



RESOLUTION NO. 13-2017

APPROVING THE SUBMISSION OF COMMENTS ON SENATE AND HOUSE BILLS ON THE PROPOSED AMENDMENTS TO REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT

WHEREAS, the Government Procurement Policy Board-Technical Support Office (GPPBTSO) received several versions of Senate and House Bills on the proposed amendment to Republic Act (RA) No. 9184, otherwise known as the Government Procurement Reform Act, thus:

1. **House Bill No. 4142**, entitled “*An Act Authorizing Reference to Brand Names in the Specifications for the Procurement of Goods by the Government and Allowing for the Extension of a Winning Bidder’s Period to Enter into Contract with the Procuring Entity, Amending for the Purpose Republic Act No. 9184, Otherwise Known as “The Government Procurement Reform Act,”*” introduced by Representative Gloria Macapagal Arroyo;
2. **House Bill No. 4306**, entitled “*An Act Prescribing Additional Eligibility Requirements for Bidders and Contractors to Participate in the Procurement Process,*” introduced by Representative Florida P. Robes;
3. **House Bill No. 4790**, entitled “*An Act Amending Certain Sections of Republic Act No. 9184 otherwise known as the Government Procurement Reform Act,*” introduced by Representative Gloria Macapagal Arroyo;
4. **Senate Bill No. 116**, entitled, “*An Act Amending Section 53(B) of Republic Act No. 9184, otherwise known as An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for other Purposes,*” introduced by Senator Aquilino Pimentel III;
5. **Senate Bill No. 274**, entitled “*An Act Amending Republic Act No. 9184, otherwise known as the Government Procurement Reform Act,*” introduced by Senator Francis G. Escudero;
6. **Senate Bill No. 459**, entitled “*An Act Enhancing the Transparency of the Procurement Process by Mandating the Video Recording of all Procurement-Related Conferences, thereby Amending Republic Act Numbered 9184, otherwise known as the “Government Procurement Reform Act of 2003”, Prescribing Penalties for Violations thereof, and for Other Related Purposes,*” introduced by Senator Antonio F. Trillanes IV; and

7. **Senate Bill No. 466**, entitled “*An Act Amending Section 4 of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act on its Scope and Application,*” introduced by Senator Antonio F. Trillanes IV.

WHEREAS, the proposed pieces of legislation seek to eliminate or diminish corruption in the public procurement process;

WHEREAS, Sections 18 and 37 of House Bill No. 4142 seek to authorize reference to brand names in the specifications for the procurement of goods by the government and to allow the extension of a winning bidder’s period to enter into contract with the Procuring Entity, respectively;

WHEREAS, House Bill No. 4306 seeks to prescribe additional eligibility requirements for bidders and contractors in their participation in the procurement process to streamline the procurement process by allowing only eligible and qualified parties to participate in the public bidding in order to prevent excessive bureaucracy;

WHEREAS, House Bill No. 4790 aims to amend the provisions of RA 9184 by providing additional rules on reference to brand names, lease of real property, formal execution of contract and alternative methods of procurement, especially Direct Contracting and Repeat Order;

WHEREAS, Senate Bill No. 116 proposes to amend the provisions on Negotiated Procurement under Emergency Cases modality embodied in Section 53(b) of RA 9184 by including imminent danger to life or property “Before” or “After” a state of calamity as one of the conditions for allowing the resort to this alternative method of procurement;

WHEREAS, Senate Bill No. 274 seeks to amend RA 9184 by prescribing additional rules on its applicability to the negotiation or conclusion of a treaty or international or executive agreement;

WHEREAS, Senate Bill No. 466 intends to include private institutions, Non-Government Organizations (NGOs) and People’s Organizations (POs), who are recipients of government funds, as part of the coverage by RA 9184;

WHEREAS, Senate Bill No. 459 seeks to institutionalize rules on video-recording of all procurement-related conferences;

WHEREAS, during the 2nd GPPB and 3rd IATWG Joint Meeting held on 10 April 2017, the GPPB-TSO recommended the submission of Comments on the proposed pieces of legislation based on the following comments and observations:

1. *House Bill No. 4142:*
 - a. On Reference to Brand Names, Section 18 of RA 9184 and its 2016 Revised IRR provides that the prohibition on reference to brand names

in “specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements” without any exception or condition. Reference to brand names defeats competition since it limits the bidders who may join and prevents other legally, technically and financially capable suppliers, contractors and consultants from participating in government biddings; and

- b. For longer period on Contract Signing, under RA 9184 and its IRR, the Procuring Entity is already given a maximum period of 30 to 40 calendar days to enter into contract with the winning bidder. Providing a longer period will unduly delay the procurement process and project implementation, and hamper the efficiency and economy that are sought to be achieved by the law. This will also provide an opportunity for abuse and corruption considering a longer period for contract execution.

