



Republic of the Philippines
House of Representatives
Constitution Hills, Quezon City

Fifteenth Congress
Second Regular Session

House Bill No. 4921

Introduced by **HON. ROMEO M. ACOP**

EXPLANATORY NOTE

Transparency constitutes a central pillar of any public procurement system, without which vast government resources channeled through public procurement run the danger of increased corruption and misuse of funds. Thus, Republic Act No. 9184, otherwise known as 'An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government', as amended, declares as its primordial guide the principle of transparency in the procurement process and in the implementation of procurement contracts.

Transparency in public procurement is about information. The access to key procurement information by stakeholders and how they use them directly enhances accountability. Transparency of decisions on contract awards ensures that decisions are taken strictly on the basis of evaluation criteria and technical specifications set out in advance and are applied objectively. Moreover, post-qualification information made available to tenderers who failed to win a bid is provided with the opportunity to ascertain that they had been treated equitably according to the criteria and requirements laid down in the tender documentation. These information should be made known and generally made available to interested parties through accessible sources such as the electronic media. Electronic media offer significant benefits in terms of both time and costs and have been shown to be increasingly used in the foreseeable future.

Republic Act No. 9184 further requires public monitoring of the procurement process to guarantee that contracts are awarded and performed in accordance with law. Under Section 13 of the law, civil society organizations are allowed to monitor all stages of the procurement process sitting as observers in the proceedings with the requirements that they must have knowledge of the sector or discipline relevant to the procurement at hand, and that they do not have interest in the contract to be bid out. However, the absence of observers during the

procurement proceedings do not nullify the proceedings. Hence, there is lack of compulsion to comply with a mandatory requirement of the law. This situation undermines the transparency of the proceedings.

Moreover, in the midst of rising incidents of illegal, irregular, wasteful and anomalous disbursements of public funds due to inadequacies of internal controls, there is a growing clamor for the re-institution of pre-audit mechanisms in selected government transactions, particularly in its procurement activities. The argument that pre-audit schemes will result in further delays that may unduly hamper implementation of urgent government projects must yield to the higher interest of protecting and conserving government resources and minimize losses from illegal expenditures in these hard times. In the case of government procurement, there is need for pre-audit of the financial components of bids tendered to determine compliance of these bids with existing laws and regulations, and whether the bids are not excessive and unconscionable and are supported by evidence. This way, errors are discovered early prior to awarding of contracts. Consequently, opportunities for corruption and incidents of wastage of public funds are greatly reduced if not eradicated.

This bill seeks to strengthen transparency in the government procurement process through :

- 1) The posting of the decisions of the Bids and Awards Committee (BAC) relative to criteria, ratings and calculations of bids, responsive or otherwise, on the procuring agency's website or that of the Government Procurement Policy Board (GPPB). By making such decisions public, anomalies in the bidding process are hoped to be reduced if not eradicated, and culpable parties can be identified when anomalies do occur;
- 2) The compulsory presence of BAC observers in the procurement process with their absence resulting to the nullification of the proceedings.
- 3) The requirement of pre-audit of all tendered bids prior to the determination of the winning bid and awarding of contract.

Transparency in government is about allowing the people to see and know how their taxes are spent, and what services are delivered to them. By making more information available to the public, government officials and agencies become more accountable for their actions and decisions. Greater accountability means less corruption and slippage of precious public funds.

For the foregoing reasons, the immediate passage of this bill is earnestly sought.


ATTY. ROMEO M. ACOP, MNSA
Representative
2nd District, Antipolo City



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AN ACT
TO FURTHER ENSURE TRANSPARENCY IN THE GOVERNMENT PROCUREMENT
BIDDING PROCESS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9184,
OTHERWISE KNOWN AS 'AN ACT PROVIDING FOR THE MODERNIZATION,
STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF
THE GOVERNMENT', AS AMENDED

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

SECTION 1. Section 13 of Republic Act No. 9184, otherwise known as 'An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government', as amended, is hereby amended to read as follows :

SECTION 13. Observers - To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization : *Provided, however, that they do not have any direct or indirect interest in the contract to be bid out: PROVIDED, FURTHER, THAT THE ABSENCE OF OBSERVERS SHALL NULLIFY THE PROCEEDINGS.*

The observers should be [duly registered with the Securities and Exchange Commission] **MEMBERS IN GOOD STANDING OF THE SECTOR, DISCIPLINE OR NON-GOVERNMENT ORGANIZATION THEY REPRESENT AS DULY CERTIFIED BY THEIR PRESIDENT OR CHAIRPERSON AS THE CASE MAY BE**, and should meet the criteria for observers as set forth in the IRR.

SECTION 2. Section 32 of Republic Act No. 9184 is hereby amended to read as follows :

SECTION 32. *Bid for the Procurement of Goods and Infrastructure Projects* – For the procurement of Goods and Infrastructure Projects, the BAC shall evaluate the financial component of the bids: **PROVIDED, THAT SUCH FINANCIAL COMPONENT OF THE BIDS AND THEIR INDIVIDUAL ITEMS SHALL BE SUBJECT TO PRE-AUDIT BY THE COMMISSION ON AUDIT.** The bids that passed the preliminary examination shall be ranked from lowest to highest in terms of their corresponding calculated price shall be referred to as the 'Lowest Calculated Bid'.

SECTION 3. Section 34 of Republic Act No. 9184 is hereby amended to read as follows :

SECTION 34. *Objective and Process of Post-Qualification; TRANSPARENCY* – 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 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 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 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.

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

PROVIDED, THAT THE CALCULATED RATINGS, BID PRICES OF ALL BIDDERS, INCLUDING THE RATINGS GIVEN TO EACH OF THEM BY EACH MEMBER OF THE BAC, SHALL BE POSTED IN THE PROCURING ENTITY'S WEBSITE OR THAT OF THE GOVERNMENT PROCUREMENT POLICY BOARD (GPPB) FROM THE END OF EVALUATION TO SIXTY (60) DAYS AFTER AWARD OF CONTRACT. ALL BIDDERS SHALL INCLUDE ALL

THOSE WHO SUBMITTED BIDS REGARDLESS OF COMPLETENESS OF REQUIREMENTS AND RESPONSIVENESS.

SECTION 4. *Implementing Rules and Regulations* - The Government Procurement Policy Board (GPPB), jointly with the members of the Oversight Committee, shall formulate and issue the necessary rules and regulations within sixty (60) days from the effectivity of this Act, and shall be approved by the President of the Philippines.

SECTION 5. *Separability Clause* - If, for any reason, any section or provision of this Act is declared unconstitutional or invalid, such parts not affected thereby shall remain in full force and effect.

SECTION 6. *Repealing Clause* - All laws, executive orders, issuances, rules and regulations or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed or repealed accordingly.

SECTION 7. *Effectivity Clause* - This Act shall take effect upon its complete publication in at least two (2) newspapers of general circulation.

Approved.