

[GPPB Resolution No. 29-2014, December 05, 2014]

AMENDING SECTION 23.1(B) OF THE REVISED IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT (RA) NO. 9184 AND CLAUSES 12.1(A)(VIII) AND 30.3 OF THE INSTRUCTIONS TO BIDDERS (ITB) OF THE PHILIPPINE BIDDING DOCUMENTS (PBDs) FOR INFRASTRUCTURE PROJECTS

Adopted: 05 December 2014

Date Filed: 19 May 2015

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 23.5.2.3 of the IRR of RA 9184 allows a bidder to participate in public bidding for infrastructure projects if he has been issued a license by the Philippine Contractors Accreditation Board (PCAB) to engage or act as a contractor in accordance with RA 4566^[1];

WHEREAS, Section 23.1(b) of the IRR of RA 9184 and Clause 12.1(a)(viii)^[2] of the Instructions to Bidders (ITB) under the Philippine Bidding Documents (PBDs) for Infrastructure Projects requires the submission of a valid joint venture agreement (JVA) as Class "B" Eligibility Document, in case the joint venture is already in existence. In the absence of a JVA, duly notarized statements from all the potential joint venture partners may be submitted; stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful;

WHEREAS, Clause 30.3(a)(i) of the ITB under the PBDs for Infrastructure Projects requires that if the bidder has submitted a notarized statement, a valid JVA shall be presented as a condition for the award of contract, within ten (10) calendar days from the issuance of the Notice of Award;

WHEREAS, Section 38 of RA 4566 provides that it is unlawful for any two or more licensees, each of whom has been issued a license to engage separately in the capacity of a contractor, to jointly submit a bid or otherwise act in the capacity of a contractor without first having secured an additional license for acting in the capacity of such a joint venture as provided for an individual, partnership or corporation;

WHEREAS, Joint Ventures (JVs) are required to secure a Special PCAB license in

accordance with Section 3.5 of IRR of RA 4566;

WHEREAS, Section 4.6 of the IRR of RA 4566 requires the submission of a JVA for the application of a Special PCAB License;

WHEREAS, on 24 February 2014, GPPB-TSO received a letter from PCAB informing the former that procuring entities allow JVs to bid without the required Special PCAB License, which is violative of Section 38 of RA 4566 and its IRR;

WHEREAS, upon initial presentation to the Board during its 6th GPPB and 5th Inter-Agency Technical Working Group (IATWG) Joint meeting on 31 October 2014, GPPB-TSO was directed to meet with PCAB to reconcile the seeming conflict between the provisions of the IRR of RA 9184 and RA 4566 relative to the submission of a sworn statement, in lieu of a JVA;

WHEREAS, during the meeting held on 20 November 2014, PCAB maintains the strict interpretation of Section 38 of RA 4566; PCAB cannot accept a notarized statement, in lieu of a JVA, as it cannot evaluate the qualifications of potential JVs. According to PCAB, they process and issue a Special PCAB license within five (5) days from the date of application;

WHEREAS, during the 7th GPPB and 6th IAWTG Joint Meeting on 5 December 2014, the GPPB-TSO presented the matter for the Board's consideration and recommended adoption of any of the following:

- a. **MAINTAIN** the present rule under **Section 23.1(b) of the IRR of RA 9184**, which allows, in the absence of a JVA, **duly notarized statements** from all potential JV partners stating that they will enter and abide by the conditions of the JVA in the instance that the bid is successful; or
- b. **AMEND Section 23.1(b) of the IRR of RA 9184 and Clauses 12.1(a)(viii) and 30.3(a)(i) of the Instructions to Bidders (ITB), Philippine Bidding Documents (PBDs) for Infrastructure Projects, by requiring only JVAs as Class "B" document.**

WHEREAS, the Board thoroughly discussed the matter, and, after careful deliberation, favorably approved GPPB-TSO's second recommendation.

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 to following:

1. **REQUIRE** the submission of **Joint Venture Agreement** as Class B Eligibility Document in the Procurement of Infrastructure Projects;
2. **AMEND Section 23.1(b) of the IRR of RA 9184**, as shown in Annex "A" hereof;
3. **AMEND Clauses 12.1(a)(viii) and 30.3(a)(i) of the Instructions to Bidders (ITB), Philippine Bidding Documents (PBDs) for Infrastructure Projects**, as shown in Annex "B" hereof.