

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

House Bill No. 7739



Introduced by Representative PABLO JOHN F. GARCIA

EXPLANATORY NOTE

Government procurement is a universal concern across all government agencies and instrumentalities. Worldwide, public procurement accounts for around 10 to 20 percent of the Gross Domestic Product. The United Nations recognized its importance and included it as one of the targets in its 17-point Sustainable Development Goals: Target 12.7¹ - to "[p]romote public procurement practices that are sustainable in accordance with national policies and priorities."² Thus, improving public procurement is an imperative for all governments.

In the Philippines, Republic Act No. 9184 or the Government Procurement Reform Act (GPRA) was passed in 2003. Its Implementing Rules and Regulations (IRR) have been revised three times (most recently in August 2016) in hopes of solving recurring issues and achieving the efficiency that has so far eluded government procurement.

The latest impetus to further reform government procurement has been the need to find an alternative to the lowest-bid method that President Duterte himself has often criticized as inefficient and prone to abuse.³ The goal is to shift from the traditional approach to a more strategic approach that promotes fast and efficient procurement, prevents waste and fraud, and complies with global standards.

Several kinds of procurement methods have been devised over the years such as the lowest bid, average bid, and the best value methods.⁴ Out of these systems, the Best Value Procurement (BVP) stands out as a solution. BVP refers to the procurement

¹ Goal 12. Ensure sustainable consumption and production patterns, 7. Promote public procurement practices that are sustainable in accordance with national policies and priorities.

² Sustainable Development Goals 12.7.

³ Ruth Abbey Gita, Duterte seeks to amend Procurement Act, available at <https://www.sunstar.com.ph/article/1827243> (October 2019).

⁴ Other procurement methods include minimum quality and price method, lowest adjusted price, quality only method, bid weighing system, average bid method, A+B method, among others.

process where all key factors such as, but not limited to, price, life cycle cost, benefits, and predicted risks are considered in the selection process to maximize the performance and value for money of every government procurement project, activity, or program. Among the salient features of this bill promoting BVP are as follows:

- *Adoption of Global Open Data Contracting Standards (OCDS).* This bill seeks to make the GPRA compliant to OCDS, which enhances the electronic government procurement system by facilitating publication and analysis of data related to all stages of a contracting process.⁵ OCDS promises developments in transparency, resource savings, structured transactional procurement data, business intelligence, and interoperability with other e-GP systems.⁶
- *Promotion of Sustainable Public Procurement (SPP).* Widely regarded as a driver for innovation and sustainable development, SPP provisions in the bill supports the creation of an Inter-Agency Task Force to determine the standards for products and services needed to fulfill the government's environmental objectives and their corresponding certification and boosting in PhilGEPS.
- *Supporting Inclusive Public Procurement.* Due to the impact of COVID-19 in MSMEs, the bill seeks to promote MSMEs, cooperatives, and sheltered workshops through affirmative action by incentivizing the participation of these priority enterprises in government procurement. Earmarking 25% of purchases to these priority enterprises is seen to be a huge boost to their recovery and eventual development.
- *Introducing the Best Value Procurement.* A new procurement method is instituted that can accommodate the consideration of several factors in the determination of the winning bidder aside from the costs.
- *Strengthening Procurement by Electronic Means.* Because of the developments in information technology and enterprise resource planning, several provisions are dedicated to ensure the responsiveness of PhilGEPS to procuring entities and suppliers such as a mandate to adopt state-of-the-art technologies, prompt payment, data collection and analysis, and the maintenance, update and backup of the system. Web-based solutions are likewise emphasized in various parts of the bill.
- *Institutionalizing a Procurement Academy.* As a response to the increasing need for well-rounded procurement practitioners, the bill likewise calls for an educational institution under the GPPB that shall conduct training programs for mandated and interested public and private individuals.
- *Introducing an Integrated Procurement Approach.* The bill likewise calls for the application of the cradle-to-grave concept to procurement activities that encapsulates a planned and systematic enterprise-wide procurement process that continuously improves and re-evaluates its purchasing activities. This is geared

⁵ Open Contracting Partnership. Guide to Defining Open Contracting Data Standard Functional Requirements for Electronic Government Procurement Systems (2018).

⁶ *Id.*

towards reducing costs and generating savings, maintaining and improving product quality, and determining areas of risk to calculate the level of acceptable risk.

- Optimization of processes by:
 - Providing for a definite and faster timetable -
 - Bid opening must not be conducted not more than five (5) working days after the deadline of submission of bids.
 - The Head of the Procuring Entity (HOPE) must act on recommendations of award within 10 working days, instead of 15 calendar days.
 - The Bids and Awards Committee (BAC) shall only have five (5) working days to take action in case of disapproval of the HOPE.
 - The HOPE and the winning bidder must enter into contract within five (5) working days, instead of 10 calendar days.
 - Procuring entities must issue the Notice to Proceed within five (5) working days, instead of 7 calendar days.
 - The BAC shall have five (5) working days to decide or act on observed deviations from the process.
 - The HOPE must decide within five (5) working days on appeal to decisions or inactions of the BAC upon receipt of the position paper. A motion for reconsideration may be filed five (5) working days from the notice of such decision.
- More dynamic rules on Alternative Modes of Procurement:
 - Increasing the threshold of Shopping (unforeseen contingency) from Php 50,000 to Php 200,000,
 - Increasing the threshold of Shopping (office supplies and equipment not available in the Procurement Service) from Php 250,000 to Php 1,000,000,
 - Allowing negotiated procurement in case of imminent danger to life or property before and after a state of calamity.
- Offering innovative solutions by introducing provisions on:

○ Procurement Capability Index ○ Requirement Specification ○ Industry Analysis ○ Price References ○ Oral Presentation ○ Final Offer ○ Debriefing of Unsuccessful Bidders	○ Managing Relationship with Winning Bidder ○ Periodic Updates of Winning Bidders ○ Satisfaction Metric ○ Blacklisting ○ Disposal Procedure ○ Clearer rules for foreign sourcing
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- Introducing the concept of “Most Advantageous Bid” and “Most Advantageous and Responsive Bid”. Since cost is not the only factor considered in BVP, procurement entities are not required to automatically select a bidder based on the lowest cost. “Most Advantageous Bid” is intended to replace the “Lowest Calculated Bid” standard and shall be understood as the one that offers the best public value over the whole life of the goods and infrastructure projects.

The use of BVP, along with the innovations contained in this bill—designed to make the procurement process more transparent, faster, and more efficient—will guarantee that all projects will be advantageous to the government in the long run.

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

A stylized, handwritten signature in black ink, appearing to be 'P. Garcia'.

Rep. PABLO JOHN F. GARCIA
3rd District, Province of Cebu

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EIGHTEENTH CONGRESS
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House Bill No. 7739

Introduced by Representative PABLO JOHN F. GARCIA

AN ACT
PROVIDING FOR BEST VALUE PROCUREMENT,
AMENDING FOR THIS PURPOSE REPUBLIC ACT NO. 9184,
OTHERWISE KNOWN AS
“GOVERNMENT PROCUREMENT REFORM ACT”
AND FOR OTHER PURPOSES

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

Section 1. *Short Title.* - This Act shall be known as the "Best Value Procurement Act".

Section 2. Section 3 of R.A. 9184 is hereby amended to read as follows:

Section 3. *Governing Principles on Government Procurement.* -

XXX

(a) Transparency in the procurement process and in the implementation of procurement contracts, CONSISTENT WITH GLOBAL OPEN CONTRACTING DATA STANDARDS.

XXX

(f) SUSTAINABLE PUBLIC PROCUREMENT AS DRIVER FOR INNOVATION AND SUSTAINABLE DEVELOPMENT.

(g) INCLUSIVE PUBLIC PROCUREMENT AND ENTREPRENEURSHIP THROUGH THE ENCOURAGEMENT AND INCENTIVIZATION OF PRIORITY ENTERPRISES INVOLVEMENT.

Section 3. Section 4 of R.A. 9184 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 signatory shall be observed.] *PROVIDED THAT, THE GPPB SHALL PROMULGATE SPECIAL RULES CONSISTENT WITH THE GOVERNING PRINCIPLES OF THIS ACT FOR THE FOLLOWING CLASSES OF PROCUREMENT:*

- a. THOSE FOR THE USE OF PHILIPPINE GOVERNMENT OFFICES OVERSEAS;
- b. THOSE INVOLVING OFFICIAL DEVELOPMENT ASSISTANCE OR INTERNATIONAL DEVELOPMENT ASSISTANCE THROUGH MULTILATERAL OR BILATERAL AGREEMENTS, AND THOSE COVERED BY INTERNATIONAL AGREEMENTS, INTERNATIONAL FUNDING, INTERNATIONAL ORGANIZATION AGREEMENTS BETWEEN COUNTRIES FOR JOINT IMPLEMENTATION OF PROJECTS, OR ANY PROCUREMENT FUNDED BY INTERNATIONAL GRANT, LOAN, OR OTHER ASSISTANCE;
- c. THOSE COVERED BY THE NATIONAL SECURITY INTERESTS INCLUDING DEFENSE ARTICLES, SERVICES, AND INFRASTRUCTURE PROJECTS DETERMINED BY THE SECRETARY OF NATIONAL DEFENSE AS VITAL TO NATIONAL SECURITY AND OTHER STRATEGIC CONSIDERATIONS; AND
- d. THOSE INVOLVING SCIENTIFIC RESEARCH AND DEVELOPMENT INITIATIVES.

