



Republic of the Philippines
House of Representatives
Quezon City, Metro Manila

Sixteenth Congress

First Regular Session

House Bill No. 3110



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

EXPLANATORY NOTE

Republic Act No. 9184, otherwise known as the 'Government Procurement Reform Act', was enacted into law in 2003 to curb, if not completely eradicate graft and corruption in the government's procurement system, and instead, instill the ideals of good governance. It was envisioned that wastage of scarce public funds will be minimized and their use maximized for the common good. Likewise, the law upholds the principles of transparency and accountability as primordial beacons in the implementation of government procurement contracts. But in the passage of time, loopholes in the law have been identified that need remedial measures.

Section 4 of the law brings within its scope both domestically and foreign-funded projects. However, foreign lending institutions claim exemption from the ambit of the law citing the same section which partly 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'*. While there is a point of view which construes the provision as applicable only to those loans entered into prior to the passage of RA 9184, the recent declaration of the Department of Justice (DOJ) that the National Broadband Network (NBN) Project contracted with a Chinese corporation is exempted from the coverage of RA 9184 is rather disturbing. The project, a highly controversial one, has been labelled as tainted with official corruption and was later scrapped by the

government. To exempt foreign-funded projects from the coverage of RA 9184 would defeat the purpose and spirit behind the enactment of the law. Thus, the need to remove any ambiguity in the interpretation of the law. This bill provides that in such cases, the parties shall apply, as first option, the provisions of the Act, and should a foreign government or international financing institution waives the application of the law and insists on another option, it shall explain its reasons in writing and commit to review its position at regular intervals.

RA 9184 further requires public monitoring of the procurement process to promote transparency. Under Section 13 of the law, representatives of civil society organizations with knowledge on the subject matter of the procurement at hand are allowed to observe the proceedings. However, the absence of observers in the process does not nullify the proceedings which undermines transparency. This bill requires the compulsory presence of BAC observers in the procurement process with their absence resulting to the nullification of the proceedings.

To promote transparency, competitiveness and accountability in all procurements of the government, the general rule is for the conduct of public bidding as laid down in RA 9184. But in order to grant the government flexibility in exceptional circumstances such as during a state of calamity, the law provides for alternative methods of procurement by which public bidding is dispensed with to expedite the process and serve higher public interests and concerns, among them is the negotiated procurement mode. There are other circumstances which may be considered 'exceptional' but not covered by the present law.

This measure seeks to exempt the purchases of military and police equipment, as well as directly related works and services from the requirement of a public bidding and having the same covered under the provision of negotiated procurement under Section 53 of RA 9184. The rationale being the nature of these purchases are impressed with national security and public order significance. For example, in the purchase of firearms, it is of paramount importance to the government that it is able to acquire the most technically superior brands available in the market to enhance the combat capabilities of its security forces. However, public bidding often results to the acquisition of lower quality products as their manufacturers are able to offer lower and oftentimes winning bids. The government is left to content itself while national security and public order may have been compromised. Such is an exceptional circumstance.

Unfortunately, many government officials abuse such leeway and engage in anomalous or irregular transactions. This measure lays down limitations on the availment of a negotiated contract to reduce, if not end such abuses. Some of the

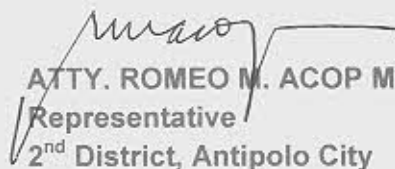
conditions set in the bill have been incorporated in the law's implementing rules and regulations but are proposed for legislation to reinforce the same.

Further, the measure proposes that the limitation on reference to brand names when specifying procurement of goods be qualified by allowing its use but with the addition of the phrase 'or equivalent' and with the observance of other conditions laid down therein.

Finally, the bill provides that the decisions of the Bids and Awards Committee (BAC) and the Procuring Entity in all stages of the procurement may be protested to the Government Procurement Policy Board (GPPB).

These amendments to RA 9184 are aimed at ensuring and promoting greater accountability, transparency and efficiency in the government's procurement system. In implementation, it is hoped that every agency of the government will be strengthened, corruption reduced and bidders are placed in a more competitive environment in the conduct of their legitimate business.

