

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

FIFTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 5366



Introduced by **ATTY. MAGTANGGOL T. GUNIGUNDO I**

EXPLANATORY NOTE

The main thrust of this bill is to improve the procurement system by requiring a 3rd party to help evaluate the eligibility of bidders and technical specifications imposed by the bid documents prepared by the Project Management Team (PMT), and the compliance of the bid with said technical specifications. The 3rd party acts as a check and balance of the Bids and Awards Committee (BAC) - PMT in the Department of National Defense (DND), Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP).

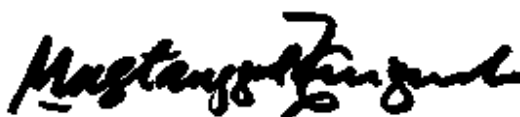
In the procurement of sophisticated air, army and naval assets including weaponry and radio communication and Information Technology (IT) equipment, technical specifications are not easily comprehensible by laymen. The PMT who wrote the bid specifications and eligibility requirements are usually headed by a senior or ranking officer who can easily influence junior officers of the PMT who are forced into silence in the evaluation of the technical specifications of the items being offered in the bidding. The collegiality of the decisions of PMT is jeopardized. The presence of observers who have no technical expertise do not deter the senior officer of PMT from imposing on junior officers.

The presence of a third party with the necessary technical expertise will stop the practice of senior ranking officers in the BAC-PMT from imposing their preferences on junior officers. The BAC-PMT can now arrive at collegial decision in its truest sense.

"Third Party" can be any competent academic institution (preferably a state university or college) or another government agency that is not part of the organizational structure of the procuring entity. The Government Procurement Policy Board (GPPB) shall be mandated to draw up the list of third parties and tap said third party.

Also, by this amendment, we can enhance transparency in the bidding process and rectify the situation where the aggrieved bidder resorts to court proceedings to question the bidding process and thereby slow down the AFP Modernization Program.

Immediate approval of this bill is earnestly sought.


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AN ACT
STRENGTHENING THE BIDDING PROCESS BY AMENDING ARTICLE
V OF REPUBLIC ACT 9184 OR THE GOVERNMENT PROCUREMENT
REFORM ACT, AND FOR OTHER PURPOSES

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

Section 1. Short Title. – This Act shall be known as “*Bidding Process Strengthening Act of 2011*”.

Section 2. Article V (Bids and Awards Committee) is hereby amended to read as follows:

ARTICLE V
BIDS AND AWARDS COMMITTEE

Section 11. The BAC and its Composition.– Each procuring entity shall establish a single BAC for its procurement. The BAC shall have at least five (5) members, but not more than seven (7) members. It shall be chaired by at least a third ranking permanent official of the procuring entity other than its head, and its composition shall be specified in the IRR. Alternatively, as may be deemed fit by the head of the procuring entity, there may be separate BACs where the number and complexity of the items to be procured shall so warrant. Similar BACs for decentralized and lower level offices may be formed when deemed necessary by the head of the procuring entity. The numbers of the BAC shall be designated by the Head of Procuring Entity. However, in no case shall the approving authority be a member of the BAC.

Unless sooner removed for cause, the members of the BAC shall have a fixed term of one (1) year reckoned from the date of appointment, renewable at the discretion of the Head of the Procuring Entity. In case of resignation, retirement, separation, transfer, re-assignment, removal, the replacement shall serve only for the unexpired term: Provided, That in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension. For justifiable causes, a member shall be suspended or removed by the Head of the Procuring Entity.

Section 11-A. Third Party to Conduct Evaluation of the Procurement of Armed Forces of the Philippines (AFP) and Philippine National Police (PNP) Highly Technical Equipment. – The AFP and PNP, in procuring sophisticated air, army and naval assets including weaponry, radio communication equipment and the like, shall ensure

that a third party, possessing the necessary technical knowledge shall be appointed to conduct evaluation of the eligibility requirements and technical specifications found in the bid documents prepared by the PMT.

The third party will come from either a recognized academic institution or from a government office that is not part of the organizational structure of the procuring entity.

The Head of the Procuring Entity shall choose the Third Party from a list of candidates to be provided by the Government Procurement Policy Board (GPPB).

Section 12. Functions of the BAC.- shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: Provided, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

Section 12-A. Functions of the Third Party - The Third Party shall ensure that the writing of the technical specifications are clear and unbiased not favoring any specific supplier, manufacturer or even a brand.

The Third Party shall evaluate the bidders' compliance with the technical specifications as imposed by the bid documents and give advice and recommendation accordingly.

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. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

Section 14. *BAC Secretariat.*- To assist the BAC in the conduct of its functions, the Head of the Procuring Entity shall create a Secretariat that will serve as the main support unit of the BAC. The Head of the Procuring Entity may also designate an existing organic office within the agency to serve as the Secretariat.

Section 15. *Honoraria of BAC Members* - The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the Department of Budget and Management (DBM) shall promulgate the necessary guidelines.

Section 16. *Professionalization of BAC, BAC Secretariat and Technical Working Group Members.*- The GPPB shall establish a sustained training program for developing the capacity of the BAC's, BAC Secretariats and technical Working Groups of Procuring Entities, and professionalize the same.

Section 3. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations, implementing rules and regulations or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

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

Approved,