Section 4. Section 5 of R.A. 9184 is hereby amended to read as follows:

Section 5. *Definition of Terms.* -

(a) Approved Budget for the Contract (ABC) - XXX. For multi-year contracts, for which a Multi-Year CONTRACTUAL [Obligational] Authority (MYCA) [(MYOA)] or an equivalent document is required, the ABC shall be [that] incorporated in the project cost reflected in the MYCA [MYOA] or equivalent document.

(c) BEST VALUE PROCUREMENT - REFERS TO THE PROCUREMENT PROCESS WHERE ALL KEY FACTORS SUCH AS, BUT NOT LIMITED TO,

PRICE, LIFE CYCLE COST, BENEFITS AND PREDICTED RISKS ARE CONSIDERED IN THE SELECTION PROCESS TO MAXIMIZE THE PERFORMANCE AND VALUE FOR MONEY OF EVERY GOVERNMENT PROCUREMENT PROJECT OR PROGRAM.

(d) [(c)] Bidding Documents – refers to documents issued by the Procuring Entity as the basis for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the Goods, Infrastructure Projects, and Consulting Services to be provided. IT MAY ALSO REFER TO THE ELECTRONIC DOCUMENT/S PUBLISHED BY THE PROCURING ENTITY TO A PORTAL OR PHILGEPS FOR PURPOSES OF INVITING POTENTIAL BIDDERS.

(e) [(d)] Bid – refers to a signed offer or proposal submitted PHYSICALLY OR THROUGH PHILGEPS by a supplier, manufacturer, distributor, contractor or consultant in response to the Bidding Documents.

(f) BLACKLISTING - AN ADMINISTRATIVE PENALTY DISQUALIFYING A PERSON OR AN ENTITY FROM PARTICIPATING IN ANY GOVERNMENT PROCUREMENT FOR A GIVEN PERIOD.

(g) [(e)] Competitive Bidding - XXX

(h) COOPERATIVES - ANY ASSOCIATION DULY REGISTERED WITH THE COOPERATIVE DEVELOPMENT AUTHORITY AND DEFINED AS SUCH BY REPUBLIC ACT 6938 OTHERWISE KNOWN AS AN ACT TO ORDAIN A COOPERATIVE CODE OF THE PHILIPPINES, AS AMENDED.

(i) [(f)] Consulting Services - XXX

(g) DISABLED PERSONS - ANY PERSON DESCRIBED AS SUCH BY REPUBLIC ACT NO. 7277 OTHERWISE KNOWN AS AN ACT PROVIDING FOR THE REHABILITATION, SELF-DEVELOPMENT AND SELF-RELIANCE OF DISABLED PERSONS AND THEIR INTEGRATION INTO THE MAINSTREAM OF SOCIETY AND FOR OTHER PURPOSES, AS AMENDED.

(i) GPPB - refers to the governing Body created in accordance with ARTICLE XVII OF THIS ACT.

(j) Head of Procuring Entity (HOPE) - XX

(m) KEY PERFORMANCE INDICATORS (KPI) - REFERS TO MEASURABLE VALUE THAT DEMONSTRATES HOW EFFECTIVE A PROCUREMENT IS BEING IMPLEMENTED.

(n) LIFE-CYCLE COST - REFERS TO THE TOTAL COST OF OWNERSHIP OF A GOOD FROM ITS ACQUISITION, OPERATION, MAINTENANCE, AND DISPOSAL.

(o) MICRO, SMALL AND MEDIUM ENTERPRISES (MSMES) - ANY BUSINESS OR ENTERPRISE DEFINED AND FOUND ELIGIBLE AS SUCH BY REPUBLIC ACT NO. 6977 OTHERWISE KNOWN AS AN ACT TO PROMOTE, DEVELOP AND ASSIST SMALL AND MEDIUM SCALE ENTERPRISES THROUGH THE CREATION OF A SMALL AND MEDIUM ENTERPRISE DEVELOPMENT (SMED) COUNCIL, AND THE RATIONALIZATION OF GOVERNMENT ASSISTANCE PROGRAMS AND AGENCIES CONCERNED WITH THE DEVELOPMENT OF SMALL AND MEDIUM ENTERPRISES, AND FOR OTHER PURPOSES, AS AMENDED.

(p) MULTI-YEAR PROJECT - REFERS TO THE PROGRAM OR PROJECT THAT WILL TAKE MORE THAN ONE (1) YEAR TO COMPLETE;

(q) MULTI-YEAR CONTRACTUAL AUTHORITY (MYCA) - REFERS TO THE AUTHORIZATION AWARDED TO MULTI-YEAR PROJECTS OR PROGRAMS THAT WILL TAKE MORE THAN ONE YEAR FOR COMPLETION AND WILL REQUIRE MULTI-YEAR APPROPRIATIONS.

(r) PERFORMANCE-BASED SPECIFICATIONS - REFERS TO A SPECIFICATION DESCRIBING THE DESIRED OUTCOMES OR RESULTS IN TERMS OF FUNCTIONAL OR PERFORMANCE REQUIREMENTS RATHER THAN IN TERMS OF TECHNICAL DETAILS. THIS SPECIFICATION IS USED IN CASES WHEN THE PROCURING ENTITY IS UNCERTAIN OF THE BEST PROCESS OR METHOD TO DELIVER THE REQUIREMENTS, WHEN HIGH-LEVEL TECHNOLOGY IS REQUIRED, WHEN SUPPLIERS ARE KNOWN TO HAVE THE CAPABILITY TO DESIGN FIT FOR PURPOSE SOLUTIONS, OR WHEN PAST PERFORMANCE OR OTHER NON-FINANCIAL CONSIDERATIONS MAY BE BENEFICIAL IN THE GOVERNMENT.

(s) [(g)] PHILGEPS [G-EPS] - REFERS TO THE PHILIPPINE GOVERNMENT ELECTRONIC PROCUREMENT SYSTEM AS PROVIDED IN SECTION 9 OF THIS ACT.

(t) [(m)] PORTAL - XXX

(u) PRIORITY ENTERPRISES - SHELTERED WORKSHOPS, COOPERATIVES, AND MICRO, SMALL AND MEDIUM ENTERPRISES.

(v) [(n)] Procurement - XXX

(w) [(o)] Procuring Entity - XXX

(x) SHELTERED WORKSHOPS - ANY BUSINESS, ENTERPRISE, OR WORKPLACE THE MAIN PURPOSE OF WHICH IS THE SOCIAL AND PROFESSIONAL INTEGRATION OF DISABLED PERSONS: PROVIDED, THAT AT LEAST THIRTY PERCENT (30%) OF WORKERS, EMPLOYEES, OR PERSONNEL IN THE SHELTERED WORKSHOP, AT THE TIME OF BID EVALUATION AND THROUGHOUT THE EXECUTION OF THE CONTRACT, SHALL BE DISABLED PERSONS.

Section 5. Article IV of R.A. 9184 is hereby renumbered as Article II and Section 10 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE II [IV] COMPETITIVE BIDDING

Section 7 [10]. LOWEST BID PROCUREMENT [*Competitive Bidding*.- [All Procurement shall be done through] LOWEST BID METHOD OF Competitive Bidding SHALL BE THE DEFAULT MODE OF PROCUREMENT, except as provided for in Section 8 and Article XI [XVI] of this Act.

Section 6. A new section designated as Section 8 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 8. *BEST VALUE PROCUREMENT*. - PROCUREMENT OF NON-COMMON USE GOODS, INFRASTRUCTURE PROJECTS, CONSULTANCY SERVICES, AND OTHER CLASSES AS DETERMINED BY THE GPPB, MAY BE DONE THROUGH THE BEST VALUE PROCUREMENT (BVP) METHOD.

IN THE USE OF BVP METHOD, THE FOLLOWING FACTORS OR A COMBINATION THEREOF MAY BE CONSIDERED AS RELEVANT TECHNICAL AND FINANCIAL COMPONENTS OF EACH SUBMISSION INCLUDING, BUT NOT LIMITED TO THE:

1. QUALITY OF THE GOODS, MATERIALS, AND SERVICES;
2. ALIGNMENT WITH DESIRED OUTCOMES;
3. KEY PERFORMANCE INDICATORS;
4. RISKS INVOLVED;
5. TIMELINESS;
6. LIFE CYCLE COSTS;
7. POTENTIAL BIDDER'S RELEVANT EXPERIENCE AND PERFORMANCE HISTORY; AND
8. ENVIRONMENTAL SUSTAINABILITY OF THE PROPOSED GOODS AND INFRASTRUCTURES.

Section 7. Section 8 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 9 [8]. *TRANSPARENCY AND EFFICIENCY IN ELECTRONIC PROCUREMENT [Procurement By Electronic Means].* - To promote transparency and efficiency, information and communications technology shall be FULLY utilized in the conduct of procurement procedures. Accordingly, there shall be A single portal that shall serve as the primary source of information on all government procurement FROM THE PLANNING STAGE UP TO THE IMPLEMENTATION STAGE TO BE KNOWN AS THE PHILIPPINE GOVERNMENT ELECTRONIC PROCUREMENT SYSTEM OR PHILGEPS. The PHILGEPS [G-EPS] shall serve as the primary and definitive source of information on government procurement AND SHALL PROVIDE EQUAL ACCESS TO ALL POTENTIAL BIDDERS. Further, the GPPB is authorized to approve changes in the procurement process to adapt to improvements in [modern] technology, provided that such modifications are consistent with THE provisions of Section 3 of this Act.

