



## RESOLUTION NO. 06-2019

### **ADOPTION OF FOREIGN EQUITY REQUIREMENT UNDER EXECUTIVE ORDER NO. 65 S. 2018 AND AMENDMENT OF THE RELEVANT PROVISIONS OF THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184**

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

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

**WHEREAS**, Sections 23.4.2.1(b), (c) and (e) provide for a threshold of at least seventy-five percent (75%) on domestic interest, outstanding capital stock or ownership as eligibility criteria for partnerships, corporations or joint ventures in the procurement of infrastructure projects;

**WHEREAS**, Commonwealth Act (CA) No. 541, dated 26 May 1940, requires government agencies to give preference in awarding of contracts for construction or repair of public works to domestic entities and that the term **domestic entity** shall refer to any corporate body or commercial company duly organized and registered under the laws of the Philippines **seventy-five per centum of the capital of which is owned by citizens of the Philippines** or of the United States, or by citizens of both countries;

**WHEREAS**, Letters of Instruction No. 630, dated 22 November 1977, provides that “unless specifically authorized by the President of the Philippines in exceptional cases, bidding award or negotiations of primarily civil works contracts shall be limited to Filipino individuals and to corporations, partnership, or associations **seventy-five percent (75%) of the capital of which is owned by citizens of the Philippines**”;

**WHEREAS**, the Office of the President (OP) issued Executive Order (EO) No. 65 on 29 October 2018 promulgating the Eleventh (11<sup>th</sup>) Foreign Investment Negative List (FINL) which provides for limitation on investment by foreign entities in specific business and/or industry;

**WHEREAS**, EO No. 65, s. 2018, provides that contractors with forty percent (40%) foreign equity may get contracts for construction and repair of locally-funded public works subject to regulatory frameworks;

**WHEREAS**, on 18 January 2019, representatives from GPPB-Technical Support Office (TSO) met with representatives from the Office of the Deputy Executive Secretary for General Administration (ODESGA) of the OP to discuss the shift in requirements and the conflict between the provisions of the EO and the IRR;

**WHEREAS**, ODESGA representatives conveyed that the intention is to ease restrictions on foreign participation in certain investment areas or activities by increasing the threshold of how much foreign entities may own from twenty-five percent (25%) to forty percent (40%) and that such was the intention of the President in issuing EO No. 65, s. 2018;

**WHEREAS**, during the 1<sup>st</sup> Joint Meeting of the GPPB and the Inter-Agency Technical Working Group (IATWG) held last 07 February 2019, the GPPB-TSO presented the issue to the Board and recommended that the matter be referred to the IATWG for further study and to address the conflicting provisions between EO No. 65, s. 2018 and 2016 revised IRR of RA No. 9184, and while the matter is under review, to retain the eligibility criteria provided in Section 23.4.2.1(b), (c) and (e) of the 2016 revised IRR of RA No. 9184;

**WHEREAS**, consistent with the intention to ease restrictions on foreign participation in certain investment areas or activities, the Board resolved to adopt the provisions of EO No. 65 and amend the relevant provisions of the 2016 revised IRR of RA No. 9184;

**WHEREAS**, based on the instructions of the Board, the GPPB-TSO drafted the proposed amendments to the relevant provisions of the 2016 revised IRR of RA No. 9184 and the Philippine Bidding Documents (PBD) for the Procurement of Infrastructure Projects to adopt the policy provided in EO No. 65 s. 2018, and presented the same for consideration of the IATWG in its 2<sup>nd</sup> Regular Meeting last 28 February 2019;

**WHEREAS**, after due consideration, the IATWG resolved to recommend to the Board the proposed amendments to the 2016 revised IRR of RA No. 9184 and the PBDs for the Procurement of Infrastructure Projects, including the corresponding provisions in the Generic Procurement Manuals (GPMs);

**WHEREAS**, during the 2<sup>nd</sup> Regular Meeting of the GPPB last 08 March 2019, the GPPB-TSO presented the proposed amendments to Sections 23.4.2.1 (b), (c) and (e) of the 2016 revised IRR of RA No. 9184, and proposed amendments to Instructions to Bidders (ITB) Clause 5 of the PBDs for the Procurement of Infrastructure Projects as recommended by the IATWG;

