

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

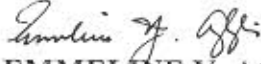
FIFTEENTH CONGRESS
First Regular Session

House Bill No. 4715

Introduced by **DIWA Party-list Representative Emmeline Y. Aglipay**

The inclusion of general support services, non-personal services, and contractual services under the term "Goods", and the concomitant application of the simpler bidding and eligibility requirements for goods, means that price is the only factor that the government can consider when it comes to biddings for the abovementioned services. This has created an untenable situation where service contractors cut legal corners--including undermining labor standards, particularly provisions on the minimum wage--in order to ensure they have the lowest possible calculated price.

It is unacceptable to have a bidding process wherein the most unscrupulous of employers has an institutionalized unfair advantage. This bill seeks to remedy this problem by reclassifying general support services, non-personal services, and contractual services under a new category, "Contractual Services", and applying to the said classification new bidding and eligibility requirements similar to those for Consulting Services, with particular emphasis on ensuring that compliance with labor laws must be taken into account in calculating ratings and determining the winning bidder.


EMMELINE Y. AGLIPAY
Representative, DIWA Party-list

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HOUSE BILL NO. 4715

Introduced by **DIWA Party-list Representative Emmeline Y. Aglipay**

**AN ACT AMENDING REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE
GOVERNMENT PROCUREMENT REFORM ACT**

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

SECTION 1. Section 4 of Republic Act No. 9184 is hereby amended to read as follows:

SECTION 4. - Scope and Application. — This Act shall apply to the Procurement of Infrastructure Projects, Goods, **CONTRACTUAL SERVICES**, and Consulting Services, 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 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.

SECTION 2. Section 5 of Republic Act No. 9184 is hereby amended to read as follows:

SECTION 5. Definition of Terms. — For purposes of this Act, the following terms or words and phrases shall mean or be understood as follows:

- (a) **Approved Budget for the Contract (ABC)** — refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act and/or continuing appropriations, in the case of National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O. No. 518, series of 1979, in the case of Government-Owned and/or Controlled Corporations, Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units.
- (b) **BAC** — refers to the Bids and Awards Committee established in accordance with Article V of this Act.
- (c) **Bidding Documents** — refer to documents issued by the Procuring Entity as the basis for Bids, furnishing all information necessary for a prospective bidder to prepare a bid for the Goods, Infrastructure Projects, **CONTRACTUAL SERVICES**, and Consulting Services to be provided.

(d) Bid — refers to a signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor or consultant in response to the Bidding Documents.

(e) Competitive Bidding — refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.

(f) Consulting Services — refer to services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies. SEIDAC

(G) CONTRACTUAL SERVICES — GENERAL SUPPORT SERVICES, EXCEPT CONSULTING SERVICES AND INFRASTRUCTURE PROJECTS, INCLUDING NON-PERSONAL OR CONTRACTUAL SERVICES SUCH AS THE REPAIR AND MAINTENANCE OF EQUIPMENT AND FURNITURE, AS WELL AS TRUCKING, HAULING, JANITORIAL, SECURITY, AND RELATED OR ANALOGOUS SERVICES.

(g) (h) G-EPS — refers to the Government Electronic Procurement System as provided in Section 8 of this Act.

(h) (i) Goods — refer to all items, supplies, ~~AND materials and general support services, except consulting services and infrastructure projects,~~ which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, ~~including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services,~~, as well as procurement of materials and supplies provided by the procuring entity for ~~such services~~ **CONTRACTUAL SERVICES.**

(i) (j) GPPB — refers to the Government Procurement Policy Board established in accordance with Article XX of this Act.

(j) (k) Head of the Procuring Entity — refers to: (i) the head of the agency or his duly authorized official, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned and/or -controlled corporations; or (iii) the local chief executive, for local government units. Provided, That in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency.

(k) (l) Infrastructure Projects — include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings and other related construction projects of the government.

(l) (m) IRR — refer to the implementing rules and regulations to be promulgated in accordance with Section 75 of this Act.