To take advantage of the significant built-in-efficiencies of the PHILGEPS [G-EPS] and the volume discounts inherent in bulk purchasing, all Procuring Entities shall utilize the PHILGEPS [G-EPS] for the procurement of common supplies in accordance with the rules and procedures to be established by the GPPB. With regard to the procurement of non-common use items, infrastructure projects and consulting services, agencies may hire service providers to undertake their electronic procurement provided these service providers meet the minimum requirements set by the GPPB.

Section 8. Section 9 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 10 [9]. *Security, Integrity and Confidentiality.* - The PHILGEPS [G-EPS] shall ensure the security, integrity, and confidentiality of documents submitted through the system. It shall include features that provide for an audit trail for ELECTRONIC [on-line] transactions and allow the Commission on Audit to verify the security and integrity of the systems at any time.

Section 9. A new section designated as Section 11 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 11. ADOPTION OF STATE-OF-THE-ART TECHNOLOGIES. PHILGEPS SHALL CONTINUOUSLY ADOPT STATE-OF-THE-ART TECHNOLOGIES THAT SHALL HAVE THE MINIMUM FEATURES OF REAL-TIME UPDATES, TRACEABILITY OF ALL TRANSACTIONS, AND ACCESSIBILITY TO A LARGE POOL OF USERS AT ANY GIVEN TIME.

Section 10. A new section designated as Section 12 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 12. PROMPT PAYMENT. PHILGEPS SHALL INCORPORATE AN ELECTRONIC PAYMENT SYSTEM THAT SHALL ENSURE PROMPT PAYMENTS TO SUPPLIERS. IN ALL CASES, OBLIGATIONS OF THE GOVERNMENT MUST BE SETTLED WITHIN THIRTY (30) CALENDAR DAYS AFTER THE DELIVERY AND FAVORABLE INSPECTION OF THE GOODS OR SERVICES.

Section 11. A new section designated as Section 13 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 13. MAINTENANCE, UPDATE, AND BACK UP. PHILGEPS MUST UNDERGO A PERIODIC MAINTENANCE TO ENSURE THAT ITS SYSTEMS ARE RUNNING SMOOTHLY. IT SHALL HAVE A DISASTER BACKUP FEATURE TO MAINTAIN THE SYSTEM'S INTEGRITY AND ENSURE UNINTERRUPTED OPERATIONS.

Section 12. A new section designated as Section 14 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 14. DATA COLLECTION AND ANALYSIS. THE GPPB TECHNICAL SERVICE OFFICE AND THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) PROCUREMENT SERVICE SHALL COLLECT DATA AND CREATE USABLE AND PRESENTABLE STATISTICS ON PROCUREMENT ACTIVITIES TO UNDERSTAND THE STATUS OF PUBLIC PROCUREMENT AND FORMULATE AND IMPLEMENT EFFECTIVE PROCUREMENT POLICIES.

Section 13. Article V of R.A. 9184 is hereby renumbered as Article IV and Section 14 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE IV [V] BIDS AND AWARDS COMMITTEE

Section 18 [14]. *BAC Secretariat.* - To assist the BAC in the conduct of its functions, PROCUREMENT UNITS SHALL BE ESTABLISHED IN ALL GOVERNMENT AGENCIES AND INSTRUMENTALITIES [the Head of the Procuring Entity shall create a Secretariat] that will serve as the main support unit of the BAC. [The Head of the Procuring Entity may also designate an existing organic office within the agency to serve as the Secretariat.] THE GPPB SHALL PROMULGATE GUIDELINES AS TO THE DUTIES OF ITS

PERSONNEL, NUMBER OF PLANTILLA ITEMS, COMPENSATION, AND OTHER MATTERS NECESSARY FOR THE SUCCESS OF THESE UNITS.

Section 14. Section 16 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 20 [16]. PROCUREMENT ACADEMY [*Professionalization of BAC, BAC Secretariat and Technical Working Group Members*]. - The GPPB shall establish a sustained training program for developing the capacity of the BACs, BAC Secretariats, and Technical Working Groups of Procuring Entities, and professionalize the same.

FOR THIS PURPOSE, THE GPPB SHALL ESTABLISH A PROCUREMENT ACADEMY UNDER ITS TECHNICAL SERVICE OFFICE THAT SHALL BE RESPONSIVE TO THE NEEDS AND APT FOR THE RESPONSIBILITIES OF GOVERNMENT PROCUREMENT PERSONNEL AND OTHER INTERESTED INDIVIDUALS.

THE PROCUREMENT ACADEMY MAY ESTABLISH PARTNERSHIPS WITH STATE UNIVERSITIES AND COLLEGES (SUCS) OR OTHER EDUCATIONAL INSTITUTIONS IN PROVIDING THESE TRAININGS. THE GPPB SHALL ESTABLISH STANDARDS FOR ACCREDITATION OF THESE INSTITUTIONS. CERTIFICATIONS SHALL BE AWARDED TO INDIVIDUALS WHO WILL FINISH THE COURSES.

MEMBERS OF THE BAC SECRETARIAT SHALL UNDERGO AN ANNUAL TRAINING BASED ON THEIR RESPONSIBILITIES AS CONDUCTED. HOPES, MEMBERS OF THE BAC, AND TECHNICAL WORKING GROUPS SHALL BE UNDERGO AN EXECUTIVE COURSE ON PROCUREMENT.

THE GPPB SHALL ALSO ESTABLISH A SYSTEM PROFESSIONAL LICENSURE EXAMINATIONS OF PROCUREMENT PRACTITIONERS.

Section 15. A new article designated as Article V is hereby created and a new section designated as Section 21 of R.A 9184, as amended, is hereby inserted to read as follows:

ARTICLE V THE INTEGRATED PROCUREMENT PROCESS

SECTION 21. THE INTEGRATED PROCUREMENT PROCESS. THE LIFE CYCLE OF PROCUREMENT ACTIVITIES HAS THREE INTEGRATED STAGES:

- (A) PLANNING STAGE
 - (1) PROCUREMENT PLANNING
 - (2) REQUIREMENT SPECIFICATION AND MARKET

FEASIBILITY ANALYSIS

(3) PREPARATION OF BIDDING DOCUMENTS

(B) SOURCING STAGE

- (4) INVITATION TO BID
- (5) RECEIPT AND OPENING OF BIDS
- (6) BID EVALUATION
- (7) POST-QUALIFICATION

(C) MANAGEMENT STAGE

- (8) IMPLEMENTATION OF CONTRACT
- (9) MONITORING AND EVALUATION
- (10) DISPOSAL

Section 16. Article II of R.A. 9184 is hereby renumbered as Article VI and a new section designated as Section 22 of R.A 9184, as amended, is hereby inserted to read as follows:

ARTICLE VI [II]
[PROCUREMENT] PLANNING STAGE

A. PROCUREMENT PLANNING

SECTION 22. PROCUREMENT CAPABILITY INDEX. THE PROCURING ENTITY SHALL SUBMIT A SELF-ASSESSED PROCUREMENT CAPABILITY INDEX (PCI) TO THE DBM EVERY YEAR. THE PCI SHALL GAUGE THE CAPACITY OF THE PROCURING ENTITY TO UNDERTAKE PROCUREMENT ACTIVITIES.

IN THE PREPARING THE PCI, THE PROCURING ENTITY SHALL ENGAGE WITH STAKEHOLDERS AND ALSO REVIEW PREVIOUS OR EXISTING CONTRACTS.

Section 17. A new section designated as Section 23 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 23. MULTI-YEAR CONTRACTING. NATIONAL GOVERNMENT AGENCIES, LOCAL GOVERNMENT UNITS, CONSTITUTIONAL OFFICES, AND STATE UNIVERSITIES AND COLLEGES MAY REQUEST THE DBM FOR THE ISSUANCE OF AN MYCA PRIOR TO ENTERING INTO CONTRACTS TO COVER THE TOTAL PROJECT COSTS OF MULTI-YEAR PROJECTS, WHETHER LOCALLY-FUNDED OR FOREIGN-ASSISTED. IN THE CASE OF GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS (GOCCS), THEY SHALL SECURE PRIOR AUTHORITY FROM THEIR RESPECTIVE GOVERNING BOARDS BEFORE ENTERING

INTO MULTI-YEAR PROJECTS AND PROCEEDING WITH THEIR PROCUREMENT.

Section 18. A new section designated as Section 24 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 24. ESTIMATE OF THE TOTAL MONETARY VALUE OF A PROCUREMENT. THE END-USER MUST CONSIDER THE TOTAL VALUE OVER THE WHOLE LIFE OF THE CONTRACT REQUIRED FOR THE FULL DELIVERY OF THE GOODS, INFRASTRUCTURE PROJECTS, OR CONSULTING SERVICES IN ESTIMATING THE TOTAL MONETARY VALUE OF PROCUREMENT THROUGH METHODOLOGIES SUCH AS LIFE CYCLE COSTING. THE GPPB MAY PRESCRIBE SPECIAL METHODS OF VALUATION IN CERTAIN TYPES OF PROCUREMENT.