**WHEREAS**, after careful review and due deliberations, the GPPB approved the recommendation of the IATWG to amend Sections 23.4.2.1 (b), (c) and (e) of the 2016 IRR of RA No. 9184 and ITB Clause 5 of the PBDs for the Procurement of Infrastructure Projects, including the corresponding provisions of the GPMs, subject to the relevant provisions of CA 541;

**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 amendments to Sections 23.4.2.1 of the 2016 IRR of RA No. 9184 and amendment to ITB Clause 5 of the PBDs for the Procurement of Infrastructure Projects, including the corresponding provisions in the GPMs, subject to the relevant provisions of CA 541, a copy of which is attached as Annex "A", and made an integral part hereof.

This resolution shall take effect immediately.

**APPROVED** this 8<sup>th</sup> day of March 2019 in Manila City, Philippines.

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**DEPARTMENT OF BUDGET AND  
MANAGEMENT**

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**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

(SGD)

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**DEPARTMENT OF EDUCATION**

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**DEPARTMENT OF ENERGY**

(SGD)

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**DEPARTMENT OF FINANCE**

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**DEPARTMENT OF HEALTH**

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**DEPARTMENT OF INFORMATION AND  
COMMUNICATION TECHNOLOGY**

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**DEPARTMENT OF INTERIOR AND LOCAL  
GOVERNMENT**

(SGD)

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**DEPARTMENT OF NATIONAL  
DEFENSE**

(SGD)

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**DEPARTMENT OF PUBLIC WORKS AND  
HIGHWAYS**

(SGD)

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

(SGD)

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**DEPARTMENT OF TRANSPORTATION**

(SGD)

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**PRIVATE SECTOR REPRESENTATIVE**

2016 revised Implementing Rules and Regulations of Republic Act No. 9184

Original	Amendment
<b>Section 23.4.2.1 (b)</b>	
Partnerships duly organized under the laws of the Philippines and which at least seventy-five percent (75%) of the interest belongs to citizens of the Philippines;	Partnerships duly organized under the laws of the Philippines and which at least <b>sixty percent (60%)</b> of the interest belongs to citizens of the Philippines;
<b>Section 23.4.2.1 (c)</b>	
Corporations duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines.	Corporations duly organized under the laws of the Philippines, and of which at least <b>sixty percent (60%)</b> of the outstanding capital stock belongs to citizens of the Philippines.
<b>Section 23.4.2.1 (e)</b>	
Persons/entities forming themselves into a joint venture, <i>i.e.</i> a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: <i>Provided, however,</i> That in accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest of the joint venture concerned shall be at least seventy-five percent (75%): <i>Provided, further,</i> That joint ventures in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be build require application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement: <i>Provided, finally,</i> That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in the JVA.	Persons/entities forming themselves into a joint venture, <i>i.e.</i> a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: <i>Provided, however,</i> That in accordance with <b>Executive Order No. 65 (EO 65), s. 2018<sup>1</sup></b> , Filipino ownership or interest of the joint venture concerned shall be at least <b>sixty percent (60%)</b> : <i>Provided, further,</i> That joint ventures in which Filipino ownership or interest is less than <b>sixty percent (60%)</b> may be eligible where the structures to be build require application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the <b>sixty percent (60%)</b> Filipino ownership requirement: <i>Provided, finally,</i> That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in the JVA.

<sup>1</sup> Promulgating the Eleventh Foreign Investment Negative List issued on 29 October 2018.

