



## RESOLUTION NO. 19-2016

### APPROVING THE SUBMISSION OF COMMENTS ON THE PROPOSED SENATE AND HOUSE BILLS ON THE GRANT OF EMERGENCY POWERS TO THE PRESIDENT OF THE PHILIPPINES TO ADDRESS TRAFFIC CRISIS

WHEREAS, the Government Procurement Policy Board-Technical Support Office (GPPBTSO) received several versions of bills on the grant of Emergency Powers to the President to address the transportation crisis and massive traffic congestion problem in the country, thus:

1. **Senate Bill No. 11** entitled “*An Act Providing for Emergency Powers to Address the Transportation Crisis in Urban Areas*” introduced by Senator Franklin M. Drilon;
2. **Senate Bill No. 154** entitled “*An Act Granting the President of the Philippines Special Powers, Prescribing Urgent and Related Measures Necessary and Proper to Effectively Address the Crisis in the Transportation Sector, and for Other Purposes*” introduced by Senator Joseph Victor G. Ejercito;
3. **Senate Bill No. 999** entitled “*An Act Granting the President/Executive Branch of Government Emergency Powers to Manage, Mitigate and Solve the Traffic and Congestion Crisis Across the Philippines, to Expeditiously and Effectively Implement Measures that shall Provide Real Lasting Solutions as well as the Earliest Respite from Traffic and Congestion, and for Other Purposes*” introduced by Senator Alan Peter S. Cayetano;
4. **Senate Bill No. 1067** entitled “*An Act Granting President Rodrigo Roa Duterte Emergency Powers, to Address the Air Traffic Problem in the Country and Prescribing the Measures Necessary to Carry Out the Objectives of the National Policy*” introduced by Senator Sherwin Gatchalian;
5. **House Bill No. 03** entitled “*An Act Granting President Rodrigo Roa Duterte Emergency Powers to Address the Massive Traffic Congestion in the Country that has Assumed the Nature and Magnitude of a National Emergency, Declaring National Policy in Connection therewith and Authorizing Him, For a Limited Period and Subject to Restrictions, to Implement Rules and Regulations Necessary and Proper to Carry Out Such Powers*” introduced by Representative Rodolfo C. Farinas, et.al.;
6. **House Bill No. 38** entitled “*An Act Declaring Metro Manila Traffic Crisis as a National Emergency, Granting the President of the Philippines Emergency Powers, Prescribing Urgent Related Measures Necessary and Proper to*

*Effectively Address Such Predicament, and for Other Purposes”* introduced by Representative Arthur C. Yap;

7. **House Bill No. 554** entitled “*An Act Prescribing Urgent Related Measures Necessary and Proper to Effectively Address the Traffic Crisis in Metro Manila and for Other Purposes*” introduced by Representatives Gloria Macapagal-Arroyo and Bayani F. Fernando;
8. **House Bill No. 1315** entitled “*An Act Granting Specific Emergency Powers to the President of the Republic of the Philippines to Effectively Address the Metro Manila Gridlock*” introduced by Representative Winston “Winnie” Castelo;
9. **House Bill No. 1666** entitled “*An Act Prescribing Urgent Related Measures Necessary and Proper to Effectively Address the Public Thoroughfare Crisis in Greater Manila Area and Other Urban Centers in the Country and for Other Purposes*” introduced by Representative Strike B. Revilla;
10. **House Bill No. 3048** entitled “*An Act Granting the President/Executive Branch of Government Emergency Powers to Manage, Mitigate and Solve the Traffic and Congestion Crisis Across the Philippines, to Expeditiously and Effectively Implement Measures that shall Provide Real Lasting Solutions as well as the Earliest Respite from Traffic and Congestion, and for Other Purposes*” introduced by Representative Pia Cayetano;
11. **House Bill No. 3162** entitled “*An Act Providing for Emergency Powers to the President of the Republic of the Philippines to Address the Transportation Crisis in Metro Manila*” introduced by Representative Gus S. Tambunting;
12. **House Bill No. 3314** entitled “*An Act Prescribing Urgent Related Measures Necessary and Proper to Effectively Address the Traffic Crisis in Metro Manila and for Other Purposes*” introduced by Representative Marlyn L. Primicias-Agabas; and
13. **House Bill No. 3442** entitled “*An Act Granting the President of the Philippines Special Powers Necessary and Proper to Effectively Address the Current Crisis in the Transportation Sector, and for Other Purposes*” introduced by Representatives Evelina G. Escudero and Maria Vida E. Bravo;

