



RESOLUTION NO. 15-2017

APPROVING THE SUBMISSION OF COMMENTS ON SENATE BILL NO. 915 ON THE NATIONAL MUSEUM OF THE PHILIPPINES

WHEREAS, the Government Procurement Policy Board-Technical Support Office (GPPB-TSO) received a Memorandum from the Department of Budget and Management - Department Legislative Liaison Office (DBM-DLLO) requesting comments and recommendations on Senate Bill No. 915 entitled “*An Act Strengthening the National Museum of the Philippines, Repealing for the Purpose Republic Act No. 8492, Otherwise Known as the National Museum Act of 1998, and Appropriating Funds Therefor*” introduced by Senator Loren Legarda;

WHEREAS, Section 32 of Senate Bill No. 915 seeks to exempt the procurement of items for the Museum’s Collections from all laws, rules and regulations regarding government procurement while Section 36 thereof states the rule on hiring foreign consultants, wherein subject to the provisions of the Labor Code and other pertinent legislations, the Museum may hire consultants and experts;

WHEREAS, Senate Bill No. 915 contains similar provisions with that of House Bill Nos. 1177 and 3201, to which, the GPPB approved the submission of comments thereon during the 12th GPPB and 10th Inter-Agency Technical Working Group (IATWG) Joint Meeting on 20 December 2016;

WHEREAS, during the 2nd IATWG Meeting on 31 March 2017, the GPPB-TSO presented the request for comments on Senate Bill No. 915, including its salient features, and the previous comments and recommendations submitted by the GPPB on similar bills, and thereafter, the IATWG adopted the proposal of the GPPB-TSO to recommend to the GPPB the submission of Comments on Senate Bill No. 915 containing findings, comments and recommendations similar to those already indicated in the previous Comments submitted by the GPPB for House Bill Nos. 1177 and 3201, with some modifications.

WHEREAS, the comments and observations of the GPPB-TSO, as well as the recommendation of the IATWG, were presented to the GPPB during its 3rd Regular Meeting on 10 April 2017, and thereafter, the GPPB approved the submission of the following comments and recommendations on Senate Bill No. 915, thus:

1. There are alternative methods of procurement already available under RA 9184 and its 2016 Revised IRR, such as Direct Contracting (Sec. 50), and Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services modality of Negotiated Procurement (Sec. 53.6), that may already address the procurement concerns of the National Museum;

2. To standardize the process and procedures of all government procurement projects, procurement activities of the National Museum shall follow the provisions of RA 9184 and its 2016 Revised IRR; and
3. Engagement of consultants, whether local or foreign, shall likewise observe the provisions of RA 9184 and its 2016 Revised IRR.

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 No. 915 adopting *in toto* the comments, observations and recommendations of the GPPB-TSO and IATWG.

This resolution shall take effect immediately.

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

(SGD)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(SGD)

DEPARTMENT OF EDUCATION

(SGD)

DEPARTMENT OF ENERGY

(SGD)

DEPARTMENT OF FINANCE

(SGD)

DEPARTMENT OF HEALTH

(SGD)

**DEPARTMENT OF INFORMATION AND
COMMUNICATION TECHNOLOGY**

**DEPARTMENT OF INTERIOR AND
LOCAL GOVERNMENT**

(SGD)

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

(SGD)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

(SGD)

**DEPARTMENT OF TRADE AND
INDUSTRY**

(SGD)

DEPARTMENT OF TRANSPORTATION

PRIVATE SECTOR REPRESENTATIVE

Comments
of the
Government Procurement Policy Board-Technical Support Office
on
Senate Bill No. 915 on the National Museum of the Philippines

Title of the Bill

An Act Strengthening the National Museum of the Philippines, Repealing for the Purpose Republic Act No. 8492, Otherwise Known as the National Museum Act of 1998, and Appropriating Funds Therefor.”

Author of the Bill

Senator Loren Legarda

Salient Features of the Bill:

- SB No. 915 seeks to give the Museum more flexibility in generating, maintaining, and spending its internally generated income, donations from the private sector and annual appropriations from the national government.
- SB No. 915 seeks to exempt the procurement of items for the Museum collections from all laws, rules and regulations regarding government procurement.

Findings and Comments:

Specific Provision	Comments
<p>Sec. 32. Procurement of Items for the Museum Collections. – The procurement of items by the Museum for its collections, charged to any of its sources of funds as may be allowed, and authorized by the Head of Agency and/or the Board of Trustees as herein provided, shall be regarded as a unique and special case, and is thereby exempted from all laws, rules and regulations regarding government procurement.</p>	<ul style="list-style-type: none"> • It is an established public policy, as well as a statutory mandate, that all government procurement shall be done through competitive public bidding. However, as an exception, in order to promote efficiency and economy, Article XVI of RA No. 9184 sanctions resort to alternative methods of procurement, such as: 1) Sec. 50. Direct Contracting Direct Contracting or single source