Section 19. A new section designated as Section 25 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 25. PROCUREMENT SHORT OF AWARD. TO FACILITATE THE IMMEDIATE PROCUREMENT OF GOODS, INFRASTRUCTURE PROJECTS, OR CONSULTING SERVICES, EVEN PENDING APPROVAL OF THE GENERAL APPROPRIATIONS ACT, CORPORATE BUDGET, OR APPROPRIATIONS ORDINANCE, AS THE CASE MAY BE, THE PROCURING ENTITY MAY UNDERTAKE PROCUREMENT ACTIVITIES SHORT OF AWARD. NATIONAL GOVERNMENT AGENCIES (NGAS), SUCS, CONSTITUTIONAL COMMISSIONS OR OFFICES MAY START THEIR PROCUREMENT ACTIVITIES IMMEDIATELY AFTER THE NATIONAL EXPENDITURE PROGRAM (NEP) HAS BEEN SUBMITTED BY THE PRESIDENT TO CONGRESS, PROVIDED THAT THE HOPE HAS APPROVED THE CORRESPONDING INDICATIVE ANNUAL PROCUREMENT PLAN (APP). THIS WILL FACILITATE THE AWARDED OF PROCUREMENT CONTRACTS AFTER THE ENACTMENT OF THE GAA, ENABLING THE TIMELY IMPLEMENTATION AND COMPLETION OF PROGRAMS AND PROJECTS.

THE PROCURING ENTITIES SHALL PROCEED WITH THE AWARDED OF CONTRACT ONLY UPON APPROVAL OR ENACTMENT OF THEIR RESPECTIVE APPROPRIATIONS OR BUDGET AUTHORIZATION DOCUMENTS, AS THE CASE MAY BE, AND ON THE BASIS OF THE AMOUNT AUTHORIZED THEREIN.

SHOULD THE APPROVED BUDGET FOR A PROGRAM, ACTIVITY, OR PROJECT BE LESSER THAN THE AMOUNT INDICATED IN THE NEP, THE

CONCERNED PROCUREMENT ENTITY SHALL MAKE THE NECESSARY ADJUSTMENTS ACCORDINGLY.

Section 20. A new section designated as Section 26 of R.A 9184, as amended, is hereby inserted to read as follows:

B. REQUIREMENT SPECIFICATION AND INDUSTRY ANALYSIS

SECTION 26. REQUIREMENT SPECIFICATION. UPON THE ISSUANCE OF THE NATIONAL EXPENDITURE PROGRAM, THE PROCURING ENTITY SHALL INSTRUCT ITS END-USERS TO FURTHER SPECIFY THE REQUIREMENTS OF THEIR PROPOSED PROCUREMENT ACTIVITIES.

Section 21. A new section designated as Section 27 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 27. INDUSTRY ANALYSIS. AFTER THE END-USERS HAVE SPECIFIED THEIR REQUIREMENTS, AN INDUSTRY ANALYSIS SHALL BE CONDUCTED WHEREIN THE LANDSCAPE OF SUPPLIERS FOR THE DESIRED GOODS AND SERVICES IS EXAMINED. THE END-USERS SHALL ALSO DETERMINE THE RISKS INVOLVED IN THE PROCUREMENT AND POTENTIAL MITIGATION APPROACHES.

Section 22. A new section designated as Section 28 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 28. PRICE REFERENCES. THE DBM PROCUREMENT SERVICE, IN COOPERATION WITH THE DEPARTMENT OF TRADE AND INDUSTRY, SHALL MAINTAIN VERIFIED PRICE REFERENCES FOR COMMON USE ITEMS AND OTHER ITEMS THAT SHALL BE SEASONABLY UPDATED. PROCURING ENTITIES MAY USE THESE VERIFIED PRICE REFERENCES IN LIEU OF MARKET FEASIBILITY STUDIES.

Section 23. Article VI of R.A. 9184 is hereby designated as Part C of the new Article VI and Section 18 of R.A. 9184 thereunder is hereby renumbered and amended to read as follows:

C. [ARTICLE VI] PREPARATION OF BIDDING DOCUMENTS

Section 30 [18]. *Reference to Brand Names.*- Specifications for the Procurement of Goods AND GOODS COMPONENTS OF INFRASTRUCTURE PROJECTS shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall BE ALLOWED IN SPECIFIC INSTANCES, AS DETERMINED BY THE GPPB [not

be allowed]. PROVIDED THAT, IN CASES WHERE THE REFERENCE TO THE BRAND NAME OF A PARTICULAR SUPPLIER IS NECESSARY, THE PHRASE "OR EQUIVALENT" SHALL BE ADDED AFTER SUCH REFERENCE.

Section 24. Section 19 of R.A. 9184 is hereby amended to read as follows:

Section 31 [19]. *Access to Information.*- In all stages of the preparation of the Bidding Documents, the Procuring entity shall ensure equal access to information BY POSTING THE SAID DOCUMENTS IN THE PHILGEPS WEBSITE AND MAKING THEM AVAILABLE IN THE CONCERNED OFFICES. Prior to their official release, no aspect of the Bidding Documents shall be divulged or released on any prospective bidder or having direct or indirect interest in the project to be procured.

Section 25. Article VII of R.A. 9184 is hereby designated as Part A of the new Article VII herein and Section 20 of R.A. 9184 is hereby renumbered and amended as follows.

ARTICLE VII SOURCING STAGE

A. [ARTICLE VII] INVITATION TO BID

Section 31 [20]. *Pre-ADVERTISING [Procurement] Conference.* - XXX

Section 26. Section 21 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 32 [21]. *Advertising and Contents of the Invitation to Bid.* - In line with the principle of transparency and competitiveness, all Invitations to Bid contracts under LOWEST COST PROCUREMENT [competitive bidding] AND BEST VALUE PROCUREMENT shall be OPENLY advertised by the Procuring Entity in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible dissemination thereof, such as, but not limited to, posting in the Procuring Entity's premises, [in newspapers of general circulation,] the PHILGEPS [G-EPS] and the website of the Procuring Entity, if available. The details and mechanics of implementation shall be provided in the IRR to be promulgated under this Act.

The Invitation to Bid shall contain, among others:

- (a) A brief description of the subject matter of the Procurement;
- (b) A general statement on the criteria, CERTIFICATIONS, AND PERFORMANCE MEASURES to be used by the Procuring entity for the eligibility check, the short listing of prospective bidders, in the case of the

Procurement of Consulting Services the examination and evaluation of Bids, and post-qualification;

XXX

(g) The ESTIMATED TIMEFRAME FOR DELIVERING THE GOODS, INFRASTRUCTURE PROJECTS, AND CONSULTING SERVICES, OR THE ESTIMATED contract duration AND ANY OPTIONS RELATING TO THE LENGTH OF CONTRACT; [and]

(H) ANY LIMITATIONS ON THE NUMBER OF BIDDERS THAT MAY BE SHORTLISTED;

(I) THE MODE OF PROCUREMENT; AND

(J) [(h)] Such other necessary information deemed relevant by the Procuring Entity.

ANY PROSPECTIVE BIDDER MAY SEND QUERIES ABOUT THE INVITATION TO BID TO THE PROCURING ENTITY ELECTRONICALLY. THE PROCURING ENTITY MUST PROMPTLY RESPOND TO ALL QUESTIONS AND REASONABLE REQUESTS FOR INFORMATION WITHIN TWO (2) WORKING DAYS. PROVIDED THAT, INFORMATION THAT MIGHT GIVE UNDUE ADVANTAGE OVER OTHER PROSPECTIVE BIDDERS OR DISCLOSE CONFIDENTIAL OR COMMERCIAL SENSITIVE INFORMATION MUST NOT BE GIVEN. PROVIDED, FURTHER, THAT WHEN A PROCURING ENTITY RESPONDS TO A SUPPLIER'S QUESTION, IT MUST NOT DISCUSS OR DISCLOSE ANOTHER SUPPLIER'S CONFIDENTIAL OR COMMERCIAL SENSITIVE INFORMATION.

THE PROCURING ENTITY MAY MAKE CHANGES IN ITS REQUIREMENTS OR PROCESS OR PROVIDE ADDITIONAL INFORMATION TO ALL PARTICIPATING BIDDERS AFTER AN INVITATION TO BID IS PUBLISHED. PROVIDED THAT, SHOULD A SHORTLISTING BE CONDUCTED, THE INFORMATION MUST BE MADE AVAILABLE TO ALL SHORTLISTED BIDDERS AT THE SAME TIME. CHANGES IN THE BID THEREAFTER SHALL BE ALLOWED UNTIL THE DEADLINE FOR RESPONSES.

Section 27. A new section designated as Section 33 of R.A 9184 is hereby added to read as follows:

SECTION 33. CLOSED INVITATION TO BID. INVITATIONS TO BID SHALL BE SENT TO EITHER A DIRECT SOURCE OR A LIMITED NUMBER OF KNOWN SUPPLIERS, AS THE CASE MAY BE, FOR THE ALTERNATIVE MODES OF PROCUREMENT AS DEFINED IN ARTICLE XI OF THIS ACT AS WELL AS TO THE FOLLOWING TRANSACTIONS:

A. PURCHASE OF A PROTOTYPE FOR RESEARCH, EXPERIMENT,

- STUDY, OR ORIGINAL DEVELOPMENT;
- B. PURCHASE ON EXCEPTIONALLY ADVANTAGEOUS CONDITIONS THAT ONLY ARISE ON THE VERY SHORT TERM;
- C. WHERE THE CONTRACT IS AWARDED TO THE WINNER OF A DESIGN CONTEST; AND
- D. WHERE AN AGENCY RECEIVES A UNIQUE UNSOLICITED PROPOSAL.

Section 28. Section 22 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 34 [22]. *Pre-bid Conference.* - At least one PHYSICAL OR WEB-BASED pre-bid conference shall be conducted for each procurement, unless otherwise provided in the IRR. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon the written request of any prospective bidder.

XXX

Section 29. A new section designated as Section 35 of R.A 9184, as amended, is hereby added to read as follows:

SECTION 35. EXCLUSION OF BIDDERS. THE PROCURING ENTITY MAY EXCLUDE A BIDDER FROM PARTICIPATING DUE TO THE FOLLOWING REASONS:

- a. BLACKLISTING OF THE SUPPLIER,
- b. BANKRUPTCY, RECEIVERSHIP, OR LIQUIDATION
- c. MAKING A FALSE DECLARATION IN ITS SUBMISSIONS
- d. SERIOUS PERFORMANCE ISSUE IN A PREVIOUS CONTRACT
- e. CONVICTION FOR A SERIOUS CRIME
- f. PROFESSIONAL MISCONDUCT
- g. FAILING TO PAY TAXES, DUTIES, OR OTHER LEVIES
- h. HUMAN RIGHTS VIOLATIONS BY THE SUPPLIER OR IN THE SUPPLIER'S SUPPLY CHAIN; AND
- i. ANY ANALOGOUS MATTER

EVIDENCE SUPPORTING THE REASON FOR EXCLUSION MUST EXIST BEFORE EXCLUSION. THE EXCLUDED BIDDER MUST BE NOTIFIED OF ITS EXCLUSION TOGETHER WITH THE REASONS FOR SUCH AND BE AFFORDED THE RIGHT TO REFUTE WITHIN A REASONABLE TIME.

Section 30. Section 23 of R.A. 9184 is hereby repealed.

Section 31. Article VIII of R.A. 9184 is hereby designated as Part B of the new Article VII herein and Section 24 of R.A. 9184 is hereby renumbered and amended to read as follows:

B. [ARTICLE VIII] RECEIPT AND OPENING OF BIDS

Section 36 [24]. Eligibility Requirements and Short Listing [for the Procurement of Consulting Services].- The Eligibility of prospective bidders for the Procurement of GOODS, INFRASTRUCTURE SERVICES, AND Consulting Services XXX

Section 32. Section 25 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 37 [25]. Submission and Receipt of Bids.- A bid shall have two (2) components, namely the technical and financial components which should be in separate ELECTRONIC FOLDERS OR sealed envelopes, and which shall be submitted simultaneously. The bids shall be received by the BAC on OR BEFORE such date, time and place specified in the invitation to bid. The deadline for the receipt of bids shall be fixed by the BAC, giving the prospective bidders sufficient time to study and prepare their bids. The deadline shall also consider the urgency of the procurement involved.

Bids submitted after the deadline shall not be accepted.

Notwithstanding the provisions of this Section and Section 38 [26] of this Act, the GPPB may prescribe innovative procedure for the submission, receipt and opening of bids through the PHILGEPS [G-EPS].

Section 33. Section 26 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 38 [26]. *Modification and Withdrawal of Bids.* - A bidder may modify his bid, provided that this is done before the deadline for the receipt of bids. The modification shall be submitted in aN ELECTRONIC FOLDER OR sealed envelope duly identified as a modification of the original bid and stamped received by the BAC.

A bidder may, through aN ELECTRONIC MAIL [letter], withdraw his bid or express his intention not to participate in the bidding before the deadline for the receipt of bids. In such a case, he shall no longer be allowed to submit another Bid or the same contract either directly or indirectly.

Section 34. Section 29 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 41 [29]. Bid Opening. - the BAC shall publicly open all bids at the time, date, and place specified in the bidding documents, WHICH IN NO CASE SHALL BE MORE THAN FIVE (5) WORKING DAYS AFTER THE DEADLINE OF THE SUBMISSION OF BIDS. The minutes of the bid opening shall be made available to the public THROUGH THE PHILGEPS [upon written request and payment of a specified fee].

Section 35. Article IX is hereby designated as Part C of Article VII and a new section thereunder, designated as Section 44 of R.A 9184, as amended, is hereby inserted to read as follows:

C. [ARTICLE IX] BID EVALUATION

SECTION 44. ORAL PRESENTATIONS AND DEMONSTRATIONS. TO PROVIDE TOP-RANKED BIDDERS AN OPPORTUNITY TO HIGHLIGHT THE STRENGTHS OF THEIR PROPOSAL AND PROVIDE ANSWERS REGARDING THEIR BIDS, A PROCURING ENTITY MAY HAVE THE OPTION TO SCHEDULE AN ORAL PRESENTATION OF THEIR RESPECTIVE PROPOSALS THAT SHALL BE CONDUCTED IN A FAIR MANNER NOT LATER THAN FIVE (5) CALENDAR DAYS AFTER THE OPENING OF BIDS IN BEST VALUE PROCUREMENTS. PROVIDED THAT, THE BIDDERS SHALL NOT BE ALLOWED TO SUBMIT NEW INFORMATION OR MODIFY THEIR BIDS.

Section 36. A new section designated as Section 45 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 45. FINAL OFFER. AFTER THE ORAL PRESENTATION AND DEMONSTRATION, THE PROCURING ENTITY MAY GIVE BIDDERS UP TO TWO (2) OPPORTUNITIES TO IMPROVE THEIR BIDS IN ORDER TO RECEIVE A MORE FAVORABLE EVALUATION. THE BIDDERS SHALL BE REQUESTED TO SUBMIT THEIR FINAL OFFERS NOT LATER THAN TEN (10) WORKING DAYS AFTER THE ORAL PRESENTATION OR DEMONSTRATION. PROCURING ENTITIES MAY EVALUATE THE FINAL OFFERS AS AN ADDITION TO THE SCORES ALREADY RECEIVED BY THE BIDDERS ON THEIR ORIGINAL BID OR MAY DEVELOP A NEW EVALUATION PROCESS BASED ENTIRELY ON THE FINAL OFFERS.

BIDDERS MAY OPT NOT TO SUBMIT A FINAL OFFER AND RESPOND IN WRITING TO THE PROCURING ENTITY THAT THEIR RESPONSE REMAINS AS ORIGINALLY SUBMITTED. DURING THE FINAL OFFER

PROCESS, THE LOWEST PRICE DURING THE ORIGINAL RESPONSES MAY BE DISCLOSED BUT NOT THE IDENTITY OF THE BIDDER AS WELL AS THE CURRENT RANK OF THE BIDDERS.

Section 37. Section 32 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 46 [32]. *Bid EVALUATION for the Procurement of Goods and Infrastructure Projects.* - For the procurement of Goods and Infrastructure Projects, 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 IN LOWEST BID PROCUREMENT OR OVERALL PERFORMANCE RATING BASED ON EVALUATION CRITERIA shall be referred to as the "MOST ADVANTAGEOUS BID" ["Lowest Calculated Bid"].

THE MOST ADVANTAGEOUS BID UNDER BEST VALUE PROCUREMENT SHALL BE UNDERSTOOD AS THE ONE THAT OFFERS THE BEST PUBLIC VALUE OVER THE WHOLE LIFE OF THE GOODS AND INFRASTRUCTURE PROJECTS AS PROPOSED BY THE BIDDER THAT FULLY UNDERSTANDS AND HAS THE CAPABILITY TO DELIVER THE REQUIREMENTS AND MEET THE CONTRACT CONDITIONS.

Section 38. Section 33 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 33. *Bid Evaluation of Short Listed Bidders for Consulting Services.* - XXX The Bid with the highest calculated rating shall be the "MOST ADVANTAGEOUS BID." ["Highest Rated Bid."] After approved by the Head of the Procuring Entity of the MOST ADVANTAGEOUS BID [Highest Rated Bid], XXX

Section 39. Article X of R.A. 9184 is hereby designated as Part D of the new Article VII herein and Section 34 of R.A. 9184 is hereby renumbered and amended to read as follows:

D. [ARTICLE X] POST-QUALIFICATION

Section 48 [34]. *Objective and Process of Post-qualification.* - Post-qualification is the stage where the bidder with the MOST ADVANTAGEOUS BID (MAB) [Lowest Calculated Bid, in the case of Goods and Infrastructure Projects, or the Highest Rated Bid, in the case of Consulting Services,] undergoes verification and validation whether he has passed all the requirements and conditions as specified in the Bidding Documents.

