



## RESOLUTION NO. 20-2012

### RESOLUTION AMENDING SECTION 54.5 OF THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184

**WHEREAS**, Section 63 of Republic Act No. (RA) 9184 mandates the Government Procurement Policy Board (GPPB) to formulate and amend, whenever necessary, the Implementing Rules and Regulations (IRR) and the corresponding standard forms for procurement;

**WHEREAS**, Section 39.1 of the IRR of RA 9184 provides that “to guarantee the faithful performance by the winning bidder of its obligations under the contract in accordance with the Bidding Documents, it shall post a performance security prior to the signing of the contract.”

**WHEREAS**, Section 62 of the IRR of RA 9184 provides that a warranty security shall be required from the contract awardee for the procurement of goods and infrastructure projects;

**WHEREAS**, Section 54.5 of the IRR provides that “performance and warranty securities, as prescribed in Section 39 and 62 of this IRR, shall be submitted for contracts acquired through the alternative methods of procurement, except for Shopping under Section 52 and Negotiated Procurement under Sections 53.2 (emergency cases), 53.9 (small value procurement), 53.10 (lease of real property), and 53.13 (UN agencies).”

**WHEREAS**, Agency-to-Agency and Community Participation modalities of Negotiated Procurement under Sections 53.5 and 53.12 of the IRR, respectively, are not included as among those exempt under Section 54.5 from the posting of performance and warranty securities;

**WHEREAS**, Sections 3(c) and 6(e) of the Guidelines on Agency-to-Agency Agreements<sup>1</sup> provide that the Procuring Agency may require from the Servicing Agency the posting of performance and warranty securities;

**WHEREAS**, under the Agency-to-Agency modality, the servicing agency tasked to perform the work, must have the legal mandate to deliver the goods and services or undertake the infrastructure projects or consulting services required by the procuring entity, and thus, there is an assurance that the servicing agency can execute and perform the contract in accordance with the agreed requirements;

**WHEREAS**, in Community Participation modality, project sustainability and achievement of specific social objectives are the underlying reasons for its adoption; accordingly local communities take ownership of their work; have interest in the accomplishment of the project as they directly benefit therefrom; and, would ensure that the activity is actually carried out and completed pursuant to the identified requirements;

<sup>1</sup>GPPB Resolution 018-2007 dated 31 May 2007, and published in the Official Gazette on 14 January 2008.

**WHEREAS**, in Community Participation, local communities may not possess the financial capability to post the required performance and warranty securities under Sections 39 and 62 of the IRR;

**WHEREAS**, there is a need to exempt Agency-to-Agency and Community Participation modalities from the posting of performance and warranty securities by amending Section 54.5 of the IRR of RA 9184 and the Guidelines on Agency-to-Agency Agreements;

**WHEREAS**, the proposal to exempt Agency-to-Agency and Community Participation modalities from the posting of performance and warranty securities, was discussed by the Inter-Agency Technical Working Group (IATWG) in its 9<sup>th</sup> Regular Meeting held on 13 July 2012, where the IATWG recommended amendment to Section 54.5 of the IRR of RA 9184 and the Guidelines on Agency-to-Agency Agreements;

**WHEREAS**, the GPPB, in its 7<sup>th</sup> Regular Meeting, resolved to adopt the IATWG's recommendation to amend Section 54.5 and the Guidelines on Agency-to-Agency Agreements by including Agency-to-Agency and Community Participation among those exempt from the requirement of posting performance and warranty securities;

**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 following:

1. **AMEND** Section 54.5 of the revised IRR of RA 9184 to read as follows:

Performance and warranty securities, as prescribed in Section 39 and 62 of this IRR, shall be submitted for contracts acquired through the alternative methods of procurement, except for Shopping under Section 52 and Negotiated Procurement under Sections 53.2 (emergency cases), **53.5 (Agency-to-Agency)**, 53.9 (small value procurement), 53.10 (lease of real estate property), **53.12 (Community Participation)**, and 53.13 (UN agencies),

2. **AMEND** the Guidelines on Agency-to-Agency Agreements as follows:

- a) Deletion of the following provisions:

- (i) Section 5(c)

Subject to appropriate guidelines, the Procuring Agency may require the Servicing Agency to post a performance security under Section 39 of R.A. 9184 and/or post a warranty security under Section 62 of R.A. 9184.

- (ii) Section 6(e)

Pursuant to Section 5(c), the MOA shall reflect the agreement of the parties with regard to the posting of a performance bond and/or a warranty security.

b) Renumbering of the following Sections, to wit:

- (i) Sections 5(d) and (e) to Sections 5(c) and (d), respectively.
- (ii) Section 6(f) to Section 6(e).

This resolution shall take effect immediately.

**APPROVED** this 27<sup>th</sup> day of July 2012 at Pasig City, Philippines

(Sgd.)

DEPARTMENT OF BUDGET AND  
MANAGEMENT

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

DEPARTMENT OF NATIONAL  
DEFENSE

DEPARTMENT OF PUBLIC WORKS AND  
HIGHWAYS

DEPARTMENT OF SCIENCE AND  
TECHNOLOGY

(Sgd.)

DEPARTMENT OF TRADE AND  
INDUSTRY

(Sgd.)

DEPARTMENT OF TRANSPORTATION  
AND COMMUNICATIONS

(Sgd.)

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**PRIVATE SECTOR REPRESENTATIVE**

Attested by:

(Sgd.)

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