The Museum, as a general rule, shall be allowed to procure collections items by means of direct negotiation with the owners of such items, or their duly designated agents or representatives, in the Philippines and abroad, as follows:

a) A written and signed quotation for the sale of the items, shall be issued and addressed to the Museum by the owner, or his or her agent or representative;

b) A certification that the item to be acquired is of appropriate significance to the Museum and of importance to the heritage and patrimony of the Filipino people, that the negotiated price is reasonable and fair, that no conflicts of interest as may be defined by prevailing laws, rules and regulations exist, and that item in question has not been illegally acquired or trafficked, shall be issued by the Head of Agency;

c) For items above P1,000,000 or its foreign currency equivalent in price, the Head of Agency shall recommend in writing to the Board of Trustees the issuance of a resolution for the approval in principle of the transaction; items under this amount may be procured upon the sole authority of the Head of Agency provided, that there is no “splitting” as defined in pertinent procurement laws, rules and regulations;

d) A resolution of the Board of Trustees approving in principal the purchase of the concerned item by the Museum and authorizing the signing by Head of Agency of a Deed of Sale as well as all other documents to the transaction shall be issued for items above P1,000,000 or its foreign currency equivalent in price;

e) A resolution of the Bids and Awards

procurement is a method of procurement of Goods that does not require elaborate Bidding Documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale.

Direct contracting may be resorted to by concerned Procuring Entities under any of the following conditions:

1. *Procurement of Goods of proprietary nature which can be obtained only from the proprietary source, i.e. when patents, trade secrets, and copyrights prohibit others from manufacturing the same item;*
2. *When the procurement of critical components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or*
3. *Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the GoP.*

Relatedly, under Section 172.1(g) of RA 8293 or the Intellectual Property Code of the Philippines, works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art are considered subject of copyright that are protected from the moment of their creation. It should be noted that Direct Contracting involving intellectual property rights may be employed only when the goods can be obtained only from the proprietary source.

2) Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services modality of Negotiated Procurement

Committee of the Museum verifying that the aforementioned documents, where applicable, have been produced, certifying as to the availability of funds, and authorizing the issuance of a Notice of Award pertaining to the purchase of the items for the signature of the Head of Agency, shall be issued;

f) After the Notice of Award has been issued, the execution of the Deed of Sale by the Head of Agency shall be made, after which the Bids and Awards Committee of the Museum shall issue the Notice to proceed which, once signed by the Head of Agency, shall authorize the processing of payment in Philippine or foreign currency to the seller; receipt of payment in Philippine or foreign currency shall be acknowledged by an official receipt or, in cases where the issuance of an official receipt is not possible, any legal equivalent;

g) Payment for collections items made under this provision shall be made by the National Museum gross of any deductions for tax. It shall be the sole responsibility of the owner, or his agent or representative, to pay all direct and indirect taxes owed to Philippine and pertinent foreign authorities from the sale of the item as may be due under existing laws, rules and regulations of the Philippines and any pertinent foreign jurisdiction; and

h) Certified true copies of all the aforementioned documents shall be posted within the designated public place of the Museum and on its official website for at least 6 months, as well as transmitted to the COA through the resident auditor of the Museum, the DBM, the GPPB, the BIR and, if the item has been acquired from abroad and is being imported into

- a new modality of Negotiated Procurement under Sec. 53.6 of the 2016 Revised IRR of RA 9184.
- can be resorted to where Goods, Infrastructure Projects and Consulting Services can be contracted from a particular supplier, contractor or consultant, as determined by the HoPE.
- applies when the requirement, among others, is for Work of art; commissioned work or services of an artist for a specific artist skills (e.g., Singer, poet, writer, painter, sculptor, etc.).
- RA 9184 also adheres to the principle of streamlined procurement process that will uniformly apply to all government procurement.
- It was enacted to be the single source of procurement rules. Thus, government procurement projects by National Government Agencies, Government Owned and/or Controlled Corporations, Government Financial Institutions, State Universities and Colleges, and Local Government Units, whether domestically or foreign funded, are covered by RA 9184 and its 2016 Revised IRR, subject to exemptions under existing laws, rules and regulations.

<p>the Philippines, the BOC.</p>	
<p>Sec. 36. Hiring of Foreign Consultants. Subject to the provisions of the Labor Code and other pertinent legislation, the Museum may hire consultants and experts.</p>	<ul style="list-style-type: none"> • RA 9184 also covers procurement of consulting services. Under Sec. 24.3.3 of the 2016 IRR, “in order to manifest trust and confidence in and promote the development of Filipino consultancy, foreign consultants may be hired in the event Filipino consultants do not have the sufficient expertise and capability to render the services required under the project, as determined by the HoPE subject to the submission of the documents in accordance with Section 37.1.4(a)(iv).” • Following again the principle of streamlined procurement process that will uniformly apply to all government procurement, engagement of consultants, whether local or foreign, shall likewise follow the procedures and processes under RA 9184 and its 2016 Revised IRR.

Recommendations:

- 1.0** There are alternative methods of procurement already available under RA 9184 and its 2016 Revised IRR, such as Direct Contracting (Sec. 50) and Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services modality of Negotiated Procurement (Sec. 53.6), that may already address the procurement concerns of the National Museum.
- 2.0** To standardize the process and procedures of all government procurement projects, procurement activities of National Museum shall follow the provisions of RA 9184 and its 2016 Revised IRR.
- 3.0** Engagement of consultants, whether local or foreign, shall likewise observe the provisions of RA 9184 and its 2016 Revised IRR.