

GOVERNMENT PROCUREMENT REFORM ACT

H. No. 4809

S. No. 2248

Republic of the Philippines
Congress of the Philippines
Metro Manila
Twelfth Congress
Second Regular Session

Begun and held in Metro Manila, on Monday, the twenty-second day of July, two thousand two.

[REPUBLIC ACT NO. 9184]

AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES

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

ARTICLE I GENERAL PROVISIONS

SECTION 1. *Short Title.* - This Act shall be known as the "Government Procurement Reform Act."

SEC. 2. *Declaration of Policy.* - It is the declared policy of the State to promote the ideals of good governance in all its branches, departments, agencies, subdivisions, and instrumentalities, including government-owned and/or controlled corporations, and local government units.

SEC. 3. *Governing Principles on Government Procurement.* - All procurement of the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions and local government units, shall, in all cases, be governed by these principles:

- a) Transparency in the procurement process and in the implementation of procurement contracts.
- b) Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.
- c) Streamlined procurement process that will uniformly apply to all government procurement. The procurement process shall be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method.
- d) System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.
- e) Public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of this Act and its implementing rules and regulations, and that all these contracts are performed strictly according to specifications.

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 departments, offices and agencies, including government-owned and/or -controlled corporations and

SEC. 5. *Definition of Terms.* - For purposes of this Act, the following terms or words and phrases shall mean or be understood as follows:

(a) *Approved Budget for the Contract (ABC)* - refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act and/or continuing appropriations, in the case of National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O. No. 518, series of 1979, in the case of Government-Owned and/or Controlled Corporations, Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units.

(b) *BAC* - refers to the Bids and Awards Committee established in accordance with Article V of this Act.

(c)

electrification facilities, national buildings, school buildings, hospital buildings and other related construction projects of the government.

(l) *IRR* - refer to the implementing rules and regulations to be promulgated in accordance with Section 75 this Act.

(m) *Portal* - refers to a website that aggregates a wide variety of content for the purpose of attracting a large number of users.

(n) *Procurement* - refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes", and other applicable laws, rules and regulations.

(o) *Procuring Entity* - refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

SEC. 6. *Standardization of Procurement Process and Forms.* - To systematize the procurement process, avoid

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.

SEC. 9. *Security, Integrity and Confidentiality.* - The G-EPS shall ensure the security, integrity and confidentiality of documents submitted through the system. It shall include a feature that provides for an audit trail for on-line transactions and allow the Commission on Audit to verify the security and integrity of the systems at any time.

ARTICLE IV

COMPETITIVE BIDDING

SEC. 10. *Competitive Bidding.* - All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

ARTICLE V

BIDS AND AWARDS COMMITTEE

SEC. 11. *The BAC and its Composition.* - Each procuring entity shall establish a single BAC for its procurement. The BAC shall have at least five (5) members, but not more than seven (7) members. It shall be chaired by at least a third ranking permanent official of the procuring entity other than its head, and its composition shall be specified in the IRR. Alternatively, as may be deemed fit by the head of the procuring entity, there may be separate BACs where the number and complexity of the items to be procured shall so warrant. Similar BACs for decentralized and lower level offices may be formed when deemed necessary by the head of the procuring entity. The members of the BAC shall be designated by the Head of Procuring Entity. However, in no case shall the approving authority be a member of the BAC.

Unless sooner removed for a cause, the members of the BAC shall have a fixed term of one (1) year reckoned from the date of appointment, renewable at the discretion of the Head of the Procuring Entity. In case of resignation, retirement, separation, transfer, re-assignment, removal, the replacement shall serve only for the unexpired term: Provided, That in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension. For justifiable causes, a member shall be suspended or removed by the Head of the Procuring Entity.

SEC. 12. *Functions of the BAC.* - The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: Provided, that in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

SEC. 13. *Observers.* - To enhance 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 private 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. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

SEC. 14. *BAC Secretariat.* - To assist the BAC in the conduct of its functions, 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.

SEC. 15. *Honoraria of BAC Members.* - The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability
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ARTICLE VII

INVITATION TO BID

SEC. 20. *Pre-Procurement Conference.* - Prior to the issuance of the Invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional.

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ARTICLE IX

BID EVALUATION

SEC. 35. *Failure of Bidding.* - There shall be a failure of bidding if:

- a) No bids are received;
- b) No bid qualifies as the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid; or,
- c) Whenever the bidder with the highest rated/lowest calculated responsive bid refuses, without justifiable cause to accept the award of contract, as the case may be.

Under any of the above instances, the contract shall be re-advertised and re-bid. The BAC shall observe the same process and set the new periods according to the same rules followed during the first bidding. After the second failed bidding, however, the BAC may resort to negotiated procurement as provided for in Section 53 of this Act.

SEC. 36. *Single Calculated/Rated and Responsive Bid Submission.* - A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:

- a) If after advertisement, only one prospective bidder submits a Letter of Intent and/or applies for eligibility check, and meets the eligibility requirements or criteria, after which it submits a bid, which is found to be responsive to the bidding requirements;
- b) If after the advertisement, more than one prospective bidder applies for eligibility check, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements; or
- c) If after the eligibility check, more than one bidder

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.

SEC. 39. *Performance Security.* - Prior to the signing of the contract, the winning bidder shall, as a measure of guarantee for the faithful performance of and compliance with his obligations under the contract prepared in accordance with the Bidding Documents, be required to post a performance security in such form and amount as specified in the Bidding Documents.

SEC. 40. *Failure to Enter into Contract and Post Performance Security.* - If, for justifiable causes, the bidder with the Lowest Calculated Price is rejected, the bidder with the next lowest calculated price shall be invited to enter into the contract. If the bidder with the next lowest calculated price is also rejected, the process shall be repeated until a bidder is found who is willing to enter into the contract. If no bidder is found who is willing to enter into the contract, the procurement shall be declared failed and a new procurement shall be initiated.

SEC. 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
- b) Procurement of major plant comp

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 on-going 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. Whenever applicable, this principle shall also govern

as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

SEC. 60. *Appeals.* - The arbitral award and any decision rendered in accordance with the foregoing Section shall be appealable by way of a petition for review to the Court of Appeals. The petition shall raise pure questions of law and shall be governed by the Rules of Court.

ARTICLE XIX

CONTRACT PRICES AND WARRANTIES

SEC. 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.

For purposes of this Section, "extraordinary circumstances" shall refer to events that may be determined by the National Economic and Development Authority in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned.

SEC. 62. *Warranty.* -

(a) For the procurement of Goods, in order to assure that manufacturing defects shall be corrected by the supplier, manufacturer, or distributor, as the case may be, for a specific time after performance of the contract, a warranty shall be required from the contract awardee for such period of time as may be provided in the IRR, the obligation for which shall be covered by either retention money in the amount equivalent to a percentage of every progress payment, or a special bank guarantee equivalent to a percentage of the total contract price, to be provided in the IRR. The said amounts shall only be released after the lapse of the warranty period, provided that the Goods supplied are free from defects and all the conditions imposed under the contract have been fully met.

(b) For the procurement of infrastructure projects, the contractor shall assume full responsibility for the contract work from the time project constr(n)-4.i (an.d all 6nsarairprice, to be

standard forms for Procurement; (c) ensure that Procuring Entities regularly conduct Procurement training programs and prepare a Procurement operations manual for all offices and agencies of government; and (d) conduct an annual review of the effectiveness of this Act and recommend any amendments thereto, as may be necessary.

SEC. 69. *Imposition of Administrative Penalties.*

reason of the performance of their functions or duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion.

In the event of a settlement or compromise, indemnification shall be confined only on matters covered by the settlement, as to which the Procuring Entity had been advised by counsel that the public officials to be indemnified have not committed gross negligence or misconduct in the performance of their functions and duties.

The members of the BAC and the BAC Secretariat shall also be entitled to medical assistance for injuries incurred in the performance of their functions.

ARTICLE XXV

FINAL PROVISIONS

SEC. 74. *Oversight Committee.* - There is hereby created a Joint Congressional Oversight Committee 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 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.

SEC. 75. *Implementing Rules and Regulations and Standard Forms.* - Within sixty (60) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated