

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. 6612



Introduced by Hon. ANGELO B. PALMONES

EXPLANATORY NOTE

The objectives of the Government Procurement Reform Act (RA No. 9184) are to promote transparency in the procurement process, competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding, and establish a procurement process that will uniformly apply to all government procurement. Despite the Procurement Reform Act there are still many alleged irregularities in the procurement process. Only recently the procurement of guns by the Philippine National Police came under scrutiny by the Senate' Committee on Peace and Security.

Among the issues that surfaced during the Senate inquiry is the alleged attendance of persons as observers despite the fact that under Section 13 of RA No. 9184 has specific definition of who are observers. The purpose of the specification of observers under the Act is to reduce if not entirely eliminate undue influence on the procurement process by various interested parties.

RA No. 9184 does not penalize violation of the provisions on observers. To eliminate violations of this provision it should be penalized.

One other instance where transparency in the bidding process is violated is in the Post Qualification. Winning bidders can be disqualified for the flimsiest reasons even after

submitting the winning bid in order to favor a losing bidder. To eliminate this process all bidders should have qualified with all the requirements and conditions even before the bids are opened. This way a winning bidder would have satisfied all requirements and need not undergo a post-qualification evaluation and validation.

To prevent or reduce anomalous government transactions in bidding it is urged that this bill be enacted as soon as possible.



ANGELO B. PALMONES
Representative, AGHAM Party List

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AN ACT AMENDING REPUBLIC ACT NO. 9184 OTHERWISE KNOWN AS "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES"

Section 1. Observers - Section 32 of RA No. 9184 shall be amended as follows:

SEC. 32. *Bid for the Procurement of Goods and Infrastructure Projects.* - For the procurement of Goods and Infrastructure Projects, **AND PRIOR TO THE EVALUATION OF THE FINANCIAL COMPONENTS OF THE BIDS THE BAC SHALL EVALUATE ALL THE REQUIREMENTS AND CONDITIONS NECESSARY TO EFFECT A CONTRACT OF ALL BIDDERS TO ELIMINATE THE NECESSITY OF CONDUCTING A POST-QUALIFICATION EVALUATION. BEFORE THE OPENING OF THE BIDS, ALL BIDDERS SHALL HAVE SATISFIED ALL THE REQUIREMENTS FOR A CONTRACT. SHOULD THERE BE ANY TESTS TO BE MADE THEY SHOULD BE DONE AS PART OF THE PREQUALIFICATION PRIOR TO BIDDING. TRACK RECORDS OF BIDDERS SHALL SOLELY BE BASED ON THE BIDDERS' PARTICIPATION AND NOT ON MOTHER COMPANIES. FOR JOINT VENTURES, THEIR TRACK RECORD SHALL BE BASED ON THEIR INDIVIDUAL OR JOINT RECORDS**

AND NOT ON MOTHER COMPANIES OR ANY THIRD PARTY TRACK RECORD.

BIDDERS' PAID-UP CAPITAL SHOULD NOT BE LESS THAN FORTY-PERCENT (40%) OF THE TOTAL VALUE OF THE CONTRACT.

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."

Section 2. Bid evaluation of Short Listed Bidders for Consulting Services –
Section 33 of RA No. 9184 is likewise amended as follows:

SEC. 33. *Bid Evaluation of Short Listed Bidders for Consulting Services.* –
LIKEWISE for the Procurement of Consulting Services, **THE BAC SHALL EVALUATE ALL THE REQUIREMENTS NECESSARY TO EFFECT A CONTRACT OF ALL BIDDERS TO ELIMINATE THE NECESSITY OF CONDUCTING A POST-QUALIFICATION EVALUATION. BEFORE THE OPENING OF THE BIDS, ALL BIDDERS SHALL HAVE SATISFIED ALL THE REQUIREMENTS FOR A CONTRACT.**

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. 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 3. Post-qualification – Section 34 of RA No. 9184 is hereby amended as follows:

SEC. 34. POST-QUALIFICATION – SINCE PRIOR TO THE OPENING OF THE BID DOCUMENTS ALL THE QUALIFIED BIDDERS HAVE ALREADY SATISFIED ALL THE REQUIREMENTS AND CONDITIONS AS SPECIFIED IN THE BIDDING DOCUMENTS THERE IS THEREFORE NO NEED FOR A POST-QUALIFICATION OR VERIFICATION AND VALIDATION OF THE BIDDERS.

