

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SIXTEENTH CONGRESS
First Regular Session

148

Introduced By: HON. FRANCIS GERALD AGUINALDO ABAYA

EXPLANATORY NOTE

Republic Act 9184, otherwise known as the "Government Procurement Reform Act", dated January 10, 2003 was enacted primarily to eradicate graft and corruption in the government procurement system. The law likewise aims to minimize wastage and thus maximize utilization of our government's meager resources.

The passage of RA 9184 was hailed as a milestone that marked our government's commitment to reform public procurement. It was even described as "one of the best in the world" by Joachim von Amsberg, World Bank Country Director for the Philippines and the East Asia and Pacific Region, during a televised round table discussion with PGMA, as published in the August 11, 2006 issue of *The Philippine Star*.

Section 4 of RA 9184 states that "Scope and Application - This Act shall apply to the Procurement of Infrastructure Projects, Goods 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 respected." The intent of the law is very clear - to bring within its scope both domestically-funded and foreign-funded projects.

Section 31 of RA 9184 provides that the Approved Budget for the Contract (ABC) shall be the upper limit or ceiling for bid prices, and that bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. This provision is intended to prevent the government from entering into highly onerous and overpriced contracts and, consequently reduce opportunities for graft and corruption. Unfortunately, while this particular provision is being strictly enforced as regard domestically-funded projects, the same is not true with foreign-funded ones.

Foreign lending institutions, however, claim that projects which they have funded through a loan agreement are exempt from the coverage of the law by invoking the provision under Section 4 which states that ***"Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine Government is a signatory shall be respected."***

The above-cited provision speaks of any treaty or international or executive agreement which the Philippine Government is already a signatory. It does not refer to those which the Philippine Government will enter into subsequent to the enactment of RA 9184. Thus, assuming for the sake of argument that loan agreements partake of the nature of international or executive agreement, only those loan agreements entered into prior to the passage of RA 9184 are exempt from its coverage and not those which the government will contract after the effectivity of the law.

The Department of Justice (DOJ) just recently declared that the National Broadband Network (NBN) project is valid and thus exempted from the coverage of RA 9184 based on the interpretation that loan agreements partake of the nature of international or executive agreement and that it applies even to loan agreements contracted after the enactment of the said law. In view of this development, a similar opinion could be expected as regards the Cyber Education Project (CEP) and other future projects that will be contracted by the government.

Exempting foreign-funded projects from the coverage of RA 9184, particularly in allowing bids or tenders over and above the Approved Budget for the Contract (ABC), would defeat the purpose and the spirit behind its enactment. There would be no genuine reform to speak of and the government procurement system will remain graft ridden. Moreover, it will amount to unnecessary wastage of government resources.

This bill seeks to remove any ambiguity in the interpretation of the scope and application of RA 9184 by amending Section 4 thereof to make it very clear that it applies to all government procurement activities, regardless of source of funds, whether local or foreign, and that only treaties or international or executive agreements entered into by the government prior to its enactment shall be exempt from its coverage.

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


FRANCIS GERALD AGUINALDO ABAYA
Representative, First District, Cavite

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AN ACT
AMENDING SECTION 4 OF REPUBLIC ACT 9184, OTHERWISE
KNOWN AS THE "GOVERNMENT PROCUREMENT REFORM ACT."

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

Section 1. Section 4 (Scope and Application) of Republic Act 9184 shall be amended to read as follows:

"Section 4. Scope and Application – This Act shall apply to the Procurement of Infrastructure Projects, Goods 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] ENTERED INTO BY the Philippine Government [is a signatory] BEFORE THE PASSAGE OF THIS ACT shall be respected."

Section 2. Effectivity Clause – This Act shall take effect fifteen (15) days after its publication in at least two (2) national papers of general circulation.

Approved.