



RESOLUTION NO. 29-2013

REITERATING THE POSITION OF THE GOVERNMENT PROCUREMENT POLICY BOARD ON THE NATURE OF MIXED PROCUREMENTS

WHEREAS, Republic Act (RA) No. 9184, otherwise known as the “Government Procurement Reform Act” and its revised Implementing Rules and Regulations (IRR) took effect on 26 January 2003 and 2 September 2009, respectively;

WHEREAS, Section 63 of RA 9184 mandates the Government Procurement Policy Board (GPPB) to protect national interest in all matters affecting public procurement;

WHEREAS, Section 5(r) of the revised IRR of RA 9184 defines “Goods” as referring to “all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and services, as well as procurement of materials and supplies provided by the procuring entity for such services. The term “related” or “analogous” shall include, but not be limited to, lease or purchase of office space, media advertisement, health maintenance services, and other services essential to the operation of the procuring entity”;

WHEREAS, Section 5(u) of the revised IRR of RA 9184 defines “Infrastructure Projects” as referring to “the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government”;

WHEREAS, Section 5(aa) of the revised IRR of RA 9184 defines “Procurement” as referring to “the acquisition of goods, consulting services, and the contracting for infrastructure projects by the procuring entity. In the case of projects involving mixed procurements, the nature of the procurement, *i.e.*, goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract”.

WHEREAS, the GPPB received a letter from the National Economic and Development Authority (NEDA) on 26 September 2013 seeking clarification on whether the Agus 6 Hydroelectric Power Plant (Units 1 and 2) Upgrading Project of the Power Sector Assets and Liabilities Management Corporation (PSALM) involves primarily the procurement of an infrastructure project or the procurement of goods;

WHEREAS, during the 5th Inter-Agency Technical Working Group (IATWG) Meeting held on 11 October 2013, the IATWG agreed to recommend to the Government Procurement Policy Board (GPPB) the position that in case of projects involving mixed procurements, the

nature of the procurement, *i.e.*, goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract;

WHEREAS, in the 7th GPPB meeting held on 25 October 2013, the GPPB agreed to adopt the recommendation of the IATWG, *i.e.*, to reiterate the position that in case of mixed procurements, the nature of the procurement shall be determined based on the primary purpose of the contract, based on the following reasons:

- (a) That the procuring entity (PE) is in the best position to determine the correct classification for its procurement based on its identified needs and the best way by which these needs may be addressed, managed, and satisfied;
- (b) That PEs are capable of discerning whether the procurement involves primarily procurement of “goods”, “infrastructure projects” or “consulting services”;

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 following:

- a) **REITERATE** the position that in case of projects involving mixed procurements, the nature of the procurement, *i.e.*, goods infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract;
- b) **DIRECT** the GPPB-TSO to issue a Non-Policy Matter Opinion addressed to NEDA reiterating the GPPB’s position as stated above.

This Resolution shall take effect immediately.

APPROVED this 25th day of October 2013 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

(Sgd.)

DEPARTMENT OF HEALTH

(Sgd.)

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

(Sgd.)

**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**

PRIVATE SECTOR REPRESENTATIVE

Attested by:

(Sgd.)

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