up by the Inter-Agency Technical Working Group Meeting (IATWG) in its 4th Regular Meeting held last 16 March 2012, where it was proposed that graduated rates of protest fee be applied to projects with large ABCs;

WHEREAS, in the 3rd GPPB and 5th IATWG Meeting, the Board resolved to approve the rationalization of protest fees amending Sections 55.3 and 55.4 of the IRR through the adoption of a fixed percentage or fixed amount of protest fee depending on the ABC range; and, the requirement of a sworn certification against forum shopping in accordance with the Rules of Court, specifically, the 1997 Revised Rules on Civil Procedure;

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 amendment of Sections 55.3 and 55.4 of the IRR of R.A. 9184, as follows:

- 55.3. The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC

denying its request for reconsideration. A protest may be made by filing a verified position paper with the Head of the Procuring Entity concerned, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be as follows:

ABC RANGE	PROTEST FEE
50 million pesos and below	0.75% of the ABC
More than 50 million pesos to 100 million pesos	PhP 500,000.00
More than 100 million pesos to 500 million pesos	0.5% of the ABC
More than 500 million pesos to 1 billion pesos	PhP 2,500,000.00
More than 1 billion pesos to 2 billion pesos	0.25% of the ABC
More than 2 billion pesos to 5 billion pesos	PhP 5,000,000.00
More than 5 billion pesos	0.1 % of the ABC

55.4. The verified position paper shall contain the following information:

- a) The name of bidder;
- b) The office address of the bidder;
- c) The name of project/contract;
- d) The implementing office/agency or procuring entity;
- e) A brief statement of facts;
- f) The issue to be resolved; and
- g) Such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper must be verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned, produces no legal effect, and results to the outright dismissal of the protest.

In addition, the bidder shall likewise certify under oath that:

- a) **he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;**

- b) if there is such other pending action or claim, he is including a complete statement of the present status thereof; and
- c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the Head of Procuring Entity wherein his protest is filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the verified position paper.

These amendments to the IRR shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.

APPROVED this 30th day of March 2012 at Pasig City, Philippines

(Sgd.)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

(Sgd.)

**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