

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Thirteenth Congress
First Regular Session

House Bill No. 2802



Introduced by Representative Imee R. Marcos

EXPLANATORY NOTE

Often, the contracts for the procurement of a supplier, contractor or consultant entered into by the government are complained to be tainted with anomalies and irregularities which are usually attributed to the commission of corruption by concerned government officials or officers. To avert the incidence of corruption in procurement contracts, Republic Act No. 9184, also known as the Government Procurement Reform Act, was enacted specially to promote transparency in the procurement process, to afford all private contracting parties equal opportunities, and to ensure that the government officials or officers involved are made accountable to the people.

To grant the government flexibility in exceptional circumstances such as during a state of calamity, alternative methods of procurement are provided by the law. Among these alternative methods is the negotiated procurement. A negotiated procurement, among other alternative methods, is allowed whenever there is a natural or man-made calamity or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.

It is, however, regrettable that some government officials and officers, make use of such leeway to engage in anomalous or irregular procurement. To further reduce, if not totally put an end, to abuses of government officials and officers, this author included a few more limitations on the availment of a negotiated contract. Some of the conditions set in this bill are already provided in the implementing rules and regulations of the Act. To reinforce the same, this author decided to incorporate it in the bill, along with other reasonable conditions, which to the mind of the author, are necessary to prevent any possibility of abuse.

In view of the foregoing, passage of this bill is earnestly recommended.

Imee R. Marcos
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Representative
2nd District, Ilocos Norte

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AN ACT
AMENDING SECTIONS 53 AND 54, ARTICLE XVI OF REPUBLIC ACT NO. 9184,
OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT

SECTION 1. Section 53 is hereby amended to read as follows:

SECTION 53. *Negotiated Procurement.* — Negotiated Procurement shall be allowed only in the following instances:

- (a) xxx;
- (b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities: PROVIDED, THE FOLLOWING CONDITIONS ARE OBSERVED:
 - (1) THE PROCURING ENTITY SHALL DRAW UP A LIST OF AT LEAST THREE (3) SUPPLIERS OR CONTRACTORS WHICH WILL BE INVITED TO SUBMIT BIDS, OR
 - (2) THE NEGOTIATION SHALL BE MADE WITH A PREVIOUS SUPPLIER, CONTRACTOR OR CONSULTANT OF GOOD STANDING OF THE PROCURING ENTITY CONCERNED, OR A SUPPLIER, CONTRACTOR OR CONSULTANT OF GOOD STANDING SITUATED WITHIN THE VICINITY WHERE THE CALAMITY OR EMERGENCY OCCURRED; AND
 - (3) THE PROCEDURES FOR THE CONDUCT OF PUBLIC BIDDING SHALL BE CLOSELY OBSERVED;
 - (4) THE PROCURING ENTITY SHALL ENSURE THAT THE MOST ADVANTAGEOUS PRICE FOR THE GOVERNMENT IS OBTAINED;

- (5) THE PRICES AGREED UPON SHALL BE CONSIDERED AS FIXED PRICES, HENCE, NOT SUBJECT TO PRICE ESCALATION DURING THE CONTRACT IMPLEMENTATION, EXCEPT UNDER EXTRAORDINARY CIRCUMSTANCES AND UPON APPROVAL OF THE GOVERNMENT PROCUREMENT POLICY BOARD (GPPB);
- (6) THE RESORT TO NEGOTIATED PROCUREMENT AND THE PREFERRED SUPPLIER(S) AND/OR CONTRACTOR(S) SHALL BE PUBLISHED IN TWO NEWSPAPERS OF GENERAL CIRCULATION BEFORE THE CONCLUSION OF THE CONTRACT;
- (7) ALL BIDDING DOCUMENTS SHALL BE READILY MADE AVAILABLE TO THE PUBLIC DURING OFFICE HOURS.
- (c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities: PROVIDED, THAT THE CONDITIONS SET IN PRECEDING PARAGRAPH ARE OBSERVED;
- (d) xxx
- (e) xxx

SECTION 2. Section 54 shall be amended to read as follows:

SECTION 54. *Terms and Conditions for the use of Alternative Methods.* — THE PROCEDURAL REQUIREMENTS UNDER SECTION 17 (A), (C), (D), (E), (F), (G), (I), (J), AND SECTIONS 39, AND 40 OF THIS ACT SHALL SPECIALLY APPLY TO THE ABOVE ALTERNATIVE METHODS OF PROCUREMENT. **The specific terms and conditions, including the limitations and restrictions, for the application of each of the alternative methods mentioned in this Article shall be specified in the IRR.**

SECTION 3. *Repealing Clause.* - All laws, presidential decrees or issuances, executive orders, rule or regulations contrary to, or inconsistent with the provisions of this Act are hereby repealed, modified, or amended accordingly.

SECTION 4. *Effectivity.* This Act shall take effect fifteen (15) days following its complete publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,