



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

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DEPARTMENT MEMORANDUM)

CIRCULAR NO.)
Series of 2022)

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12/7/22

FOR/TO : UNDERSECRETARIES
ASSISTANT SECRETARIES
REGIONAL DIRECTORS
BUREAU DIRECTORS
SERVICE DIRECTORS
HEADS OF UPMOs
DISTRICT ENGINEERS
HEADS OF ATTACHED AGENCIES
OTHERS CONCERNED
This Department

For information and guidance, attached is a copy of **GPPB Resolution No. 09-2022** dated October 27, 2022, with the subject: "**APPROVING THE PROPOSAL TO REQUEST FOR THE ESTABLISHMENT OF THE SECURITIES AND EXCHANGE COMMISSION SPECIAL BASKET (FAST LANE) FOR WINNING FOREIGN BIDDERS FOR THE PURPOSE OF AWARDING A CONTRACT UNDER SECTION 37 OF REPUBLIC ACT NO. 9184 AND ITS 2016 REVISED IMPLEMENTING RULES AND REGULATIONS.**"

A copy of the 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.

For dissemination to all concerned.


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

Encl: GPPB Resolution No. 09-2022 dated October 27, 2022

cc: Office of the Secretary

10.1.4 JVL/RGA/VGV/MSV

APPROVING THE PROPOSAL TO REQUEST FOR THE ESTABLISHMENT OF THE SECURITIES AND EXCHANGE COMMISSION SPECIAL BASKET (FAST LANE) FOR WINNING FOREIGN BIDDERS FOR THE PURPOSE OF AWARDING A CONTRACT UNDER SECTION 37 OF REPUBLIC ACT NO. 9184 AND ITS 2016 REVISED IMPLEMENTING RULES AND REGULATIONS

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

WHEREAS, Section 6 of RA No. 7042, as amended by RA No. 11647,¹ requires the registration of investments of non-Philippine nationals with the Securities and Exchange Commission (SEC) to do business in the Philippines or invest in a domestic enterprise up to one hundred percent (100%) of its capital;

WHEREAS, Section 140 of RA No. 11232² defines a foreign corporation as 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 and a certificate of authority from the appropriate government agency;

WHEREAS, Section 143 of RA No. 11232 provides that the SEC shall issue a license to transact business in the Philippines to the foreign corporation after the SEC has been satisfied with its submitted application that complied with all the requirements thereof. This would confer authority to such foreign corporation to 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 incorporation, unless such license is sooner surrendered, revoked, suspended or annulled in accordance with RA No. 11232 or other special laws;

WHEREAS, Section 37 of RA No. 9184 requires the winning bidder to formally enter into a contract with the Procuring Entity (PE) within ten (10) calendar days from receipt of the Notice of Award. Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184 further provides that within ten (10) calendar days from receipt of the Notice of Award, the following documents shall be submitted by the winning foreign bidder, namely: 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, the period provided under Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184 is consistent with the 2020 SEC Citizen's Charter (2nd Edition) which provides

¹ An Act Promoting Foreign Investments, Amending Thereby Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1991", as Amended, and for other purposes, 26 July 2021.

² An Act Providing for the Revised Corporation Code of the Philippines, 23 July 2018.

that the total processing time of licensing of foreign corporations through the SEC Company Registration System (CRS) is 10 days, 2 hours, and 51 minutes per application;

WHEREAS, on 23 June 2021, the Bangko Sentral ng Pilipinas requested for guidance on the registration of foreign corporations participating in Procurement Projects due to the issues and challenges encountered by foreign bidders, such as the inability of the foreign entity to open a local office since it is a government-owned crown corporation; situs of business operations is outside the Philippines; practical considerations or trade practice such as limited business opportunities and expenses in opening and maintaining a branch in the Philippines; reciprocity or diplomatic repercussions; and time constraints in securing the SEC Certificate of Registration, among others;

WHEREAS, prior to the receipt of the above letter, the GPPB-Technical Support Office (TSO) already sought clarification³ from the SEC on the registration requirements for foreign corporations, including what specific type of SEC registration should foreign bidders secure in certain cases like foreign bidders engaged in one-time transactions, government-owned crown corporations or state-owned enterprises;

WHEREAS, the SEC had the occasion to opine that participating in the bidding process constitutes "doing business" because it shows the foreign corporation's intention to engage in business in the country as provided in a line of Supreme Court cases.⁴ The SEC further opined that it is the performance by a foreign corporation of the acts for which it was created, regardless of volume of business, that determines whether the same needs a license or not;