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


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AN ACT
AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 9184, OTHERWISE
KNOWN AS THE 'GOVERNMENT PROCUREMENT REFORM ACT'

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

SECTION 1. Section 4 of Republic Act No. 9184, otherwise known as the 'Government Procurement Reform Act', is hereby 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 the Philippine government is a signatory shall be observed. **PARTIES TO SAID AGREEMENT ARE ENJOINED TO APPLY, AS A FIRST OPTION, THE PROVISIONS OF THIS ACT, FOR ANY PROCUREMENT THAT MAY ARISE THEREFROM. SHOULD THE FOREIGN GOVERNMENT OR INTERNATIONAL**

FINANCING INSTITUTION WAIVE THE APPLICATION OF THIS ACT AND INSIST ON USING ANOTHER OPTION, THEY SHALL EXPLAIN IN WRITING THE REASONS THEREFOR AND COMMIT TO REVIEW THEIR POSITIONS AT REGULAR INTERVALS.

SECTION 2. Section 13 of Republic Act No. 9184 is hereby amended to read as follows :

SECTION 13. *Observers* - To ensure 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 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 ANY OF THE OBSERVERS, INCLUDING THE REPRESENTATIVE OF THE COMMISSION ON AUDIT, 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 3. Section 18 of Republic Act No. 9184 is hereby amended to read as follows :

SECTION 18. *Reference to Brand Names* - Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed [.] **EXCEPT IN THE FOLLOWING INSTANCES :**

- A) WHEN REFERENCE TO BRAND NAME IS NECESSARY TO CLARIFY AN OTHERWISE INCOMPLETE SPECIFICATION; OR,**
- B) IF IT HAS BEEN DETERMINED THAT A DEGREE OF STANDARDIZATION IS NECESSARY IN ORDER TO ENSURE CONTINUITY FOR CERTAIN ESSENTIAL FEATURES.**

IN THESE INSTANCES, THE WORDS 'OR EQUIVALENT' SHALL BE ADDED AFTER SUCH REFERENCE. THE SPECIFICATION SHALL PERMIT THE ACCEPTANCE OF OFFERS FOR GOODS WHICH HAVE SIMILAR CHARACTERISTICS AND WHICH PROVIDE PERFORMANCE AT LEAST SUBSTANTIALLY EQUIVALENT TO THOSE SPECIFIED.

SECTION 4. Section 53 of Republic Act No. 9184 is hereby amended to read as follows :

SECTION 53. *Negotiated Procurement* - Negotiated Procurement shall be allowed only in the following instances :

a) xxxx

b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities : **PROVIDED, THAT THE FOLLOWING CONDITIONS ARE OBSERVED :**

1) THE PROCURING ENTITY WILL DRAW UP A LIST OF AT LEAST THREE (3) SUPPLIERS, CONTRACTORS OR CONSULTANTS AS THE CASE MAY BE, WHICH WILL BE INVITED TO SUBMIT BIDS; OR,

2) THE NEGOTIATION SHALL BE MADE WITH A PREVIOUS SUPPLIER, CONTRACTOR OR CONSULTANT OF GOOD STANDING OF THE PROCURING ENTITY CONCERNED, OR A SUPPLIER, CONTRACTOR OR CONSULTANT OF GOOD STANDING SITUATED WITHIN THE VICINITY WHERE THE CALAMITY OR EMERGENCY OCCURRED;

3) THE PROCURING ENTITY SHALL ENSURE THAT THE MOST ADVANTAGEOUS PRICE FOR THE GOVERNMENT IS OBTAINED; AND,

4) THE PRICES AGREED UPON SHALL BE CONSIDERED AS FIXED PRICES AND NOT SUBJECT TO PRICE ESCALATION DURING THE CONTRACT IMPLEMENTATION, EXCEPT UNDER EXTRAORDINARY CIRCUMSTANCES AND UPON APPROVAL OF THE GOVERNMENT PROCUREMENT POLICY BOARD (GPPB).

c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public facilities; **PROVIDED, THAT THE CONDITIONS SET IN THE PRECEDING PARAGRAPH SHALL BE OBSERVED.**

d) xxxx

e) xxxx

F) FOR THE PROCUREMENT OF MATERIALS AND SERVICES FOR MILITARY AND POLICE PURPOSES, OR PURCHASES AND WORKS WHICH INVOLVE NATIONAL SECURITY AND DEFENCE, AND PUBLIC ORDER, SPECIFICALLY :

- (I) CONTRACTS FOR THE SUPPLY OF MILITARY AND POLICE EQUIPMENT INCLUDING ANY PARTS, COMPONENTS OR SUB-ASSEMBLIES THEREOF, AND SPECIAL TOOLS AND MACHINES WHICH ARE NECESSARY FOR THE PRODUCTION AND MAINTENANCE OF SUCH EQUIPMENT.