The bidder with the Lowest Calculated Bid or Highest Rated Bid

X X X X X X X X X X X X X 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.

Section 5. Assistance from the Government Procurement and Policy Board (GPPB) – Should there be a request from any BAC for technical assistance from the GPPB, a representative should be provided but his/her role should only be that as adviser on technical matters.

Section 4. Failure to Enter into Contract and Post Performance Security – Section 40 of RA No. 9184 is hereby amended as follows:

SEC. 40. *Failure to Enter into Contract and Post Performance Security.* – If, for justifiable causes, the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid X X X X refuses or is otherwise unable to enter into contract with the Procuring Entity, or if the bidder fails to post the required performance security within the period stipulated in the Bidding Documents, the BAC shall disqualify the said bidder and shall **CONSIDER** the next-ranked Lowest Calculated Bid or Highest Rated Bid. This procedure shall be repeated until an award is made. However, if no award is possible, the contract shall be subjected to a new bidding. In the case of a failure to post the required performance security, the bid security shall be forfeited without prejudice to the imposition of sanctions prescribed under Article XXIII.

Section 5. Offenses and Penalties – Section 65 of RA No. 9184 is amended as follows:

SEC. 65. *Offenses and Penalties.*

(a) Without prejudice to the provisions of Republic Act No. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act” and other penal laws, public officers who commit any of the following acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years:

- (1) Open any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.
- (2) Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in the IRR.

(3) Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take a particular action which favors, or tends to favor a particular bidder.

(4) Splitting of contracts which exceed procedural purchase limits and competitive bidding.

(5) When the head of the agency abuses the exercise of his power to reject any and all bids as mentioned under Section 41 of this Act with manifest preference to any bidder who is closely related to him in accordance with Section 47 of this Act. When any of the foregoing acts is done in collusion with private individuals, the private individuals shall likewise be liable for the offense. In addition, the public officer involved shall also suffer the penalty of temporary disqualification from public office, while the private individual shall be permanently disqualified from transacting business with the Government.

(6) WHEN THE BAC ALLOWS OBSERVERS OUTSIDE OF THOSE ALLOWED IN SECTION 13 OF THIS ACT.

(b) Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

(1) When two or more bidders agree and submit different Bids as if they were bona fide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the prearranged lowest Bid.

(2) When a bidder maliciously submits different Bids through two or more persons, corporations, partnerships or any other business entity in which he has interest to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.

(3) When two or more bidders enter into an agreement which call upon one to refrain from bidding for Procurement contracts, or which call for withdrawal of Bids already submitted, or which are otherwise intended to secure an undue advantage to any one of them.

(4) When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public. In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the Government.

(5) WHEN A PERSON OR PERSONS ARE ALLOWED ATTEND AS OBSERVERS WITHOUT THE NECESSARY QUALIFICATIONS AS PROVIDED FOR IN SECTION 13 OF THIS ACT.

(c) Private individuals who commit any of the following acts, and any public officer conspiring with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

(1) Submit eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.

(2) Submit Bidding Documents of whatever kind and nature that contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.

(3) Participate in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.

(4) Withdraw a Bid, after it shall have qualified as the Lowest Calculated Bid/ Highest Rated Bid, or refuse to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but

not limited to, performance security, preparatory to the final award of the contract.

(d) When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts.

SECTION 6. Implementing rules and regulations – The Government Procurement and Policy Board (GPPB) shall issue within 90 days from the date of approval of this Act, the implementing rules and regulations for this Act.

SECTION 7. Separability clause - Any portion or provision of this Act which may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provisions hereof.

SECTION 8. Repealing Clause. - All other laws, executive orders, administrative orders, circulars, ordinances, rules, regulations, and other issuances or parts thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

SECTION 9. Effectivity Clause - This Act shall take effect immediately after its publication in two (2) Newspapers of general circulation.

Approved.