WHEREAS, on 12 August 2021, the GPPB issued Resolution No. 14-2021, clarifying that the rule on the application of a license to transact business in the Philippines by a foreign corporation is based on existing SEC rules and opinions, thus, any of the allowable types of registration for a foreign corporation under Sections 140 and 143 of RA No. 11232 shall suffice for purposes of awarding a contract under RA No. 9184;

WHEREAS, on 14 September 2021, the SEC issued a Notice informing all concerned regarding the transition of applications for registration of partnerships and licensing of foreign corporations from the SEC CRS to the SEC Electronic Simplified Processing of Application for Registration of Company (ESPARC) starting 15 September 2021;

WHEREAS, due to the said transition, the total processing time of the licensing of foreign corporations was expanded from 10 days, 2 hours, and 51 minutes to twenty (20) working days for each application, as reflected in the updated 2022 SEC Citizen's Charter (1st Edition);

WHEREAS, the processing period of twenty (20) working days for the application of registration of foreign corporations is likewise provided in Section 19(d), Rule VI of the IRR of RA No. 11647, which provides that the SEC shall decide on the approval of the application for registration within the aforesaid period. Otherwise, the application shall be considered as automatically approved if it is not acted upon within said period for a cause not attributable to the applicant;

WHEREAS, with the said transition and recent issuance of the IRR of RA No. 11647, it is apparent that the expanded period of twenty (20) working days for the total processing time of licensing of foreign corporations per application no longer coincides with the ten (10)

³ Dated 22 June 2021.

⁴ *Hutchison Ports Philippines Limited v. SBMA, et. al.*; *European Resources and Technologies, Inc., et. al v. Ingenieurburo Birkhahn + Nolte, et. al.*; *Talon Security Consulting and Trade Limited v. DND, et. al.*

calendar days under Section 37 of RA No. 9184 and and Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184 where a winning bidder shall formally enter into contract with the PE;

WHEREAS, in light thereof, the GPPB-TSO inquired from the SEC if it could further streamline the requirements for the application of registration of foreign corporations, however, the SEC- Company Registration and Monitoring Department (CRMD) responded that it could not do so since these are required by law;

WHEREAS, the GPPB-TSO instead proposed for the establishment of SEC Special Basket to expedite the processing of applications for the registration of winning foreign bidders to meet the ten (10) - calendar day contract execution period under Section 37 of RA No. 9184 and Section 37.1.4(a)(iii) of the 2016 revised IRR of RA No. 9184. In the interest of enabling winning foreign bidders to comply with the above requirement and harmonize existing rules, the SEC-CRMD is open to the said proposal and asked that the GPPB formally request the SEC as this would require approval of the SEC En Banc;

WHEREAS, during the 9th Inter-Agency Technical Working Group Meeting last 06 October 2022, the Group agreed to endorse to the GPPB the said proposal for the establishment of the SEC Special Basket for winning foreign bidders;

WHEREAS, during the 6th GPPB Meeting on 27 October 2022, the Department of Education representative inquired if there is a need for the GPPB to approve the matter since the request is simply an administrative or clerical task which does not require policy direction from the GPPB. The GPPB-TSO explained that considering that the proposal to the SEC would effectively provide a special procedure in the registration of foreign bidders which have been issued a Notice of Award, the same is not administrative in nature and would require approval of the GPPB. The GPPB-TSO further emphasized that this proposal would address the expanded period of twenty (20) working days as a result of the transition to SEC ESPARC and issuance of IRR of RA No. 11647, and effectively enable winning foreign bidders to timely comply with the requirement under Section 37 of RA No. 9184 and Section 37.1.4(a)(iii) of its 2016 revised IRR of RA No. 9184; and

WHEREAS, after careful review and deliberation, the Board resolved to approve the proposal to request for the establishment of the SEC Special Basket (Fast Lane) for winning foreign bidders for the purpose of awarding a contract under Section 37 of RA No. 9184 and its 2016 revised IRR.

NOW, THEREFORE, for and in consideration 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 proposal to request for the establishment of the SEC Special Basket (Fast Lane) for winning foreign bidders for the purpose of awarding the contract under Section 37 of RA No. 9184 its 2016 revised IRR.

This Resolution shall take effect immediately.

APPROVED this 27th day of October 2022 at Manila City, Philippines.

Sgd.

GPPB, Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

Sgd.

Alternate to the Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

Sgd.

DEPARTMENT OF HEALTH

Sgd.

**DEPARTMENT OF INTERIOR AND LOCAL
GOVERNMENT**

Sgd.

DEPARTMENT OF NATIONAL DEFENSE

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

Sgd.

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

Sgd.

DEPARTMENT OF TRADE AND INDUSTRY

Sgd.

DEPARTMENT OF TRANSPORTATION

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

Sgd.

PHILIPPINE SPACE AGENCY

PRIVATE SECTOR REPRESENTATIVE