(m) (n) Portal — refers to a website that aggregates a wide variety of content for the purpose of attracting a large number of users.

(n) (o) Procurement — refers to the acquisition of Goods, **CONTRACTUAL SERVICES**, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes", and other applicable laws, rules and regulations.

(o) (p) Procuring Entity — refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units procuring Goods, Contractual Services, Consulting Services and Infrastructure Projects.

SECTION 3. Section 8 of Republic Act No. 9184 is hereby amended to read as follows:

SECTION 8. Procurement By Electronic Means. — To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Accordingly, there shall be a single portal that shall serve as the primary source of information on all government procurement. The G-EPS shall serve as the primary and definitive source of information on government procurement. Further, the GPPB is authorized to approve changes in the procurement process to adapt to improvements in modern technology, provided that such modifications are consistent with the provisions of Section 3 of this Act.

To take advantage of the significant built-in efficiencies of the G-EPS and the volume discounts inherent in bulk purchasing, all Procuring Entities shall utilize the G-EPS for the procurement of common supplies in accordance with the rules and procedures to be established by the GPPB. With regard to the procurement of non-common use items, infrastructure projects, **CONTRACTUAL SERVICES**, and consulting services, agencies may hire service providers to undertake their electronic procurement provided these service providers meet the minimum requirements set by the GPPB.

SECTION 4. Section 21(b) of Republic Act No. 9184 is hereby amended to read as follows:

(b) A general statement on the criteria to be used by the Procuring Entity for the eligibility check, the short listing of prospective bidders, in the case of the Procurement of **CONTRACTUAL AND Consulting Services**, the examination and evaluation of Bids, and post-qualification;

SECTION 5. Republic Act No. 9184 is hereby amended with the addition of a section 23-A, to read as follows:

SECTION 23-A. ELIGIBILITY REQUIREMENTS AND SHORT LISTING FOR CONTRACTUAL SERVICES. — **THE ELIGIBILITY OF PROSPECTIVE BIDDERS FOR THE PROCUREMENT OF CONTRACTUAL SERVICES SHALL BE DETERMINED BY THEIR COMPLIANCE WITH THE ELIGIBILITY REQUIREMENTS PRESCRIBED FOR THE COMPETITIVE BIDDING CONCERNED, WITHIN THE PERIOD STATED IN THE INVITATION TO BID. THE ELIGIBILITY REQUIREMENTS SHALL PROVIDE FOR FAIR AND EQUAL ACCESS TO ALL PROSPECTIVE BIDDERS. THE PROSPECTIVE**

BIDDER SHALL CERTIFY UNDER OATH AS TO THE CORRECTNESS OF THE STATEMENTS MADE, AND THE COMPLETENESS AND AUTHENTICITY OF THE DOCUMENTS SUBMITTED.

A PROSPECTIVE BIDDER MAY BE ALLOWED TO SUBMIT ELIGIBILITY REQUIREMENTS ELECTRONICALLY. HOWEVER, SAID BIDDER SHALL LATER ON CERTIFY UNDER OATH AS TO CORRECTNESS OF THE STATEMENTS MADE AND THE COMPLETENESS AND AUTHENTICITY OF THE DOCUMENTS SUBMITTED.

THE ELIGIBLE PROSPECTIVE BIDDERS SHALL THEN BE EVALUATED USING NUMERICAL RATINGS ON THE BASIS OF THE SHORT LISTING REQUIREMENTS PRESCRIBED FOR THE COMPETITIVE BIDDING CONCERNED, WITHIN THE PERIOD STATED IN THE INVITATION TO BID TO DETERMINE THE SHORT LIST OF BIDDERS WHO SHALL BE ALLOWED TO SUBMIT THEIR RESPECTIVE BIDS.

