



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
CENTRAL OFFICE
Manila

0977. 7-D DPWH
01-06-2020

JAN 06 2020

DEPARTMENT MEMORANDUM)

04)

CIRCULAR NO. _____)

Series of 2020 *DP. 06. 2019*)

FOR / TO : Undersecretaries
Assistant Secretaries
Bureau Directors
Service Directors
Regional Directors
Heads of UPMOs
District Engineers
BAC Chairpersons and Members
This Department

For information and guidance, attached is a copy of **GPPB RESOLUTION NO. 25-2019**, re: **"APPROVING THE AMENDMENT TO SECTION 37.1.4 AND SECTION 37.1.4(a)(iii) OF THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184, AS AMENDED BY GPPB RESOLUTION NO. 36-2017"**.

A copy of said Resolution may also be downloaded from the **DPWH website: <http://dpwhweb>**. If an office cannot access the DPWH website, a hard copy may be obtained from the Records Management Division, HRAS, upon request.

MARICHU A. PALAFOX, CESO III
Assistant Secretary for Support Services

12.1.1 EYAP/MNC/MVSG



APPROVING THE AMENDMENT TO SECTION 37.1.4 AND SECTION 37.1.4(a)(iii) OF THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184, AS AMENDED BY GPPB RESOLUTION NO. 36-2017

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 authorizes the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend its IRR, whenever necessary;

WHEREAS, the GPPB-Technical Support Office (GPPB-TSO) received queries from agencies as regards the period when foreign bidders are required to submit their Securities and Exchange Commission (SEC) Certificate of Registration;

WHEREAS, the GPPB-TSO reviewed the provisions of the 2016 revised IRR of RA No. 9184 and noted the following:

- a.) foreign bidders of goods and infrastructure projects are required to submit their SEC Certificate of Registration during post-qualification under Section 34.2; and
- b.) foreign consulting firms, on the other hand, are required to submit their SEC Certificate of Registration after issuance of the Notice of Award, and as a condition for contract award under Section 37.1.4(a)(iii), as amended by GPPB Resolution No. 36-2017;

WHEREAS, the GPPB-TSO found Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184, as amended by GPPB Resolution No. 36-2017, as necessitating amendment in order to include as well, foreign corporations supplying goods and implementing infrastructure projects, and to harmonize with Section 5 of RA No. 7042, otherwise known as the Foreign Investments Act of 1991, and Sections 140 and 143, Title XV of RA No. 11232, otherwise known as the Revised Corporation Code of the Philippines;

WHEREAS, Section 5 of RA No. 7042 provides:

“SEC. 5. Registration of Investments of Non-Philippine Nationals. – Without need of prior approval, a non-Philippine national, as that term is defined in Section 3 a), and not otherwise disqualified by law may, upon registration with the Securities and Exchange Commission (SEC), or with the Bureau of Trade Regulation and Consumer Protection (BTRCP) of the Department of Trade and Industry in the case of single proprietorships, do business as defined in Section 3 d) of this Act or invest in a domestic enterprise up to one hundred percent (100%) of its capital, unless participation of non-Philippine nationals in the enterprise is prohibited or limited to a smaller percentage by existing law and/or under the provisions of this Act xxx.”

WHEREAS, Sections 140 and 143, Title XV of RA No. 11232 respectfully reads:

“SEC. 140. Definition and Rights of Foreign Corporations. – For purposes of this Code, a foreign corporation is one formed, organized or existing under laws other than

those of the Philippines' and whose laws allow Filipino citizens and corporations to do business in its own country or State. It shall have the right to transact business in the Philippines after obtaining a license for that purpose in accordance with this Code and a certificate of authority from the appropriate government agency."

"SEC. 143. Issuance of a License. – If the Commission is satisfied that the applicant has complied with all the requirements of this Code and other special laws, rules and regulations, the Commission shall issue a license to transact business in the Philippines to the applicant for the purpose or purposes specified in such license. Upon issuance of the license, such foreign corporation may commence to transact business in the Philippines and continue to do so for as long as it retains its authority to act as a corporation under the laws of the country or State of its Page 60 of 73 incorporation, unless such license is sooner surrendered, revoked, suspended, or annulled in accordance with this Code or other special laws xxx."

WHEREAS, the Supreme Court held, in the case of Hutchison Ports Philippines Limited v. Subic Bay Metropolitan Authority, et al., (GR No. 131367, August 31, 2000) that participating in the bidding process constitutes "doing business" because it shows the foreign corporation's intention to engage in business in the Philippines;

WHEREAS, on 17 October 2019, the GPPB-TSO, during the 8th Inter-Agency Technical Working Group (IATWG) Regular Meeting, proposed to amend Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184, as amended by GPPB Resolution No. 36-2017, to require foreign corporations which participate in the procurement of goods and services and infrastructure projects, to submit a SEC Certificate of Registration and/or the authorization or license issued by the appropriate government agency prior to award of contract, thus:

Section 37.1.4.

Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:

a) Submission of the following documents within ten (10) calendar days from Notice of Award:

- i) xxx
- ii) xxx
- iii) IN THE CASE OF GOODS, SERVICES AND INFRASTRUCTURE PROJECTS, THE SEC CERTIFICATE OF REGISTRATION OF THE FOREIGN CORPORATION, AND/ OR CERTIFICATE OF AUTHORITY OR LICENSE FROM THE APPROPRIATE GOVERNMENT AGENCY. In the case of Consulting Services, the SEC Certificate of Registration of the foreign consulting firm, and/or the authorization or license issued by the appropriate GoP professional regulatory body of the foreign professionals engaging in the practice of regulated professions and allied professions, where applicable.

WHEREAS, on 17 October 2019, the IATWG **AGREED** to endorse the proposed amendment for the approval of the Board, subject to refinement of the wordings of the proposed revision, as discussed during the meeting;

WHEREAS, in order to further refine the provision, the GPPB-TSO proposed as follows:

Section 37.1.4.

“WITHIN TEN (10) DAYS FROM RECEIPT BY THE WINNING BIDDER OF THE NOTICE OF AWARD, THE FOLLOWING CONDITIONS SHOULD BE COMPLIED BEFORE THE CONTRACT MAY BE AWARDED:

- a) Submission of the following documents within ten (10) calendar days from Notice of Award:
 - i) xxx
 - ii) xxx
 - iii) THE SEC CERTIFICATE OF REGISTRATION OF THE FOREIGN CORPORATION, OR THE SEC CERTIFICATE OF REGISTRATION OF THE FOREIGN CONSULTING FIRM, AND/OR THE AUTHORITY OR LICENSE FROM THE APPROPRIATE GOVERNMENT AGENCY OR PROFESSIONAL REGULATORY BODY OF THE FOREIGN PROFESSIONALS ENGAGING IN THE PRACTICE OF REGULATED PROFESSIONS AND ALLIED PROFESSIONS, WHERE APPLICABLE”

WHEREAS, during the 8th GPPB Regular Meeting on 30 October 2019, the GPPB-TSO presented its proposed revision to Section 37.1.4 and Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184, as amended by GPPB Resolution No. 36-2017;

WHEREAS, after due consideration and deliberation, the Board resolved to approve to amend Section 37.1.4 and Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184, as amended by GPPB Resolution No. 36-2017, to read as follows:

Section 37.1.4.

“WITHIN TEN (10) DAYS FROM RECEIPT BY THE WINNING BIDDER OF THE NOTICE OF AWARD, THE FOLLOWING CONDITIONS SHOULD BE COMPLIED BEFORE THE CONTRACT MAY BE AWARDED:

- a) Submission of the following documents within ten (10) calendar days from Notice of Award:
 - i) xxx
 - ii) xxx
 - iii) THE SEC CERTIFICATE OF REGISTRATION OF THE FOREIGN CORPORATION, OR THE SEC CERTIFICATE OF REGISTRATION OF THE FOREIGN CONSULTING FIRM, AND/OR THE AUTHORITY OR LICENSE FROM THE APPROPRIATE GOVERNMENT AGENCY OR PROFESSIONAL REGULATORY BODY OF THE FOREIGN PROFESSIONALS ENGAGING IN THE PRACTICE OF REGULATED PROFESSIONS AND ALLIED PROFESSIONS, WHERE APPLICABLE”

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 and other executive issuances, hereby **RESOLVE**, to confirm, adopt, and approve to **AMEND** Section 37.1.4 and Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184, as amended by GPPB Resolution No. 36-2017, to read as follows:

Section 37.1.4.

“WITHIN TEN (10) DAYS FROM RECEIPT BY THE WINNING BIDDER OF THE NOTICE OF AWARD, THE FOLLOWING CONDITIONS SHOULD BE COMPLIED BEFORE THE CONTRACT MAY BE AWARDED:

a) Submission of the following documents within ten (10) calendar days from Notice of Award:

- i) Xxx
- ii) Xxx
- iii) THE SEC CERTIFICATE OF REGISTRATION OF THE FOREIGN CORPORATION, OR THE SEC CERTIFICATE OF REGISTRATION OF THE FOREIGN CONSULTING FIRM, AND/OR THE AUTHORITY OR LICENSE FROM THE APPROPRIATE GOVERNMENT AGENCY OR PROFESSIONAL REGULATORY BODY OF THE FOREIGN PROFESSIONALS ENGAGING IN THE PRACTICE OF REGULATED PROFESSIONS AND ALLIED PROFESSIONS, WHERE APPLICABLE”

This Resolution shall take effect immediately.

APPROVED this 30th day of October 2019 at Manila City, Philippines.

(SGD)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(SGD)

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

(SGD)

DEPARTMENT OF FINANCE

DEPARTMENT OF HEALTH

(SGD)

**DEPARTMENT OF INFORMATION AND
COMMUNICATION TECHNOLOGY**

**DEPARTMENT OF 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**

DEPARTMENT OF TRANSPORTATION

PRIVATE SECTOR REPRESENTATIVE