

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS

Second Regular Session

House Bill No. **6729**



Introduced by **HON. ROZZANO RUFINO B. BIAZON**

EXPLANATORY NOTE

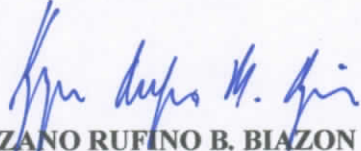
This bill basically seeks to amend Republic Act No. 9184, otherwise known as the Government Procurement Reform Act of 2003. The amendments being proposed take into consideration national security as a major factor in the procurement of defense articles, services and infrastructures by the Department of National Defense (DND) and the Armed Forces of the Philippines (AFP) pursuant to Republic Act No. 7898, as amended, otherwise known as the AFP Modernization Act.

Republic Act No. 9184 was enacted to promote the ideals of good governance in all units and instrumentalities of the government. Its passage was hailed as a milestone that marked the government's commitment to reform the country's procurement system. There are however certain provisions of RA No. 9184, with all their noble intentions, which adversely affect, or even compromise, national security interest and the national defense program.

The principles of procurement as expressed in RA 9184 unwittingly expose the country's defense plans and arms-acquisition strategies, and laid bare the country's defenses against those who may wish to sow harm and ill-will. The resurgence of terrorism and non-state and state-sponsored terrorist groups resulted in the unabated proliferation of illicit trades in arms and munitions, making the country's defense acquisition system vulnerable to unscrupulous arms dealers and suppliers, and the country as a patriarch nation to its defense allies and other peace-loving nations which provide enough legislative protection against such practice. Procurement of badly needed defense articles, services and infrastructure projects are likewise unnecessarily delayed by the vagaries of procurement procedures under the present provisions of RA 9184.

It is therefore proposed that certain provisions of RA 9184 be amended to balance the imperatives of national security with the noble intentions of sound procurement enshrined in the said law, without sacrificing the ideals of good governance.

For these reasons, immediate approval of this bill is earnestly sought.


ROZZANO RUFINO B. BIAZON
Representative
Lone District, Muntinlupa City

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AN ACT
TO PURSUE THE ARMED FORCES OF THE PHILIPPINES MODERNIZATION
PROGRAM, AMENDING FOR THIS PURPOSE 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 Philippines in Congress assembled:

SECTION 1. Section 4, Article I of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, is hereby amended to read as follows:

"SEC. 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 department, offices and agencies, including government-owned and/or controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. **IN THE INTEREST OF NATIONAL SECURITY, THE SECRETARY OF NATIONAL DEFENSE MAY PRESCRIBE RULES AND STANDARDS IN ACCORDANCE WITH THE PERTINENT PROVISIONS OF THIS ACT TO GOVERN THE PROCUREMENT OF DEFENSE ARTICLES, SERVICES, AND INFRASTRUCTURES, AND TO ENHANCE THE NATIONAL DEFENSE PROGRAM OF THE GOVERNMENT.** Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall **LIKEWISE** be observed. "

Sec. 2. Section 5, Article I of the same Act is hereby amended to read as follows:

"SEC. 5(k). Infrastructure Projects include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology **AND SHIP-BUILDING PROJECTS AND THE REPAIR,**

RESTORATION AND MAINTENANCE OF MILITARY SHIPS, AIRCRAFT AND OTHER MAJOR MILITARY EQUIPMENT, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings and other related construction projects of the government."

Sec. 3. Section 10, Article IV of the same Act is hereby amended to read as follows:

"SEC. 10. Competitive Bidding. — All procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act. **HOWEVER, IN FURTHERANCE OF THE AFP MODERNIZATION PROGRAM PURSUANT TO RA 7898 AS AMENDED AND WHEN THE PROCUREMENT INVOLVES NATIONAL SECURITY INTEREST, THE SECRETARY OF NATIONAL DEFENSE, UPON APPROVAL OF THE PRESIDENT, MAY PRESCRIBE ANY OF THE METHODS OF PROCUREMENT PROVIDED FOR IN ARTICLE XVI, AS MAY BE APPLICABLE, FOR THE PROCUREMENT OR DEVELOPMENT OF DEFENSE ARTICLES, SERVICES, AND INFRASTRUCTURES, WITHOUT RESORTING TO COMPETITIVE BIDDING.**"

Sec. 4. Section 18, Article VI of the same Act is hereby amended to read as follows:

"SEC. 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 AS MAY BE OTHERWISE PROVIDED FOR IN THIS ACT.** "

Sec. 5. Section 43, Article XII of the same Act is hereby amended to read as follows:

"SEC. 43. Procurement of Domestic and Foreign Goods. — Consistent with the country's obligations under international treaties or agreements, Goods may be obtained from domestic or foreign sources and the procurement thereof shall be open to all eligible suppliers, manufacturers and distributors. **HOWEVER, IN THE INTEREST OF NATIONAL SECURITY AND TO ENSURE HIGH-QUALITY DEFENSE ITEMS, THE SECRETARY OF NATIONAL DEFENSE, UPON APPROVAL OF THE PRESIDENT, MAY LIMIT THE PROCUREMENT OF DEFENSE ARTICLES FROM KNOWN DIRECT MANUFACTURERS OF THE ITEMS.** [However] **FURTHER**, in the interest of availability, efficiency and timely delivery of Goods, the Procuring Entity may give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality. "

Sec. 6. The last paragraph of Section 48, Article XVI of the same Act is hereby amended to read as follows:

"In all instances **NOT INVOLVING THE PROCUREMENT OF DEFENSE ARTICLES, SERVICES AND INFRASTRUCTURES**, the Procuring Entity shall

ensure that the most advantageous price for the government is obtained. **IN THE PROCUREMENT OF DEFENSE ARTICLES, SERVICES AND INFRASTRUCTURES, THE SECRETARY OF NATIONAL DEFENSE SHALL ENSURE THAT THE NATIONAL SECURITY INTEREST IS PROTECTED IN TERMS OF EFFICIENCY, ECONOMY AND QUALITY OF THE DEFENSE ITEMS TO BE PROCURED."**

Sec. 7. Section 49, Article XVI of the same Act is hereby amended, by adding new provisions which shall read as follows:

"(C). PROCUREMENT OF DEFENSE ARTICLES WHERE IT IS DEEMED OF NATIONAL SECURITY INTEREST AS DETERMINED BY THE SECRETARY OF NATIONAL DEFENSE AND APPROVED BY THE PRESIDENT, TO LIMIT THE BIDDING TO KNOWN LEGITIMATE BIDDERS AND SUPPLIERS OF DEFENSE ARTICLES IN ORDER TO OBTAIN AND MAINTAIN THE DESIRED STANDARDIZATION AND INTEROPERABILITY OF MILITARY ARTICLES INVENTORY, AND TO PROTECT THE PROCUREMENT OF DEFENSE ARTICLES AGAINST UNSCRUPULOUS SUPPLIERS.

(D). THE GOVERNMENT PROCUREMENT POLICY BOARD SHALL DESIGNATE THE RELEVANT GOVERNMENT AUTHORITY THAT SHALL FORMULATE AND MAINTAIN THE LIST OF PRE-SELECTED SUPPLIERS OR CONSULTANTS WITH KNOWN EXPERIENCE AND PROVEN CAPABILITY IN THE REQUIREMENT FOR A PARTICULAR PROCUREMENT CONTRACT."

Sec. 8. Section 50, Article XVI of the same Act is hereby amended, by adding a new provision which shall read as follows:

"(D). SUBSEQUENT PROCUREMENT OF THE SAME TYPE OR MODEL OF DEFENSE ARTICLES, SUBJECT TO THE FOLLOWING CONDITIONS:

- 1) THE DEFENSE ITEMS SHALL BE OF UNIFORM, INTER-OPERABLE AND COMPATIBLE, AND HAVE THE SAME OR BETTER PERFORMANCE CHARACTERISTICS WITH THE SIMILAR TYPES OR MODELS OF DEFENSE ITEMS CURRENTLY IN USE BY THE ARMED FORCES OF THE PHILIPPINES;**
- 2) THE SUBSEQUENT PROCUREMENT WAS PREVIOUSLY PROGRAMMED OR PLANNED FOR BUT NOT EFFECTED DUE TO RESOURCE CONSTRAINTS AND OTHER REASONABLE CAUSES; AND**
- 3) THE ORIGINAL PROCUREMENT OF THE SAME TYPE OR MODEL OF THE DEFENSE ITEM WAS UNDERTAKEN THROUGH THE LEGITIMATE PROCESS PRESCRIBED UNDER THIS ACT, AND THAT SIMILAR TERMS AND CONDITIONS, OR BETTER, ARE OBTAINED, EXCEPT FOR CHANGES THEREOF**

FOR REASONS OF IMPROVEMENT OR UPGRADE, "FORCE MAJEURE" OR SUCH OTHER CAUSES AS THE SECRETARY OF NATIONAL DEFENSE MAY DEEM ACCEPTABLE."

Sec. 9. Section 51(c), Article XVI of the same Act is hereby amended to read as follows:

"SEC. 51(c). Except in special circumstances defined in the IRR, the repeat order shall be availed of only within six (6) months from the date of the Notice to Proceed arising from the original contract. IN THE CASE OF PROCUREMENT OF DEFENSE ARTICLES, SERVICES AND INFRASTRUCTURES, A REPEAT ORDER NOT EXCEEDING FIFTY PERCENTUM (50%) OF THE ORIGINAL CONTRACT VALUE MAY BE AVAILED OF WITHIN ONE (1) YEAR FROM THE DATE OF THE LAST DELIVERY OF THE DEFENSE ARTICLES, SERVICES AND INFRASTRUCTURES ARISING FROM THE SAID CONTRACT."

Sec. 10. Section 53, Article XVI of the same Act is hereby amended, by adding a new provision which shall read as follows:

"(F) WHEN THE PRESIDENT, AS COMMANDER-IN-CHIEF, CALLS UPON THE ARMED FORCES OF THE PHILIPPINES TO SUPPRESS LAWLESS VIOLENCE, INVASION OR REBELLION, OR THE IMMINENT DANGER THEREOF, OR IN TIME OF EMERGENCY AS MAY BE DECLARED BY THE PRESIDENT OR CONGRESS, AND FOR THE DURATION OF SUCH LAWLESS VIOLENCE, INVASION, REBELLION OR EMERGENCY, OR TO ATTAIN OR UNDERTAKE PROJECTS FOR SPECIFIC NATIONAL SECURITY OBJECTIVES."

Sec. 11. *Separability Clause*. – If for any reason, any provision of this Act is declared invalid or unconstitutional, the remaining provisions not affected thereby shall continue to be in full force and effect.

Sec. 12. *Repealing Clause*. – All laws, decrees, executive orders, proclamations, rules and regulations, and other issuances, or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 13. *Effectivity*. – This Act shall take effect after fifteen (15) days following its complete publication in the Official Gazette or in any two (2) newspapers of general circulation.

Approved,