2. *House Bill 4306:*

- a. RA 9184 and its IRR proscribe Procuring Entities from requiring more than those found in the list of minimum eligibility requirements under Sections 23.1, 24.1, and 25.1 of the 2016 Revised IRR of RA 9184. The list has been streamlined/simplified, such that only those requirements of the revised IRR are necessary for purposes of determining bidder's eligibility. The rationale for this is to allow greater participation and enhance competition among prospective bidders, and reduce transaction costs brought about by numerous eligibility requirements or documents.
- b. As to the requirement that the contractor must be operating within the area or region where the project is to be implemented and must secure an Authority to Participate from Regional Director and the Undersecretary for Operations of the DPWH, this would unduly limit competition to a certain area or region and would further promote an environment for graft and corruption because of an added layer of bureaucracy. This would also affect the efficient and effective implementation of projects as certain areas or regions have limited number of contractors. Moreover, the additional requirements might be more supportive of practices that stifle competition, *e.g.*, bid rigging, *sahod*.

3. *House Bill No. 4790:*

- a. On Reference to Brand Names, it defeats competition since it limits the bidders who may join public bidding and prevents legally, technically and financially capable suppliers, contractors and consultants from participating in government procurement.

- b. There is no need to include any reference to Lease of Real Property in Sections 23 and 34 as it is already included in the definition of procurement of goods under analogous services as provided in Section 5 of RA 9184 and its 2016 Revised IRR.
- c. In resorting to Negotiated Procurement for Lease of Real Property or Venue, Annex “H” of the 2016 Revised IRR of RA 9184 already provides specific documentary requirements that a bidder must comply with to be eligible to participate in or be awarded the contract, *i.e.*, Mayor’s Permit, PhilGEPS Registration Number and Income/Business Tax Return.
- d. For the proposed amendment of Section 37 of RA 9184, providing a longer period for procuring entities to enter into a contract will unduly delay the procurement process and project implementation, which will hamper the efficiency and economy that are sought to be achieved by the law. This will also provide an opportunity for abuse and corruption considering a longer period for contract execution.
- e. As regards the last paragraph of Section 48 of RA 9184, the Guidelines on Alternative Method of Procurement does not require the submission of a Tax Clearance but only Business or Income Tax Return depending on the alternative method of procurement being used by the procuring entities. It is not recommended to cite Executive Order (EO) 398, series of 2005, as the proposed amendment may prove to be unnecessary in case the current policy of the government on the tax clearance requirement changes and EO 398 is amended, revoked or repealed. Furthermore, such proposed amendment, if necessary, may be introduced at the IRR level.
- f. For the proposed amendment to Section 50 of RA 9184, Direct Contracting or Single Source Procurement applies only to the procurement of goods, where the goods can be procured only from one (1) source. It will not find application on food, beverages and hotel accommodations because there are a number of suppliers of food, beverage and hotel accommodations.
- g. As regards the proposed amendment to Section 51 of RA 9184, Repeat Order, as an alternative method of procurement, may be availed of by procuring entities provided that they have complied with the conditions provided for under the current provisions of Section 51 of RA 9184, one of which is that unit price/s must be the same or lower than those stated in the original contract. Allowing an increase of prices on the goods to be procured as compared to the original contract may be subject to abuse and open an opportunity for corruption.

4. *Senate Bill No. 116:*

- a. On the proposed amendment of Section 53 of RA 9184, the addition of the words “Before” or “After” may not be necessary as it may already be covered under the second instance of emergency cases modality, *i.e.*, “when time is of the essence arising from natural or man-made calamities, or when immediate action is necessary in order to prevent damage to or loss of property.”
- b. The underlying reason to support a Negotiated Procurement through the Emergency modality relates to “time element”, as such, the Procuring Entity should look into the appropriate timing or the proximity of time between the actual procurement activity to be conducted and the emergency sought to be addressed, including the ensuing delivery of the goods, works and consulting services.