'MILITARY AND POLICE EQUIPMENT' ARE THOSE SPECIFICALLY DESIGNED OR ADAPTED, DEVELOPED AND PRODUCED FOR MILITARY AND POLICE PURPOSES AND INTENDED FOR USE AS ARMS, MUNITIONS OR COMBAT OR WAR MATERIALS. IT SHALL ALSO COVER INVESTIGATIVE AND SURVEILLANCE EQUIPMENT SUCH AS AUDIO-VISUAL TRANSMITTERS, RECEIVERS, CAMERAS, GLOBAL POSITIONING SYSTEM (GPS) DEVICES, POLYGRAPHS, AND OTHER SIMILAR, ACCESSORIAL OR ALLIED DEVICES AND EQUIPMENT DESIGNED AND PRODUCED FOR SUCH PURPOSES : *PROVIDED*, THAT IT SHALL ALSO INCLUDE PRODUCTS WHICH, ALTHOUGH INITIALLY DESIGNED FOR CIVILIAN USE, ARE LATER ADAPTED TO MILITARY AND POLICE PURPOSES TO BE USED AS ARMS, MUNITIONS OR COMBAT OR WAR MATERIALS, SUCH AS BUT NOT LIMITED TO SPECIAL SUITS, HELMETS, AND VEHICLES, SEA CRAFTS AND AIRCRAFTS WITH DISTINGUISHABLE MILITARY TECHNICAL FEATURES THAT ENABLE THEM TO CARRY OUT MISSIONS THAT ARE CLEARLY MILITARY AND POLICE WORK IN NATURE.

- (II) CONTRACTS FOR WORKS AND SERVICES DIRECTLY RELATED TO MILITARY AND POLICE EQUIPMENT SUCH AS, BUT NOT LIMITED TO, REPAIR OF EQUIPMENT FOR ANY AND ALL ELEMENTS OF THE LIFE CYCLE OF SUCH EQUIPMENT INCLUDING FIREARMS, ARMORED PERSONNEL CARRIERS, TANKS, AIRCRAFTS AND SHIPS, AND CONSTRUCTION OF TEST FACILITIES.

'DIRECTLY RELATED' SHALL MEAN A CLOSE CONNECTION BETWEEN THE WORKS AND SERVICES IN QUESTION AND THE EQUIPMENT, SUCH THAT WITHOUT WHICH, THE WORKS AND SERVICES MAY NOT BE PUT TO A MEANINGFUL USE TO THE MILITARY OR POLICE EQUIPMENT THEY ARE RELATED TO: *PROVIDED*, THAT IT SHALL ALSO INCLUDE WORKS AND SERVICES NOT DIRECTLY RELATED TO MILITARY AND POLICE EQUIPMENT BUT ARE FOR SPECIFICALLY MILITARY AND POLICE PURPOSES, SUCH AS BUT NOT LIMITED TO CONSTRUCTION OF RUNWAYS, BARRACKS, AIR RAID-AND FALL-OUT SHELTERS AND DEPOTS.

SECTION 5. Section 55 of Republic Act No. 9184 is hereby amended to read as follows :

SECTION 55. *Protests on Decisions of the [BAC] PROCURING ENTITY* - Decisions of the [BAC] **PROCURING ENTITY** in all stages of procurement may be protested to the [head of the procuring entity] **GOVERNMENT PROCUREMENT AND POLICY BOARD (GPPB)** and shall be in writing. Decisions of the [BAC] **PROCURING ENTITY** may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

SECTION 6. Section 56 of Republic Act No. 9184 is hereby amended to read as follows :

SECTION 56. *Resolution of Protests* - The protest shall be resolved strictly on the basis of records of the [BAC] **PROCURING ENTITY**. [Up to a certain amount to be specified in the IRR, the decisions of the Head of the Procuring Entity shall be final.] **THE GPPB SHALL FORM AN INDEPENDENT PANEL COMPOSED OF PROCUREMENT EXPERTS WHICH SHALL RESOLVE THE PROTEST.**

SECTION 7. *Separability Clause*. - If any provision of this Act is declared invalid or unconstitutional, the provisions not affected thereby shall continue to be in full force and effect.

SECTION 8. *Repealing Clause*. - All laws, decrees, orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 9. *Effectivity Clause*. - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved.