

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. 10731



Introduced by **HON. LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.**

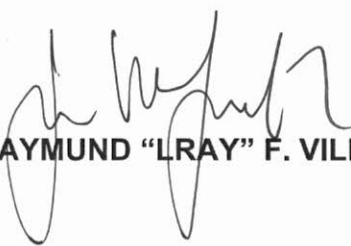
AN ACT
AMENDING SECTION 53 OF REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS
THE "GOVERNMENT PROCUREMENT REFORM ACT"

This bill seeks to amend the provisions on negotiated procurement to require the presentation of documentation that will prove bidders' financial capacity to fulfill the requirements of the government.

Based on Section 53 of RA 9184, a negotiated procurement may be had in case of extraordinary circumstances whereby the government directly negotiates a contract with a technically, legally, and financially capable supplier, contractor, or consultant.

In order to promote transparency and equality, the law should provide the determination of the financial and technical capacity of a supplier, contractor, or consultant to perform their contractual obligation.

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


LUIS RAYMUND "LRAY" F. VILLAFUERTE, JR.

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

Section 1. 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. In cases of two (2) failed biddings, as provided in Section 35 hereof;
- 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;
- c. Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property,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 utilities;
- d. Where the subject contract is adjacent or contiguous to an ongoing infrastructure project, as defined in the IRR: *Provided, however*, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: *Provided, further*. That negotiations for the procurement are commenced

- before the expiry of the original contract. Wherever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,
- e. Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

IN ALL CASES OF NEGOTIATED PROCUREMENT, ALL SUPPLIERS, CONTRACTORS, AND CONSULTANTS ARE MANDATED TO SUBMIT DOCUMENTS TO PROVE THEIR FINANCIAL CAPACITY. THE PROCURING ENTITY SHALL ASCERTAIN THE FINANCIAL, TECHNICAL, AND LEGAL CAPACITY OF SUPPLIERS, CONTRACTORS, OR CONSULTANTS."

Section 2. *Separability Clause.* – If any provision of this Act is declared invalid or unconstitutional, such parts not affected by such declaration shall remain in full force and effect.

Section 3. *Repealing Clause.* – All laws, orders, rules and regulations and other issuances, or parts thereof, which are inconsistent with this Act are hereby repealed, amended or modified accordingly.

Section 4. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,