If the bidder with the MAB [Lowest Calculated Bid or Highest Rated Bid] passes all the criteria for post-qualification, his Bid shall be considered the MOST ADVANTAGEOUS AND RESPONSIVE BID (MARB) ["Lowest Calculated Responsive Bid," in the case of Goods and Infrastructure 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 MARB [Lowest Calculated Bid or Highest Rated Bid]. If the bidder with the second MARB [Lowest Calculated Bid or Highest Rated Bid] is post-disqualified, the same procedure shall be repeated until the MARB [Lowest Calculated Responsive Bid or Highest Rated Responsive Bid] is finally determined.

In all cases, the contract shall be awarded only to the bidder with the MARB [Lowest Calculated Responsive Bid or Highest Rated Responsive Bid].

IN BEST VALUE PROCUREMENTS, THE PROCURING ENTITY IS NOT REQUIRED TO AUTOMATICALLY SELECT A BIDDER BASED UPON THE LOWEST COST OR THE HIGHEST QUALIFICATIONS UNLESS THESE WERE THE PRIMARY CRITERIA FOR SELECTION.

Section 40. A new section designated as Section 49 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 49. DEBRIEFING OF UNSUCCESSFUL BIDDERS. UPON THE REQUEST OF ANY UNSUCCESSFUL BIDDER, THE PROCURING ENTITY SHALL CONDUCT A DEBRIEFING IN ORDER TO GIVE THEM AN OPPORTUNITY TO IMPROVE THEIR FUTURE PROPOSALS. REQUESTS MAY BE MADE WITHIN TWENTY (20) DAYS AFTER GIVING THE NOTICE OF AWARD. THE PROCURING ENTITY SHALL STATE THE REASONS THEIR PROPOSAL WAS NOT SELECTED, THEIR RELATIVE STRENGTHS AND WEAKNESSES, AND ADDRESS OTHER CONCERNS. IN NO CASE SHALL THE PROCURING ENTITY DISCLOSE ANOTHER BIDDER'S CONFIDENTIAL OR COMMERCIAL SENSITIVE INFORMATION.

Section 41. Section 35 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 50 [35]. *Failure of Bidding.* - there shall be a failure of bidding if:

XXX

B. No bid qualifies as the MARB [Lowest Calculated Responsive Bid; or];

C. Whenever the bidder with the MARB refuses, without justifiable cause to accept the award of contract, as the case may be ; [.]

D. NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE AWARD OF CONTRACT; OR

E. FAILURE TO ENTER INTO CONTRACT AND POST PERFORMANCE SECURITY.

XXX however, the BAC may resort to negotiated procurement as provided for in Section 71 of this Act.

Section 42. Section 36 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 51 [36]. Single Advantageous [Calculated/Rated and] Responsive Bid Submission. - A single advantageous [calculated/rated and] responsive bid shall be considered for award if it falls under of the following circumstances:

XXX

Section 43. Article XI of R.A. 9184 is hereby renumbered as Article VIII and Section 37 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE VIII [XI] IMPLEMENTATION STAGE

A. AWARD, IMPLEMENTATION AND TERMINATION OF THE CONTRACT

Section 52 [37]. Notice and Executive of Award. - Within a period not exceeding TEN (10) WORKING [fifteen (15) calendar] days from the determination and declaration by the BAC of the MOST ADVANTAGEOUS AND RESPONSIVE BID [Lowest Calculated Responsive Bid or Highest Rated Responsive Bid,] and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the MOST ADVANTAGEOUS AND RESPONSIVE BID [Lowest Calculated Responsive Bid or Highest Rated Responsive Bid]. IN CASE OF DISAPPROVAL, THE HEAD OF THE PROCURING ENTITY SHALL STATE THE REASONS THEREOF AND RETURN THE DOCUMENTS TO THE BAC ON THE SAME DAY, WHICH SHALL TAKE ACTION THEREON WITHIN FIVE (5) WORKING DAYS.

Within FIVE (5) [ten (10) calendar] WORKING 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.]

In the case of government-owned and/or -controlled corporations, the concerned board shall take action on the said recommendation within thirty (30) calendar days from receipt thereof.

The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than FIVE (5) WORKING [seven (7) calendar] days from the date of approval of the contract by the appropriate authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the contractor. THE OTHER BIDDERS SHALL LIKEWISE BE PROMPTLY NOTIFIED BY THE DECISION OF THE BAC. THE NOTICE OF AWARD AND THE NOTICE TO PROCEED SHALL BE PUBLISHED IN PHILGEPS.

Section 44. Section 38 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 53 [38]. Period of Action on Procurement Activities. - XXX If no action on the contract is taken by the head of the procuring entity or by his duly authorized representative, or by the concerned board, in the case of government-owned and/or -controlled corporations, within the periods specified in the preceding paragraph, the contract concerned shall be deemed approved, WITHOUT PREJUDICE TO THE APPROPRIATE ADMINISTRATIVE SANCTIONS THAT MAY BE IMPOSED AGAINST RESPONSIBLE OFFICIALS.

Section 45. Section 39 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 54 [39]. PERFORMANCE [*Performing*] Security. -

Section 46. Section 40 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 55 [40]. *Failure to Enter into Contract and Post Performance Security.*
- If, for justifiable causes, the bidder with the MOST ADVANTAGEOUS AND RESPONSIVE BID [Lowest Calculated Responsive Bid or Highest Rated Responsive Bid] fails, 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 undertake post-qualification for the next-ranked MOST ADVANTAGEOUS AND RESPONSIVE BID [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 OR BE CANCELLED.

XXX

Section 47. A new sub-article is hereby added and a new section designated as Section 58 of R.A 9184, as amended, is hereby inserted to read as follows:

A. MONITORING AND EVALUATION

SECTION 58. MANAGING RELATIONSHIP WITH WINNING BIDDER. THE PROCURING ENTITY THROUGH THE END-USER SHALL ACTIVELY MANAGE THE CONTRACTUAL RELATIONSHIP WITH THE WINNING BIDDER TO ENSURE THAT KEY PERFORMANCE INDICATORS ARE MET THROUGH REGULAR COMMUNICATION.

Section 48. A new section designated as Section 59 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 59. PERIODIC UPDATES. THE END-USER SHALL MAKE PERIODIC UPDATES ON THE COMPLIANCE OF THE WINNING BIDDER NOT LONGER THAN THREE (3) MONTHS APART.

Section 49. A new section designated as Section 60 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 60. SATISFACTION METRIC. THE PROCURING ENTITY SHALL RATE THE PERFORMANCE OF THE WINNING BIDDER BEFORE A CONTRACT IS TERMINATED USING A METRIC TO BE FORMULATED BY THE GPPB ACCOMPANIED BY DETAILED OBSERVATIONS THAT SHALL BE REFLECTED IN THE PROFILE OF THE BIDDER IN PHILGEPS.

THE WINNING BIDDER SHALL ALSO BE GIVEN THE OPPORTUNITY TO RATE THE PROCURING ENTITY AFTER THE TERMINATION OF THE CONTRACT.

THE GPPB SHALL COLLATE THESE RATINGS AND ANY RECOMMENDATIONS FOR IMPROVEMENT OF BIDDERS AND THE PROCUREMENT PROCESS ITSELF.

Section 50. A new section designated as Section 61 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 61. BLACKLISTING. BLACKLISTING OF NON-COMPLIANT SUPPLIERS, CONTRACTORS, AND CONSULTANTS AS WELL AS WHITELISTING OR RECOGNIZING COMPLIANT AND EXEMPLARY SUPPLIERS, CONTRACTORS, AND CONSULTANTS SHALL BE ALLOWED UPON RELEASE OF GUIDELINES AND/OR RATINGS SYSTEM BY THE GPPB. THESE SHALL BE EASILY VIEWABLE IN THE PHILGEPS WEBSITE. BLACKLISTED PERSONS AND ENTITIES SHALL BE AUTOMATICALLY BARRED FROM PARTICIPATING IN ANY PHILGEPS ACTIVITY.

AN IT INFRASTRUCTURE THAT CAN ACCOMMODATE THE UPLOADING OF PROCEEDINGS AND TRANSACTIONS IN PHILGEPS SHALL BE PROVIDED. THIS SHALL BE ACCESSIBLE TO EVERYONE, ESPECIALLY FOR GOVERNMENT WATCHDOGS.

Section 51. A new sub-article is hereby added and a new section designated as Section 61 of R.A 9184, as amended, is hereby inserted to read as follows:

C. DISPOSAL

SECTION 62. DISPOSAL PROCEDURE. THE PROCURING ENTITIES SHALL FOLLOW THE ESTABLISHED GOVERNMENT DISPOSAL PROCEDURES.

Section 52. Article XII of R.A. 9184 is hereby renumbered as Article IX and Section 43 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE IX [XII] DOMESTIC AND FOREIGN PROCUREMENT

SEC. 63 [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 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.] HOWEVER, THE PURCHASE OF DOMESTICALLY-PRODUCED AND MANUFACTURED GOODS, SUPPLIES AND MATERIALS THAT MEET THE SPECIFIED OR DESIRED QUALITY MUST BE PRIORITIZED. FOREIGN BIDDERS MAY ONLY BE ELIGIBLE TO PARTICIPATE UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

- A. WHEN THE GOODS SOUGHT TO BE PROCURED ARE NOT AVAILABLE FROM LOCAL SUPPLIERS; OR
- B. WHEN THE FOREIGN SUPPLIER, MANUFACTURER AND/OR DISTRIBUTOR IS A CITIZEN, CORPORATION OR ASSOCIATION OF A COUNTRY THE LAWS OR REGULATIONS OF WHICH GRANT RECIPROCAL RIGHTS OR PRIVILEGES TO CITIZENS, CORPORATIONS OR ASSOCIATIONS OF THE PHILIPPINES, IRRESPECTIVE OF THE AVAILABILITY OF GOODS FROM LOCAL SUPPLIERS; OR
- C. WHEN PROVIDED FOR UNDER ANY TREATY OR INTERNATIONAL OR EXECUTIVE AGREEMENT.

Section 53. Article XIII of R.A. 9184 is hereby renumbered as Article X.

Section 54. Article XVI of R.A. 9184 is hereby renumbered as Article XI and Section 49 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE XI [XVI]
ALTERNATIVE METHODS OF PROCUREMENT

Section 67 [49]. *Limited Source Bidding.* - Limited Source Bidding may be resorted to only in any of the following conditions:

- a. Procurement of highly specialized types of Goods and Consulting Services which are known to be obtainable only from a limited number of sources OR FOR TECHNICAL REASONS THERE IS NO REAL COMPETITION; or
- b. Procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole.

Section 55. Section 52 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 70 [52]. *Shopping.* - shopping may be resorted to under any of the following instances:

- a. When there is an unforeseen contingency requiring immediate purchase: Provided, however, That the amount shall not exceed TWO HUNDRED THOUSAND PESOS (P200,000) [Fifty thousand pesos (P50,000)]; or
- b. Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding ONE MILLION PESOS (P1,000,000) [Two hundred fifty thousand pesos (P250,000)]: Provided, however, That the Procurement does not result in Splitting of Contracts: Provided, further, That at least three (3) price quotations

from bona fide suppliers shall be obtained. IN CASE THE REQUIRED NUMBER OF QUOTATIONS ARE NOT RECEIVED, THE PROCURING ENTITY MAY CANVASS ON ITS OWN FROM AT LEAST THREE (3) REPUTABLE SUPPLIERS.

The above amounts shall be subject to a period review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons.

Section 56. Section 53 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 71 [53]. *Negotiated Procurement.* - Negotiated Procurement shall be allowed only in the following instances:

- a. In case of two (2) failed bidding as provided in Section 50 [35] hereof;
- b. In case of imminent danger to life or property BEFORE, during, OR AFTER 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;

XXX

Section 57. A new article is hereby created and designated as Article XII and a new section designated as Section 73 of R.A 9184, as amended, is hereby inserted to read as follows:

ARTICLE XII SUSTAINABLE PUBLIC PROCUREMENT

SECTION 73. ENVIRONMENT-FRIENDLINESS CRITERION IN PROCUREMENT. INFRASTRUCTURE PROJECTS, THE SUSTAINABILITY OF MATERIALS TO BE PROCURED SHALL BE GIVEN GREATER WEIGHT IN THE EVALUATION OF BIDS.

Section 58. A new section designated as Section 74 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 74. INTER-AGENCY TASK FORCE ON SUSTAINABLE PUBLIC PROCUREMENT TASK FORCE. AN INTER-AGENCY TASK FORCE ON SUSTAINABLE PUBLIC PROCUREMENT (IATF-SPP) IS HEREBY CREATED TO BE HEADED BY THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES, WITH THE SECRETARIES OF TRADE AND INDUSTRY, PUBLIC WORKS AND HIGHWAYS, SCIENCE AND

TECHNOLOGY, AND EDUCATION, AND A REPRESENTATIVE FROM ENVIRONMENTAL ORGANIZATIONS, AS MEMBERS.

THE IATF-SPP SHALL BE RECOMMEND TO THE GPPB THE SUSTAINABLE PROCUREMENT POLICY THAT SHALL BE APPLICABLE TO THE ALL GOVERNMENT AGENCIES AND INSTRUMENTALITIES INCLUDING, BUT NOT LIMITED TO, THE CRITERIA TO BE USED IN THE ASSESSMENT OF SUSTAINABILITY OF PRODUCTS AND SERVICES AND THEIR CORRESPONDING CERTIFICATION.

Section 59. A new section designated as Section 75 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 75. PROMOTION OF CERTIFIED SUSTAINABLE PRODUCTS. CERTIFIED SUSTAINABLE PRODUCTS SHALL BE PROMOTED IN PHILGEPS.

GREEN PRODUCTS CERTIFIED BY THE PGPTF SHALL BE ORGANIZED BY PRODUCT NAMES TO PROMOTE THE USE OF GREEN PRODUCTS IN THE GOVERNMENT.

Section 60. A new article is hereby created and designated as Article XIII and a new section designated as Section 76 of R.A 9184, as amended, is hereby inserted to read as follows:

ARTICLE XIII INCLUSIVE PUBLIC PROCUREMENT

SECTION 76. REGISTRATION OF PRIORITY ENTERPRISES. THE PHILGEPS SHALL MAINTAIN A REGISTRY OF PRIORITY ENTERPRISES: PROVIDED, THAT, PRIOR TO REGISTRATION, A PRIORITY ENTERPRISE SHALL FIRST HAVE BEEN DULY CERTIFIED AS SUCH BY THE NATIONAL COUNCIL FOR DISABILITY AFFAIRS, THE COOPERATIVE DEVELOPMENT AUTHORITY, OR THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT COUNCIL AS THE CASE MAY BE. THESE AGENCIES SHALL LIKEWISE EXERT EFFORTS TO HAVE PRIORITY ENTERPRISES REGISTERED IN THE PHILGEPS.

INFORMATION CONCERNING REGISTERED PRIORITY ENTERPRISES IN THE PHILGEPS, AS DEFINED IN THE IRR, SHALL BE INCLUDED IN ORDER TO FACILITATE THEIR PATRONAGE IN ACCORDANCE WITH THE ALTERNATIVE MODES OF PROCUREMENT IN ARTICLE XII OF THIS ACT.

Section 61. A new section designated as Section 77 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 77. PRIORITIZATION OF ENTERPRISES. THE BAC, UPON REVIEW OF THE TECHNICAL AND FINANCIAL COMPONENTS OF PARTICIPATING BIDDERS DURING BID EVALUATION, SHALL FAVOR A PRIORITY ENTERPRISE OVER A NON-PRIORITY ENTERPRISE AND SHALL ACCORDINGLY AWARD TO THE FORMER THE CONTRACT IN THE EVENT BOTH SUCH ENTITIES DISPLAY COMPARABLY EQUAL COMPETENCE WHEN ANALYZED USING PARAMETERS DEFINED BY THE GPPB IN THE IRR, WHICH SHALL INCLUDE A PERMISSIBLE MARGIN WHICH SHALL STILL BE IN FAVOR OF PRIORITY ENTERPRISES.

THIS PRIORITIZATION DOES NOT APPLY WHEN THERE IS AN ENTERPRISE, PRIORITY OR NOT, CLEARLY MORE CAPABLE THAN THE REST OF THOSE INVOLVED.

Section 62. A new section designated as Section 78 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 78. HIERARCHY OF PRIORITY ENTERPRISES. THE PARAMETERS AND THE PERMISSIBLE MARGIN MENTIONED IN THE NEXT PRECEDING SECTION FOR THE IRR SHALL REFLECT THE FOLLOWING HIERARCHY FROM THE MOST PRIORITIZED ENTERPRISE TO THE LEAST: (I) SHELTERED WORKSHOPS, (II) COOPERATIVES, (III) MICRO ENTERPRISES, (IV) SMALL ENTERPRISES, AND (V) MEDIUM ENTERPRISES.

IN CASE TWO PRIORITY ENTERPRISES ARE FOUND TO BE OF COMPARABLY EQUAL COMPETENCE, THE ONE MORE PRIORITIZED SHALL BE AWARDED THE CONTRACT.

Section 63. A new section designated as Section 79 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 79. CEILINGS, REDUCTIONS, OR EXEMPTIONS ON BID AND PERFORMANCE SECURITIES, WARRANTIES, AND OTHER GUARANTEES. THE GPPB, AFTER DUE CONSULTATION WITH THE NATIONAL COUNCIL FOR DISABILITY AFFAIRS, THE COOPERATIVE DEVELOPMENT AUTHORITY, AND THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT COUNCIL, SHALL PRESCRIBE INSTANCES WHEREIN A REDUCTION OF OR OUTRIGHT EXEMPTION FROM BID AND PERFORMANCE SECURITIES, WARRANTIES, AND OTHER GUARANTEES SHALL BE EXTENDED TO A PRIORITY

ENTERPRISE, ESPECIALLY WHEN THE BAC DETERMINES THAT THE PRIORITY ENTERPRISE HAS DIFFICULTY ACCESSING CREDIT AND/OR CAPITAL FOR SUCH SECURITIES BUT IS OTHERWISE TECHNICALLY COMPETENT AND FINANCIALLY CAPABLE TO FULFILL THE CONTRACT. THE GPPB SHALL LIKEWISE PRESCRIBE IN THE IRR CEILINGS FOR SUCH SECURITIES FOR PRIORITY AGENCIES.

