

FIFTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
First Regular Session )

SENATE  
OFFICE OF THE SECRETARY

10 AUG 17 P2:34

SENATE  
S. No. 2425

RECEIVED BY: 

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Introduced by Senator Miriam Defensor Santiago

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#### EXPLANATORY NOTE

Republic Act No. 9184, otherwise known as the “Government Procurement Reform Act”, was enacted primarily to eradicate graft and corruption in the government procurement system. The law likewise aims to minimize wastage and maximize utilization of our government’s meager resources.

The passage of R.A. No. 9184 was hailed as a milestone that marked our government’s commitment to reform public procurement. According to news reports, the law was even described as “one of the best in the world” by Joachim von Amsberg, World Bank Country Director for the Philippines and the East Asia and Pacific Region.

R.A. No. 9184, Section 4 states: “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 local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine Government is a signatory shall be respected.” The intent of the law is very clear – to bring within its scope both domestically-funded and foreign-funded projects.

R.A. No. 9184, Section 31, on the other hand, provides that the Approved Budget for the Contract (ABC) shall be the upper limit or ceiling for bid prices, and that bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. This provision is intended to prevent the government from entering into highly onerous and overpriced contracts and, consequently reduce opportunities for graft and corruption. Unfortunately, while this

particular provision is being strictly enforced as regards domestically-funded projects, the same is not true with foreign-funded projects.

Foreign lending institutions, however, claim that projects which they have funded through a loan agreement are exempt from the coverage of the law by invoking the provision under Section 4 which states that “Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine Government is a signatory shall be respected.”

The Department of Justice (DOJ) recently declared that the National Broadband Network (NBN) project is valid and thus, exempted from the coverage of R.A. No. 9184. This was based on the interpretation that loan agreements partake of the nature of international or executive agreement and that it applies even to loan agreements contracted after the enactment of the said law. In view of this development, a similar opinion could be expected with the Cyber Education Project (CEP) and other future projects that will be contracted by the government.

Exempting foreign-funded projects from the coverage of R.A. No. 9184, particularly in allowing bids or tenders over and above the Approved Budget for the Contract (ABC), would defeat the purpose and the spirit of the law. There would be no genuine reform to speak of and the government procurement system will remain graft ridden. Moreover, it will amount to unnecessary wastage of government resources.

This bill seeks to remove any ambiguity in the interpretation of the scope and application of R.A. No. 9184 by amending Section 4 to make it very clear that:

- It applies to all government procurement activities, regardless of the source of funds, whether local or foreign, and
- Only treaties or international or executive agreements entered into by the government prior to its enactment shall be exempt from its coverage.

*This bill was originally filed by President Benigno S. Aquino III during the Fourteenth Congress.*

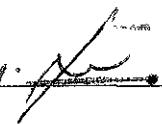
  
MIRIAM DEFENSOR SANTIAGO

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1 AN ACT  
2 AMENDING SECTION 4 OF REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE  
3 "GOVERNMENT PROCUREMENT REFORM ACT."

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

4 Section 1. Section 4 (Scope and Application) of Republic Act No. 9184 shall be amended  
5 to read as follows:

6 "Section 4. *Scope and Application.* – This Act shall apply to the  
7 Procurement of Infrastructure Projects, Goods and Consulting Services, regardless  
8 of source of funds, whether local or foreign, by all branches and instrumentalities  
9 of government, its departments, offices and agencies, including government-  
10 owned and/or controlled corporations and local government units, subject to the  
11 provisions of Commonwealth Act No. 138. Any treaty or international or  
12 executive agreement affecting the subject matter of this Act [to which]  
13 **ENTERED INTO BY** the Philippine Government [is a signatory] **BEFORE**  
14 **THE PASSAGE OF THIS ACT** shall be respected."

15 Section 2. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its  
16 publication in at least two (2) national papers of general circulation.

Approved,