

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
Second Regular Session



HOUSE BILL No. 5738

Introduced by Hon. Jacinto V. Paras

EXPLANATORY NOTE

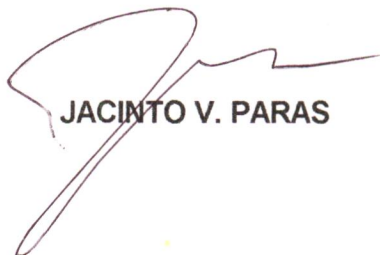
Republic Act 9184 or the "Government Procurement Reform Act of 2003" was enacted to provide for a government procurement system that promotes and adheres to the principle of good governance. It mandates "that procurement shall be competitive and transparent" and that there should be "standard and uniform set of rules and regulations governing the procurement of infrastructure, goods and consulting services". This is envisioned to improve transactions between the Government and its suppliers, contractors and consultants, and result to an atmosphere of trust and confidence between the Government and the general public.

With the standardized procedures provided by RA 9184, the procurement of office supplies for all government agencies has been made transparent and more efficient. However, in the hearing conducted by the Oversight Committee on the status of implementation of projects under the Ten Point Agenda of President Gloria Macapagal Arroyo, concerns have been raised on the effect of RA 9184 on technical and specialized operations, especially in the energy sector. The rural electrification program of the government, for example, has been considerably delayed as a result of the long bidding procedures, frequent bid failures and other provisions that render the law inflexible when applied to technologies and operations that are patented and specialized, and involves delivery of vital public services that have economic and security implications.

This bill is intended to enhance and amend some provisions of RA 9184 to consider the complexities and provide some flexibilities to certain procurements that are highly technical. This bill also proposes to limit the coverage of the act to procurements that are beyond P10,000,000.00 so as to lessen the volume of contracts that have to be bided out.

RA 9184 is designed to put in place an efficient and effective procurement system that responds to the daunting tasks of running the bureaucracy. While the objective of achieving the twin goals of transparency and good governance are primordial, it is also imperative that these procedures do not hamper vital government operations.

In view of the foregoing, early approval of this legislative measure is urgently requested.


JACINTO V. PARAS

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AN ACT

AMENDING SECTIONS 4, 11, 17, 18, 27, 36, 41, 49, 50, 51, 52, 53 and 63 OF REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT OF 2003, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

Section 1. Section 4 of RA 9184 is hereby amended to read as follows:

“Section 4. Scope and Application. – This Act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, APPROVED BUDGET OF THE CONTRACT (ABC) OF WHICH EXCEEDS TEN MILLION PESOS (P10,000,000.00), regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or –controlled corporations FOR ITS DOMESTIC OPERATIONS AND SERVICES, and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed.

“SOCIAL PROJECTS INTENDED TO BENEFIT HOST COMMUNITIES, AS PROVIDED FOR UNDER RA 7160 AND SUBJECT TO THE PROVISIONS OF SECTION 10(D), SHALL NOT BE CONSIDERED GOVERNMENT PROCUREMENT, AND SHALL THEREFORE BE OUTSIDE THE COVERAGE OF THIS AC, PROVIDED THAT, THE MATERIAL COMPONENTS OF SUCH SOCIAL PROJECTS SHALL BE UNDERTAKEN THROUGH PUBLIC BIDDING IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT AND ITS IRR.”

Sec. 2. Section 11 is amended by inserting the following to the last sentence of the first paragraph:

“Sec. 11. The BAC and its Composition. – Each procuring entity shall establish a single BAC for its procurement. xxx However, in no case shall the approving authority be a member of the BAC. PERMANENT ALTERNATE MEMBERS, WHO SHALL LIKEWISE BE PERMANENT OFFICERS OF THE PROCURING ENTITY AND APPOINTED BY THE HEAD OF THE PROCURING ENTITY, SHALL ALSO BE ALLOWED.”

x x x

Sec 3. Section 17 (a) is also amended to read as follows:

"Sec. 17. Form and Contents of Bidding Documents. – The Bidding Documents shall be prepared by the Procuring Entity following the standard forms and manuals prescribed by the GPPB. The Bidding Documents shall include the following:

- (a) Approved Budget for the Contract, EXCEPT IN CASES WHERE IT CANNOT BE CALCULATED IN ADVANCE DUE TO THE NOVELTY OF THE ITEMS OR THE HIDDEN/UNEXPECTED COSTS".

x x x

Sec. 4. Section 18 is amended to read as follows:

"Sec. 18. Reference to Brand Names. – Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed, EXCEPT FOR HIGHLY SPECIALIZED OPERATIONS OR PATENTED TECHNOLOGIES OR ORIGINAL EQUIPMENT MANUFACTURER (OEM)."

x x x

Sec 5. A new section after Section 24 is hereby inserted to read as follows:

"Sec. 25. Pre-bid Eligibility Submission and Screening – The BAC may allow eligibility submission and screening prior to the bidding.

Sec. 6. Section 27 is hereby amended by inserting a second paragraph to read as follows:

"BID SECURITIES SHALL BE REQUIRED ONLY FOR THE BIDDING OF PROJECTS BEYOND TEN MILLION PESOS (P10,000,000.00)".

x x x

Sec. 7. Section 36 is hereby amended to read as follows:

"Sec. 36. Single Calculated/Rated and Responsive Bid Submission. - "AFTER FINANCIAL BID NEGOTIATION, AN AWARD MAY BE CONSIDERED IN FAVOR OF A SINGLE CALCULATED/RATED AND RESPONSIVE BIDDER IF IT FALLS UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

- (A) IF AFTER TWO FAILED BIDDINGS AS PROVIDED FOR UNDER SECTION 41(B), STILL ONLY ONE AND THE SAME PROSPECTIVE BIDDER SUBMITS A LETTER OF INTENT AND/OR APPLIES FOR ELIGIBILITY CHECK, WHO MEETS THE ELIGIBILITY CRITERIA REQUIREMENTS AND AFTER WHICH IT SUBMITS A BID, WHICH IS FOUND TO BE RESPONSIVE TO THE BIDDING REQUIREMENTS.

x x x

Sec. 8. Section 41 is hereby amended to read as follows:

"Sec. 41. Reservation Clause – The Head of the Agency reserves the right to reject any and all Bids, declare a failure of bidding, or not award the contract in the following situations:

- (a) If there is a prima facie evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidders and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- (b) IF THERE IS ONLY ONE PARTICIPATING BIDDER;

x x x

Sec. 9. Section 49 is amended by inserting a new item (c) as follows:

"(c) PROCUREMENT FOR SPECIALIZED TYPES OF SERVICES WHERE LOCAL EXPERTISE AND TECHNOLOGY IS LIMITED ONLY TO A FEW CONTRACTORS WITH KNOWN EXPERIENCE AND CAPABILITY".

x x x

Sec. 10. Section 50 is amended by inserting new items (d) and (e) as follows:

"D) THE LABOR COMPONENTS OF SOCIAL PROJECTS INCLUDED AS PART OF BENEFITS TO HOST COMMUNITIES, AS DEFINED UNDER REPUBLIC ACT NO. 7160 OR THE LOCAL GOVERNMENT CODE, SHALL BE DIRECTLY AWARDED TO THE RESIDENTS OF SUCH HOST COMMUNITIES, PROVIDED, THAT THE MATERIAL COMPONENTS OF SUCH PROJECTS SHALL BE UNDERTAKEN THROUGH PUBLIC BIDDING IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT AND ITS IRR; AND

E) FOR PROJECTS WHICH ARE PATENTED AND/OR COVERED BY INTELLECTUAL PROPERTY RIGHTS, HIGHLY CONFIDENTIAL, EXCLUSIVE TECHNOLOGIES, CORPORATE SOCIAL RESPONSIBILITY PROJECTS, IMMINENT LOSS OF BUSINESS OPPORTUNITY AND IMMINENT OPERATIONAL LOSS OR DAMAGE."

x x x

Sec. 11. Section 51 (d) is amended to read as follows:

"Sec. 51. Repeat Order – xxx

- (a) xxx
- (b) xxx
- (c) xxx
- (d) The repeat order shall not exceed twenty-five percent (25%) Of the quantity of each item of the original contract, PROVIDED, THAT THE CEILING SHALL NOT APPLY TO PROCUREMENTS WHICH ARE BY NATURE HIGHLY CONFIDENTIAL, HIGHLY TECHNICAL, SECURITY-RISK CONCERNS, SPECIALIZED OPERATIONS INVOLVING TECHNICAL EXCLUSIVITY CONCERNS OR WHERE THE ADDITIONAL SCOPE OF WORK IS CONTINUOUS OR INSEPARABLE FROM THE ORIGINAL PROJECT; PROVIDED, FINALLY, THAT THE APPROVAL OF THE HEAD OF PROCURING ENTITY SHALL BE SECURED."

x x x

Sec. 12. Section 52 is amended by inserting new items (c) and (d) before the last paragraph to read as follows:

"Sec. 52. Shopping. – Shopping may be resorted to under any of the following instances:

- (a) xxx
- (b) xxx
- (C) FOR SERVICES WHERE THE VALUE DOES NOT EXCEED TEN MILLION PESOS (P10,000,000.00)", AND
- (D) IN THE CASE OF GOODS, IT SHOULD BE ALLOWED FOR PROCUREMENTS UP TO TEN MILLION PESOS (P10,000,000.00)"

x x x

Sec. 13. Section 53 is amended by inserting new items after (e) to read as follows:

"Sec. 53. Negotiated Procurement – Negotiated Procurement shall be allowed only in the following instances:

- (a) xxx

- (b) xxx
- (c) xxx
- (d) xxx
- (e) xxx

- (E) IN THE CASE OF REVENUE GENERATING ENTITIES OR WHERE THE PROCURING ENTITY IS ACTING IN A PROPRIETARY CAPACITY, WHERE THE SUBJECT CONTRACTS, GOODS OR CONSULTING SERVICES ARE URGENTLY NEEDED TO PREVENT LOSS OF REVENUE AND/OR OPPORTUNITY TO COMPETE; AND
- (F) IN CASES WHERE THE PROJECTS ARE URGENT TO THE OPERATION OF THE ORGANIZATION AND MAY HAMPER THE DELIVERY OF BASIC SERVICES WHICH ARE VITAL TO THE GENERAL WELFARE.

Sec. 14. Section 63 is hereby amended to read as follows:

"Sec. 63. Organization and Functions. – A Government Procurement Policy Board (GPPB) is hereby established to: (a) protect national interest in all matter affecting public Procurement, having due regard to the country's regional and international obligations; (b) formula and amend, whenever, necessary, the IRR and the corresponding standards forms for Procurement; (C) GUIDED BY THE DECLARED POLICY AND PRINCIPLES HEREOF, DETERMINE AND ALLOW SPECIFIC PROCUREMENT PROCEDURES FOR EXTRAORDINARY PROCUREMENTS; (d) ensure that Procuring Entities regularly conduct Procurement training programs and prepare a procurement operations manual for all offices and agencies of government; and (e) conduct an annual review of the effectiveness of this Act and recommend any amendments thereto, as may be necessary.

x x x

Sec. 15. Repealing Clause. – All laws, decrees, orders and rules or regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 16. Separability Clause. – If, for any reason, any section or provision of this Act shall be declared unconstitutional or invalid, such other sections or provisions not affected thereby shall remain in full force and effect.

Sec. 17. Effectivity. – This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in a national newspaper of general circulation.

Approved,

A large, stylized handwritten signature in dark ink, consisting of a large loop followed by a series of connected strokes.