

Fifteenth Congress
Second Regular Session

House Bill No. 4973



Introduced by Honorable Karlo A.B. Nograles

EXPLANATORY NOTE

This bill seeks to provide for safety nets against arbitrary selection of final bidders for goods, infrastructure projects and consulting services during the preliminary examination of bids, amending for the purpose Republic Act (RA) No. 9184, otherwise known as the "*Government Procurement Reform Act*."

RA 9184 has some very serious flaws and omissions which make it difficult for the government to be cost-effective.

As proposed, the arbitrary "pass/fail" scheme to determine the presence of the required documents during the preliminary examination of the technical components of the bids under Section 30 is deleted. Instead, to temper any tinge of arbitrariness, all bids are ranked from the highest to lowest after the preliminary examination of the technical components.

The case of the lone bidder, as allowed by under Section 36, for the procurement of goods, infrastructure projects or consulting services should be nixed as this does not promote competitiveness. Moreover, it encourages collusive schemes and makes it easy for crooks in government to rig bids and maximize bribes. Worse, the combination of Section 36 and the irrelevant pass-or-fail criteria of Section 30 makes it possible for unscrupulous government agencies to qualify the preferred bidders and eliminate all other bidders. This bill, thus, proposes that the minimum number of bidders be increased to at least two.

RA 9184 would have saved the country billions of pesos each year but it has actually made it difficult for honest government agencies to make cost-effective procurement decisions. If we really want good governance, we should hasten the refinements of this procurement reform law.

In view of the foregoing, approval of this bill is earnestly sought.

A handwritten signature in black ink, consisting of a series of connected, wavy, and somewhat vertical strokes, resembling a stylized 'K' followed by several 'm'-like shapes.

KARLO A. B. NOGRALES

Fifteenth Congress
First Regular Session

HOUSE BILL NO. 4973

Introduced by Honorable Karlo A. B. Nograles

AN ACT
PROVIDING FOR SAFETY NETS AGAINST ARBITRARY SELECTION
OF FINAL BIDDERS FOR GOODS, INFRASTRUCTURE PROJECTS AND
CONSULTING SERVICES DURING THE PRELIMINARY
EXAMINATION OF BIDS, AMENDING FOR THE PURPOSE REPUBLIC
ACT NO. 9184, OTHERWISE KNOWN AS THE "GOVERNMENT
PROCUREMENT REFORM ACT"

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

SECTION 1. Section 30 of Republic Act No. 9184 is hereby amended
to read as follows:

"Sec. 30. *Preliminary Examination of Bids.* – Prior to bid
evaluation, the BAC shall examine first the technical components of
the bids [using "pass/fail" criteria] AND RANK THEM FROM
HIGHEST TO LOWEST to determine whether all required
documents are present. Only bids that are determined to contain all

the bid requirements of the technical component shall be considered for opening and evaluation of their financial component.”

SEC. 2. Section 32 of the same Act is hereby amended to read as follows:

“Sec. 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. The bids that passed the preliminary examination shall be ranked from lowest to highest in terms of their corresponding calculated prices. The Bid with the lowest calculated price shall be referred to as the “*Lowest Calculated Bid.*”

SEC. 3. Section 33 of the same Act is hereby amended to read as follows:

“Sec. 33. *Bid Evaluation of Short Listed Bidders for Consulting Services AND INFRASTRUCTURE PROJECTS.* – For the Procurement of Consulting Services AND INFRASTRUCTURE PROJECTS, 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 and methodology. The Bids shall be ranked from highest to lowest in terms of their corresponding calculated ratings AND COST EFFECTIVENESS. The Bid with the highest calculated ratings AND COST EFFECTIVENESS 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."

SEC. 4. Section 36 of the same Act is hereby amended to read as follows:

“Sec. 36. *[Single] Calculated/Rated and Responsive Bid Submission.* – [A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:

(a) If after advertisement, only one prospective bidder submits a Letter of Intent and/or applies for eligibility check, and meets the eligibility requirements or criteria, after which it submits a bid, which is found to be responsive to the bidding requirements;

(b) If after advertisement, more than one prospective bidder applies for eligibility check, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements; or

(c) If after the eligibility check, more than one bidder meets the eligibility requirements, but only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements.]

AFTER ADVERTISEMENT, BIDDING SHALL PROCEED ONLY IF AT LEAST TWO BIDDERS SUBMIT LETTERS OF INTENT, APPLY FOR ELIGIBILITY CHECK, MEET THE ELIGIBILITY REQUIREMENTS AND ARE FOUND TO BE RESPONSIVE TO THE BIDDING REQUIREMENTS.

In all instances, the Procuring Entity shall ensure that the ABC reflects the most advantageous prevailing price for the government."

SEC. 5. This Act shall take effect fifteen (15) days after publication in the *Official Gazette* or in two (2) national newspapers of general circulation.

Approved,