SECTION 6. Republic Act No. 9184 is hereby amended with the addition of a section 32-A, to read as follows:

SECTION 32-A. BID EVALUATION OF SHORT LISTED BIDDERS FOR CONTRACTUAL SERVICES. — FOR THE PROCUREMENT OF CONSULTING SERVICES, THE BIDS OF THE SHORT LISTED BIDDERS SHALL BE EVALUATED AND RANKED USING NUMERICAL RATINGS IN ACCORDANCE WITH THE EVALUATION CRITERIA STATED IN THE BIDDING DOCUMENTS, WHICH SHALL INCLUDE FACTORS SUCH AS, BUT NOT LIMITED TO, EXPERIENCE, PERFORMANCE, QUALITY OF PERSONNEL, PRICE, METHODOLOGY, AND ABILITY TO COMPLY WITH PERTINENT LABOR LAWS, INCLUDING MINIMUM WAGE. THE BIDS SHALL BE RANKED FROM HIGHEST TO LOWEST IN TERMS OF THEIR CORRESPONDING CALCULATED RATINGS. THE BID WITH THE HIGHEST CALCULATED RATING SHALL BE THE "HIGHEST RATED BID." AFTER APPROVAL BY THE HEAD OF THE PROCURING ENTITY OF THE HIGHEST RATED BID, THE BAC SHALL INVITE THE BIDDER CONCERNED FOR NEGOTIATION AND/OR CLARIFICATION ON THE FOLLOWING ITEMS: FINANCIAL PROPOSAL SUBMITTED BY THE BIDDER, TERMS OF REFERENCE, SCOPE OF SERVICES, METHODOLOGY AND WORK PROGRAM, PERSONNEL TO BE ASSIGNED TO THE JOB, SERVICES/FACILITIES/DATA TO BE PROVIDED BY THE PROCURING ENTITY CONCERNED, AND PROVISIONS OF THE CONTRACT. WHEN NEGOTIATIONS WITH THE FIRST-IN-RANK BIDDER FAILS, THE FINANCIAL PROPOSAL OF THE SECOND RANK BIDDER SHALL BE OPENED FOR NEGOTIATIONS: PROVIDED, THAT THE AMOUNT INDICATED IN THE FINANCIAL ENVELOPE SHALL BE MADE AS THE BASIS FOR NEGOTIATIONS AND THE TOTAL CONTRACT AMOUNT SHALL NOT EXCEED THE AMOUNT INDICATED IN THE ENVELOPE AND THE ABC. WHENEVER NECESSARY, THE SAME PROCESS SHALL BE REPEATED UNTIL THE BID IS AWARDED TO THE WINNING BIDDER.

SECTION 7. Section 34 of Republic Act No. 9184 is hereby amended to read as follows:

SECTION 34. Objective and Process of Post-qualification. — Post-qualification is the stage where the bidder with the Lowest Calculated Bid, in the case of Goods and Infrastructure Projects, or the Highest Rated Bid, in the case of **CONTRACTUAL SERVICES AND Consulting Services**, undergoes verification and validation whether he has passed all the requirements and conditions as specified in the Bidding Documents.

If the bidder with the Lowest Calculated Bid or Highest Rated Bid passes all the criteria for post-qualification, his Bid shall be considered the "Lowest Calculated Responsive Bid," in the case of Goods and Infrastructure or the "Highest Rated Responsive Bid," in the case of **CONTRACTUAL SERVICES AND Consulting Services**. However, if a bidder fails to meet any of the requirements or conditions, he shall be "post-disqualified" and the BAC shall conduct the post-qualification on the bidder with the second Lowest Calculated Bid or Highest Rated Bid. If the bidder with the second Lowest Calculated Bid or Highest Rated Bid is post-disqualified, the same procedure shall be repeated until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid is finally determined. SEIDAC

In all cases, the contract shall be awarded only to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

SECTION 8. REPEALING CLAUSE. - All laws, decrees, rules and regulations or parts thereof, which are contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 9. SEPARABILITY CLAUSE. - If any part or provision of this Act is declared unconstitutional, the remaining parts or provisions not affected shall remain in full force and effect.

SECTION 10. EFFECTIVITY CLAUSE. - This Act shall take effect fifteen (15) days from its publication in two (2) national newspapers of general circulation after its approval by the President.

Approved.