

Republic of the Philippines
HOUSE OF REPRESENTATIVES

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. **4790**



Introduced by Representative **GLORIA MACAPAGAL ARROYO**

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

EXPLANATORY NOTE

The governing principles of Republic Act No. 9184 are anchored on transparency, competitiveness, streamlined processes, accountability, and public monitoring. The law further prescribed several rules and requirements which effectively make procurement and bidding available only to legitimate suppliers and bidders after a stringent selection process.

Although the law's objective is novel, real life application of its provisions results to a slow-paced process which significantly impacts revenue-generating/proprietary government-owned and controlled corporations.

In view of the foregoing, amendment to certain sections of the law is earnestly sought.


Rep. GLORIA MACAPAGAL ARROYO
2nd District, Pampanga

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

SECTION 1. 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; PROVIDED, THAT REFERENCE TO BRAND NAMES CAN BE MADE BY PROCURING ENTITIES WHICH ARE CONSTITUTED PRIMARILY FOR PROPRIETARY OR BUSINESS FUNCTION."

Sec. 2. Section 23 of Republic Act No. 9184 is hereby amended to read as follows:

"Section 23. *Eligibility Requirements for the Procurement of Goods, Infrastructure Projects AND LEASE OF REAL PROPERTY.* The BAC or, under special circumstances specified in IRR, its duly designated organic office shall determine the eligibility of prospective bidders for the procurement of Goods, Infrastructure Projects AND LEASE OF REAL PROPERTY, based on the bidders' compliance with the eligibility requirements within the period set forth in the Invitation to Bid. The eligibility requirements shall provide for fair and equal access to all prospective bidders. The documents submitted in satisfaction of the eligibility requirements shall be made under oath by the prospective bidder or by his duly authorized representative certifying to the correctness of the statements made and the completeness and authenticity of the documents submitted."

Sec. 3. Section 32 of Republic Act No. 9184 is hereby amended to read as follows:

"Section 32. *Bid for the Procurement of Goods, Infrastructure Projects AND LEASE OF REAL PROPERTY.* For the procurement of Goods, Infrastructure Projects AND LEASE OF REAL PROPERTY, 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 price which shall be referred to as the Lowest Calculated Bid."

Sec. 4. Section 34 of Republic Act No. 9184 is hereby amended to read as follows:

"Section 34. *Objective and Process of Post-Qualification.* Post-Qualification is the stage where the bidder with the Lowest Calculated Bid, in the case of Goods, Infrastructure Projects AND LEASE OF REAL PROPERTY, or the Highest Rated Bid, in the case of Consulting Services, undergoes verification and validation whether it has passed all the requirements and conditions as specified in the Bidding Documents.

If the bidder with the Lowest Calculated Bid or Highest Rated Bid passes all the criteria for post-qualification, his Bid shall be considered the "Lowest Calculated Responsive Bid", in the case of Goods, Infrastructure Projects AND LEASE OF REAL PROPERTY or the "Highest Rated Responsive Bid", in the case of Consulting Services. However, if a bidder fails to meet any of the requirements or conditions, he shall be "post-disqualified" and the BAC shall conduct the post-qualification on the bidder with the second Lowest Calculated Bid or Highest Rated Bid. If the bidder with the second Lowest Calculated Bid or Highest Rated Bid is post-disqualified, the same procedure shall be repeated until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid is finally determined."

Sec. 5. Section 37 of Republic Act No. 9184 is hereby amended to read as follows:

"Section 37. *Notice and Executive of Award.* – within a period not exceeding fifteen (15) calendar days xxxxx

Within TWENTY (20) CALENDAR DAYS from receipt of the Notice of Award, the Winning bidder shall formally enter into contract with the Procuring Entity. When further approval of higher authority is required, the approving authority for the contracts shall be given a maximum of twenty (20) calendar days to approve or disapprove it."

Sec. 6. Section 48 of Republic Act No. 9184 is hereby amended to read as follows:

"Section 48. *Alternative Methods.* Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

Xxxxx

In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained. THE PROCEDURAL GUIDELINES FOR EVERY ALTERNATIVE METHODS OR PROCUREMENT, INCLUDING DOCUMENTARY REQUIREMENTS SHALL BE PROVIDED IN THE IMPLEMENTING RULES AND REGULATIONS.

NOTWITHSTANDING EXECUTIVE ORDER NO. 398 SERIES OF 2005, AFFIDAVIT OF NO TAX LIABILITY SHALL BE SUBMITTED IN LIEU OF TAX CLEARANCE IN CASES FALLING UNDER THIS PROVISION."

Sec. 7. Section 50 of Republic Act No. 9184 is hereby amended to read as follows:

"Section 50. *Direct Contracting.* Direct Contracting may be resorted to only in any of the following conditions:

- a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same items;
- b) When the Procurement of critical components from a specific manufacturer, supplier, or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions in the contract;
- c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government; or
- d) FOOD, BEVERAGE AND HOTEL ACCOMMODATIONS, WHEN THE PROCURING ENTITY IS A GOVERNMENT OWNED AND CONTROLLED CORPORATIONS ENGAGED PRIMARILY IN PROPRIETARY OR BUSINESS FUNCTIONS SUCH AS ENTERTAINMENT AND GAMING INDUSTRY.

Sec. 8. Section 51 of Republic Act No. 9184 is hereby amended to read as follows:

"Section 51. *Repeat Order.* When provided for in the Annual Procurement Plan, Repeat Order may be allowed wherein the Procuring Entity directly procures Goods from the previous winning bidder whenever there arises a need to replenish goods procured under a contract previously awarded through Competitive Bidding, subject to post-qualification process prescribed in the Bidding Documents and provided all the following conditions are present:

- a) The unit price must be equal to or lower than that provided in the original contract. IN CASE OF PROCUREMENT OF RAW AND PERISHABLE GOODS AND COMMODITIES, PRICE INCREASE SHALL NOT EXCEED TWENTY-FIVE PER CENT (25%) OF THE ORIGINAL CONTRACT;"

Xxxxxx

Sec. 9. All laws, decrees, executive orders, proclamations and administrative regulations, or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

Sec. 10. This Act shall take effect fifteen (15) days after its publication in at least two (2) national papers of general circulation.

Approved,