Section 64. A new section designated as Section 80 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 80. RESERVED TRANSACTIONS AND EARMARKING FOR PRIORITY ENTERPRISES. TWENTY-FIVE PERCENT (25%) OF A PROCURING ENTITY'S PROCUREMENTS EVERY FISCAL YEAR SHALL BE ALLOTTED TO PRIORITY ENTERPRISES: PROVIDED, THAT SUCH LIMIT SHALL ONLY APPLY TO TRANSACTIONS ORDINARILY WITHIN THE CAPACITY OF PRIORITY ENTERPRISES AS SHALL BE DEFINED IN THE IRR. PROCURING ENTITIES SHALL EXERT ERNEST EFFORTS TO MEET THE ABOVE PERCENTAGE BUT SHALL NOT BE FAULTED IF NO PRIORITY ENTERPRISE IS AVAILABLE, COMPETENT, AND CAPABLE TO MEET A PROCURING ENTITY'S CONTRACTS.

PROCUREMENTS OF RELATIVELY SMALL VALUE, THE AMOUNTS OF WHICH SHALL BE PRESCRIBED IN THE IRR, AND WHICH MAY BE COURSED THROUGH THE ALTERNATIVE METHODS OF PROCUREMENT AS PROVIDED IN ARTICLE XI, SHALL BE EARMARKED TO PRIORITY ENTERPRISES.

Section 65. A new section designated as Section 81 of R.A 9184, as amended, is hereby inserted to read as follows:

SECTION 81. PROHIBITION ON EXCLUSION. IT SHALL BE UNLAWFUL FOR PROCURING ENTITIES TO OUTRIGHT EXCLUDE OR OTHERWISE LIMIT THE PARTICIPATION OF PRIORITY ENTERPRISES DURING THE DETERMINATION OF QUALIFIED BIDDERS, ELIGIBILITY SCREENING, OR IN ANY OTHER PHASE OF THE PROCUREMENT PROCESS.

Section 66. Article XVII of R.A. 9184 is hereby renumbered as Article XIV and renamed and Section 55 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE XIV [XVII]
GRIEVANCE [Protest] MECHANISM

Section 82 [55]. DECISIONS OF THE BAC; DEVIATIONS IN BIDDING PROCESS [Protests on Decisions of the BAC]. - Decisions of the BAC in all

stages of procurement AS WELL AS ANY OBSERVED DEVIATIONS FROM PROPER BIDDING PROCEDURE AND/OR PRACTICE may be QUESTIONED VIA A MOTION FOR RECONSIDERATION OR SUBMITTED, AS THE CASE MAY BE, to the BIDS AND AWARDS COMMITTEE WITHIN FIVE (5) WORKING DAYS FROM NOTICE OF THE DECISION OR THE OCCURRENCE OF THE DEVIATION [head of the procuring entity and shall be] in writing. THE BAC SHALL HAVE FIVE (5) WORKING DAYS TO DECIDE ON THE MOTION OR ACT ON THE OBSERVATION AND SHALL FURNISH COPIES THEREOF TO ALL PARTIES INVOLVED IN THE MOTION OR SUBMISSION.

Section 67. A new section designated as Section 83 of R.A 9184, as amended, is hereby inserted to read as follows:

Section 83. APPEAL TO THE HEAD OF THE PROCURING ENTITY; MOTION FOR RECONSIDERATION. Decisions AND/OR ACTIONS OR INACTIONS of the BAC IN ACCORDANCE WITH THE NEXT PRECEDING SECTION may be protested TO THE HEAD OF THE PROCURING ENTITY by filing a verified position paper and paying a non-refundable protest fee, WHICH SHALL IN NO CASE EXCEED ONE-TENTH PERCENT (0.1%) OF THE APPROVED BUDGET FOR CONTRACT. THE HEAD OF PROCURING ENTITY SHALL RENDER A DECISION WITHIN FIVE (5) WORKING DAYS FROM RECEIPT OF THE POSITION PAPER. DECISIONS OF THE HOPE MAY BE QUESTIONED VIA A MOTION FOR RECONSIDERATION WHICH SHALL BE FILED WITHIN FIVE (5) WORKING DAYS FROM NOTICE OF THE DECISION. DECISIONS OF THE HEAD OF THE PROCURING ENTITY, WHICH SHALL BE RENDERED WITHIN FIVE (5) WORKING DAYS FROM THE RECEIPT OF THE MOTION FOR RECONSIDERATION, SHALL BE FINAL AND EXECUTORY. NO SECOND MOTION FOR RECONSIDERATION SHALL BE ALLOWED. DECISIONS OF THE HEAD OF THE PROCURING ENTITY SHALL BE FINAL AND EXECUTORY.

Section 68. A new section designated as Section 84 of R.A 9184 is hereby added to read as follows:

Section 84. PUBLICATION OF DECISIONS. - DECISIONS OF THE BAC AND HOPE SHALL BE KEPT AND BE MADE PUBLICLY AVAILABLE AND ACCESSIBLE THROUGH THE PHILGEPS.

Section 69. Section 56 of R.A. 9184 is hereby repealed.

Section 70. Section 58 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 86 [58]. RESORT [Report] to Regular Courts; Certiorari. - Court action may be resorted to only after the protests contemplated in this Article shall have been completed AND SHALL BE BASED ONLY UPON GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE HEAD OF THE PROCURING ENTITY.

XXX

Section 71. Article XVIII of R.A. 9184 is hereby renumbered as Article XV and Section 59 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE XV [XVIII]
SETTLEMENT OF DISPUTES

Section 87 [59]. Arbitration. - XXX Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution, IN ACCORDANCE WITH REPUBLIC ACT NO. 9285.

Section 72. Section 60 of R.A. 9184 is hereby renumbered and amended to read as follows:

Section 88 [60]. Appeals. - XXX The petition shall raise ONLY pure questions of law and shall be governed by the Rules of Court.

Section 73. Article XIX of R.A. 9184 is hereby renumbered as Article XVI and Section 61 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE XVI [XIX]
CONTRACT PRICES AND WARRANTIES

Section 89 [61]. Contract Prices. - For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB, OR WHEN A TREATY OR INTERNATIONAL AGREEMENT OTHERWISE PROVIDES.

XXX

Section 74. Article XXI of R.A. 9184 is hereby renumbered as Article XVIII and Section 65 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE XVIII [XXI]
PENAL CLAUSE

Section 93 [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. UNAUTHORIZED ACCESS TO THE CONTENT OF ANY BID SUBMITTED TO THE PROCURING ENTITY, INCLUDING, BUT NOT LIMITED TO BIDS THAT HAVE BEEN SUBMITTED THROUGH AN ELECTRONIC PROCUREMENT SYSTEM AND ANY AND ALL DOCUMENTS REQUIRED UNDER A CONFIDENTIALITY CLAUSE PRIOR TO THE APPOINTED TIME FOR THE PUBLIC OPENING OF BIDS OR OTHER DOCUMENTS.

[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.]

XXX

5. When the head of the PROCURING ENTITY agency abuses the exercise of his power to reject any and all bids as mentioned under Section 56 [41] of this Act with manifest preference to any bidder who is closely related to him OR WHO HAS AN AGENT OR SHAREHOLDER RELATED TO THE HOPE in accordance with Section 103 [47] of this Act.

6. OUTRIGHT EXCLUDING OR OTHERWISE LIMITING THE PARTICIPATION OF PRIORITY ENTERPRISES IN THE PROCUREMENT PROCESS.

XXX

Section 75. Articles XXII, XXII, XXIV of R.A. 9184 are hereby renumbered as Articles XIX, XX, and XXI, respectively.

Section 76. A new article designated as Article XXII is hereby created and Sections 46 and 47 of R.A. 9184 are hereby renumbered as follows:

ARTICLE XXII
MISCELLANEOUS PROVISIONS

Section 102 [46]. Lease Contracts. - XXX

Section 103 [47]. Disclosure of Relations. - In addition to the proposed contents of the Invitation to Bid as mentioned under Section 32 [21] of this Act, XXX. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 42 [30] of this Act.

Section 77. All articles, sub-articles, sections, and references to sections affected by the renumbering of this Act but are not explicitly mentioned herein are hereby renumbered accordingly.

Section 78. Article XXV is hereby renumbered as Article XXIII and Section 74 of R.A. 9184 is hereby renumbered and amended to read as follows:

ARTICLE XXIII [XXV]
FINAL PROVISIONS

Section 104 (74). Oversight Committee. – A Joint Congressional Oversight Committee is hereby created to oversee the implementation of this Act for a period not exceeding five (5) years from the effectivity of this Act. The Committee shall be composed of the Chairman of the Senate Committee on FINANCE (Constitutional Amendments and Revision of Laws) and two members thereof appointed by the Senate President, and the Chairman of the House Committee on Appropriations, and two members thereof to be appointed by the Speaker of the House of Representatives.

Section 79. *Implementing Rules and Regulations.* - The GPPB shall formulate the Implementing Rules and Regulations (IRR) of this Act within ninety (60) days from its promulgation.

Section 80. *Transitory Provision.* - Procurement transactions commenced before the effectivity of this Act shall continue to be governed by Republic Act No. 9184.

Government agencies and instrumentalities affected by this Act shall be given one (1) year transitory period from the effectivity of the IRR to comply with the requirements of this Act.

Section 81. Separability Clause. - If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

Section 82. Repealing Clause. - Except as otherwise expressly provided in this Act, all other laws, decrees, executive orders, proclamations and administrative regulations or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

Section 83. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,