5. *Senate Bill No. 274:*

- a. International Financing Institutions (IFIs) usually require the application of their rules in procurement of items funded through their grants, loans, or other similar financial assistance scheme. The applicability of RA 9184 to foreign assisted projects was raised by IFIs during the previous review and drafting of the Implementing Rules and Regulations of RA 9184 and the proposed bill may receive similar objections from the IFIs, and discourage them from extending financial assistance to government projects.
- b. Under the 1987 Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land, including the principle of *pacta sunt servanda*, which states that a country is bound to comply with its obligations under a treaty. Amending Section 4 of RA 9184, as proposed, does not necessarily address the concern with respect to contract awards on foreign-assisted projects.
- c. Also, the procurement of goods, infrastructure projects and consulting services funded through Foreign Grants and governed by Republic Act No. (RA) 8182, otherwise known as the Official Development Assistance Act of 1996, as amended by RA 8555, are not covered by RA 9184 and its associated revised IRR, unless the Government of the Philippines and the foreign grantor/foreign or international financing institution agree otherwise. Nonetheless, Section 4 of RA 9184 and its IRR recognize observance of Treaty, or International or Executive Agreement provisions, specifically when the procurement processes and procedures are specified in the Loan or Grant Agreement. In which case, we apply the procurement guidelines, rules and regulations identified in the agreement, that is, the Loan or Grant Agreement.

- d. As regards the proposed amendment to Section 13 of RA 9184, Sections 13.1 and 13.2 of the 2016 Revised IRR of RA 9184 already provides for the criteria on the selection of observers to be invited. Also, providing further limitations in the invitation of Observers may have a negative impact on the attendance of Observers.
- e. Seeking the approval of the GPPB to award contracts to Single Calculated/Rated and Responsive Bidder will unduly delay the procurement process and project implementation, which will hamper the efficiency and economy sought to be achieved by the law.
- f. The requirement to post in the GPPB website the calculated ratings of all bidders, their bid prices and the ratings given by each member of the BAC has similar provision under the Freedom of Information (FOI) Bill, thus the requirement may be addressed upon the enactment of the FOI Bill.

6. *Senate Bill No. 466:*

- a. As regards the application of RA 9184 to private institutions, NGOs and POs, GPPB developed and issued the Community Participation Procurement Manual (CPPM) and recently, the Implementing Guidelines for the adoption of Community-Managed Procurement pursuant to the provisions of Negotiated Procurement under Community Participation modality embodied in Section 53.12 of the 2016 Revised IRR of RA 9184.
- b. The Manual and the Guidelines provide the policies and procedures in selecting Community Group that will act as service providers or contract managers for community-based projects.

7. *Senate Bill No. 459*

- a. RA 9184 and its IRR espouse the principles of transparency and public monitoring in the procurement process by requiring the full recording of BAC meetings through the minutes, which is made available to the public upon written request and payment of a specified fee.
- b. The manner in which the Procuring Entity would like to record its proceedings, such as, manually by taking down notes, or electronically through audio or video, would be subject to the sound discretion of the Procuring Entity.
- c. Assessment of the readiness and feasibility of requiring video recording of all procurement activities shall also be diligently studied.
- d. The proposed provision on the storage of video records may no longer be necessary since the National Archives of the Philippines already

issued Circulars (NAP General Circulars No. 1 and 2 series of 2009) on the management of records and archives registration. The requirement will also entail costs to the government as this would require additional manpower and resources (warehousing or archiving of records) on the part of the government.

- e. The procurement of the video recording devices/equipment is not one of the mandates of the GPPB, pursuant to Section 63 of Republic Act (RA) No. 9184 and Section 63.1 of its Implementing Rules and Regulations (IRR). Each procuring entity has its own Bids and Awards Committee that is responsible in the procurement of all the needed items of a procuring entity.

WHEREAS, after due deliberation and careful review, the GPPB resolved to adopt the comments and observations of the GPPB-TSO, as well as its recommendation to submit to the requesting office Comments on the Senate and House Bills;

NOW, THEREFORE, for and in view of all the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the submission of Comments on Senate Bill Nos. 116, 274 459 and 466, and House Bill Nos. 4142, 4306 and 3363, based on the aforementioned proposals made by the GPPB-TSO and discussion of the GPPB.

This resolution shall take effect immediately.

APPROVED this 10th day of April 2017 at the City of Pasig, Philippines.

(SGD)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(SGD)

(SGD)

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

(SGD)

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DEPARTMENT OF FINANCE

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**DEPARTMENT OF INFORMATION AND
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**DEPARTMENT OF INTERIOR AND
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**DEPARTMENT OF NATIONAL
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**DEPARTMENT OF PUBLIC WORKS
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**DEPARTMENT OF SCIENCE AND
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