**5<sup>th</sup> Edition of the Philippine Bidding Documents for the Procurement of  
Infrastructure Projects**

Original	Amendment
<b><i>ITB Clause 5.1(b)</i></b>	
Partnerships duly organized under the laws of the Philippines and which at least seventy-five percent (75%) of the interest belongs to citizens of the Philippines;	Partnerships duly organized under the laws of the Philippines and which at least <b>sixty percent (60%)</b> of the interest belongs to citizens of the Philippines;
<b><i>ITB Clause 5.1(c)</i></b>	
Corporations duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines.	Corporations duly organized under the laws of the Philippines, and of which at least <b>sixty percent (60%)</b> of the outstanding capital stock belongs to citizens of the Philippines.
<b><i>ITB Clause 5.1(e)</i></b>	
Persons/entities forming themselves into a joint venture, <i>i.e.</i> a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: <i>Provided, however,</i> That in accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest of the joint venture concerned shall be at least seventy-five percent (75%): <i>Provided, further,</i> That joint ventures in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be build require application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement: <i>Provided, finally,</i> That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in the JVA.	Persons/entities forming themselves into a joint venture, <i>i.e.</i> a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: <i>Provided, however,</i> That in accordance with <b><u>Executive Order No. 65 (EO 65), s. 2018<sup>2</sup></u></b> , Filipino ownership or interest of the joint venture concerned shall be at least <b>sixty percent (60%)</b> : <i>Provided, further,</i> That joint ventures in which Filipino ownership or interest is less than <b>sixty percent (60%)</b> may be eligible where the structures to be build require application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the <b>sixty percent (60%)</b> Filipino ownership requirement: <i>Provided, finally,</i> That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in the JVA.

<sup>2</sup> Promulgating the Eleventh Foreign Investment Negative List issued on 29 October 2018.

**Generic Procurement Manual Volume 3 –  
Manual of Procedures for the Procurement of Infrastructure Projects**

Original	Amendment
<b>Section 3 – Instructions on the Procedural Steps for the Procurement of Infrastructure Project</b>	
<b>Part One – Competitive Bidding</b>	
<b>Step 4 – Receive, Open and Examine the Technical and Financial Envelopes</b>	
<p>Who may be eligible to participate in a public bidding for infrastructure projects?</p> <p>The following persons/entities shall be allowed to participate in the bidding: (2016 IRR Section 23.4.2.1)</p> <ol style="list-style-type: none"> <li>a. Xxx</li> <li>b. Partnerships duly organized under the laws of the Philippines and which at least seventy-five percent (75%) of the interest belongs to citizens of the Philippines;</li> <li>c. Corporations duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines.</li> <li>d. Xxx</li> <li>e. Persons/entities forming themselves into a joint venture, <i>i.e.</i> a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: <i>Provided, however,</i> That in accordance with Letter of Instructions No. 630 (LOI 630), Filipino ownership or interest of the joint venture concerned shall be at least seventy-five percent (75%): <i>Provided, further,</i> That joint ventures in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be build require application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the seventy-five percent (75%) Filipino ownership requirement: <i>Provided, finally,</i> That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in the JVA.</li> </ol>	<p>Who may be eligible to participate in a public bidding for infrastructure projects?</p> <p>The following persons/entities shall be allowed to participate in the bidding: (2016 IRR Section 23.4.2.1)</p> <ol style="list-style-type: none"> <li>a. Xxx</li> <li>b. Partnerships duly organized under the laws of the Philippines and which at least <b>sixty percent (60%)</b> of the interest belongs to citizens of the Philippines;</li> <li>c. Corporations duly organized under the laws of the Philippines, and of which at least <b>sixty percent (60%)</b> of the outstanding capital stock belongs to citizens of the Philippines;</li> <li>d. Xxx</li> <li>e. Persons/entities forming themselves into a joint venture, <i>i.e.</i> a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: <i>Provided, however,</i> That in accordance with <b>Executive Order No. 65 (EO 65), s. 2018<sup>3</sup></b>, Filipino ownership or interest of the joint venture concerned shall be at least <b>sixty percent (60%)</b>: <i>Provided, further,</i> That joint ventures in which Filipino ownership or interest is less than <b>sixty percent (60%)</b> may be eligible where the structures to be build require application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the <b>sixty percent (60%)</b> Filipino ownership requirement: <i>Provided, finally,</i> That in the latter case, Filipino ownership or interest shall not be less than</li> </ol>

<sup>3</sup> Promulgating the Eleventh Foreign Investment Negative List issued on 29 October 2018.

	<p>twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in the JVA.</p>
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