**WHEREAS**, the proposed legislations aim to address the transportation crisis and massive traffic congestion problem by granting emergency powers to the President of the Philippines or the Executive Branch of Government;

**WHEREAS**, Section 3 of Senate Bill Nos. 11 and 1067, Section 11 of Senate Bill Nos. 154 and 999, Section 3(2) of Senate Bill No. 1067, Section 3 of House Bill Nos. 03, 554, 3162 and 3314, Section 10 of House Bill Nos. 38 and 3442, Section 4 of House Bill No. 1666 and Section 11 of House Bill No. 3014 allow procurement *sans* competitive bidding, upon the determination of the President, and grant the President authority to adopt alternative methods of procurement;

**WHEREAS**, Section 4 of Senate Bill No. 11, Section 12 of Senate Bill No. 154, Section 13 of Senate Bill No. 999, Section 5 of Senate Bill No. 1067, Section 12 of House Bill No. 38, Section 13 of House Bill No. 3048, and Section 10 of House Bill No. 3442 provide that “no court, except the Supreme Court, shall issue a temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government or any of its officials or any person or entity acting under the government direction to restrain, prohibit, or compel in the acquisition, clearance, and development of the right of way and bidding or awarding of any transportation project identified by the President, among others”;

**WHEREAS**, Section 5 of Senate Bill Nos. 11 and 154, Section 8 of Senate Bill No. 999, Section 3(1) of Senate Bill No. 1067, Section 3 of House Bill No. 03, Section 5 of House Bill Nos. 331, 1666 and 3442, Section 5 of House Bill Nos. 38 and 554, and Section 8 of House Bill No. 3048 propose the establishment of an urban traffic management authority and the designation and appointment of a Traffic Czar or Manager;

**WHEREAS**, during the 8<sup>th</sup> Inter-Agency Technical Working Group (IATWG) Meeting held on 9 September 2016, the GPPB-TSO recommended the issuance of a Position Paper or Comment on the proposed legislations based on the following comments and observations:

1. Objectives sought to be achieved by the proposed bills may already be attained through existing laws, particularly RA 9184 and its revised IRR. Even without the grant of emergency powers to the President, the concerned agencies may already use the alternative methods of procurement under RA 9184 and its revised IRR;
2. Thus, the proposed legislations may be limited to the grant of defined emergency powers to the President and authority to reorganize the relevant agencies to form the sole urban traffic management authority, with the use of alternative methods of procurement still being in accordance with RA 9184 and its revised IRR;
3. For purposes of efficiency and expediency, the President may issue an Executive Order (EO) lifting the GPPB review and approval requirement under EO 423, as amended, for government contracts with an approved budget for the contract (ABC) of at least PhP500 million that are intended by procuring entities to be procured through any of the alternative modalities under RA 9184 and its revised IRR related to the transportation crisis;
4. The rules or guidelines in the conduct of Competitive Challenge or Swiss Challenge modality should be laid down, since this method is not prescribed under RA 9184 and its IRR. There should be clarity whether Swiss Challenge will be adopted as an alternative method of procurement under RA 9184, since it would not be practical for public procurement under RA 9184 and its IRR. This is because of the requirement for procuring entities to identify projects in its Project Procurement Management Plan and Annual Procurement Plan. Further, this is a new concept which is yet to be introduced in the public procurement system of the country, that may pose challenges in the established norms of our procurement

processes. The proposed Swiss Challenge will be appropriately covered or governed by RA 7718 or the BOT Law and not RA No. 9184.

5. The parameters and breadth of the authority and delimitations on the exemption for the use of competitive bidding under Section 10 of RA 9184 are already prescribed under the law, to abate misuse of the authority as well as to ensure that the government will enter into agreements which are advantageous and beneficial for its constituents. The very essence of crafting RA 9184 is to have a single and uniform procurement process applicable and implemented across all agencies of the government;
6. In the event of grant of exemption from application of RA 9184 and its IRR, a substitute procurement mechanism should be put in place to prevent confusion and abuse of discretion on the part of the procuring entity; and
7. The proposed bills should specify as to who are vested with emergency powers, as proposed, without giving the authority to waive the application of RA 9184 since this is in direct contravention to the very purpose and intention of the Procurement Law. There should also be a clarification as to whether the power or authority will extend to other Members of the Cabinet, or solely to the President, so as to determine if the authority should be centralized in a single person or if the same is distributed to other Members of the Executive Branch;

**WHEREAS**, during the said IATWG Meeting, the members discussed the comments, observations and recommendation of the GPPB-TSO on the proposed legislations, and resolved to recommend for approval of the GPPB the submission of a Comment or Position Paper to the House of Representatives through the Department Legislative Liaison Office (DLLO) of the Department of Budget and Management stating the following:

1. Support the grant of Emergency Powers to the President to address the transportation or traffic crisis as may be defined or granted by Congress;
2. Explain that upon confirmation of a State of Emergency, the government may resort to Emergency Cases modality of Negotiated Procurement under Sec. 53.2 of the IRR of RA 9184;
3. Suggest that since RA 9184 and its IRR already provided alternative modes of procurement that the government may resort to during emergency cases, there is no need for exemption from application of RA 9184 nor identification of additional alternative methods of procurement; and
4. Amplify and explain the application of RA 9184 and its IRR, particularly the provision on Emergency Cases under Section 53.2 of the IRR of RA 9184 (*e.g.* state that the price is not an issue);

**WHEREAS**, the comments and observations of the GPPB-TSO as well as the recommendation of the IATWG were presented to the GPPB during its 10<sup>th</sup> Regular Meeting held on 23 September 2016;

**WHEREAS**, after due deliberation and careful review, the GPPB resolved to submit Comments on Senate Bill Nos. 11, 154, 999 and 1067, as well as on House Bill Nos. 03, 38, 119, 664, 1315, 1666, 3048, 3162, 3314 and 3442 to the Senate and House of Representatives through the DLLO stating the following:

1. Support the grant of emergency powers to the President to address the transportation or traffic crisis as may be defined or granted by Congress;
2. Explain in the Comments that upon confirmation of a State of Emergency, the government may resort to Emergency Cases modality of Negotiated Procurement under Sec. 53.2 of the IRR of RA 9184 or any other alternative methods of procurement sanctioned in RA 9184 and its IRR;
3. Suggest that since RA 9184 and its IRR already provided alternative modes of procurement that the government may resort to during emergency cases, there is no need for exemption from application of RA 9184 nor identification of additional alternative methods of procurement;
4. Amplify and explain the application of RA 9184 and its IRR, particularly the provision on Emergency Cases under Section 53.2 of the IRR of RA 9184 (*e.g.* state that the price is not an issue); and
5. Recommend the issuance of an EO lifting the GPPB review and approval requirement under EO 423, as amended, for government contracts with an approved budget for the contract (ABC) of at least PhP500 Million that are intended by procuring entities to be procured through any of the alternative modalities under RA 9184 and its revised IRR related to the transportation crisis.

**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 the attached Comments on Senate Bill Nos. 11, 154, 999 and 1067 and House Bill Nos. 03, 38, 119, 664, 1315, 1666, 3048, 3162, 3314 and subject to the aforementioned proposals made by the members.

This resolution shall take effect immediately.

**APPROVED** this 23<sup>rd</sup> day of September 2016 at the City of Manila, Philippines.

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**DEPARTMENT OF BUDGET AND  
MANAGEMENT**

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**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

(SGD)

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**DEPARTMENT OF EDUCATION**

(SGD)

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**DEPARTMENT OF ENERGY**

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**DEPARTMENT OF FINANCE**

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**DEPARTMENT OF HEALTH**

(SGD)

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**DEPARTMENT OF INFORMATION AND  
COMMUNICATION TECHNOLOGY**

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**DEPARTMENT OF INTERIOR AND  
LOCAL GOVERNMENT**

(SGD)

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**DEPARTMENT OF NATIONAL  
DEFENSE**

(SGD)

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**DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS**

(SGD)

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

(SGD)

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

(SGD)

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**DEPARTMENT OF TRANSPORTATION**

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**PRIVATE SECTOR REPRESENTATIVE**