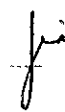


13 SEP 16 P3:06

SENATE

S. No. 1657

RECEIVED BY: 

Introduced by Senator Antonio "Sonny" F. Trillanes IV

EXPLANATORY NOTE

An excellent defense and security procurement is one which is subject to a regulatory regime that acknowledges its specificities and tries to strike a balance between: openness and transparency of the procurement process, on the one hand, and protection of the core security concerns of the procuring state, on the other.¹ The country's current procurement procedures, insofar as the acquisition of major defense materiel and equipment is concerned, however, still run counter to the aforesaid ideal. While transparency is encouraged for procurement of public goods, the procurement of major defense materiel involves higher level of risks, hence, requires further layer of protection from possible security threats.

It is in this light that this measure seeks to allow negotiated procurement for major defense equipment or materiel, in cases wherein domestic vendors are not available, and in view of certain defense strategic considerations, as deemed appropriate and urgent by the Secretary of National Defense. Said strategic considerations include the assurance of purchasing tools from allies with similar global interests or those with existing defense agreements with the government, and of the stable and seamless acquisition, maintenance and repair of the equipment or parts thereof.

Confidentiality in the procurement may also be a warranted consideration in the instances where the undue disclosure of the nature and specifications of major defense equipment is deemed to have serious implications on their relevance and effectiveness, thereby compromising the country's security.

To prevent the potential abuse of discretion on the exemption from public bidding, the bill provides for a formal institutional check and balance, by securing the prior consent and approval of the President, with the concurrence of both chairmen of the defense committees of both houses of Congress. This requirement shall help ensure that decisions under this procurement mechanism are clearly geared towards established defense policy goals, and shall insure that scarce public funds are, indeed, judiciously spent.

In view of the foregoing, immediate enactment of this measure is earnestly sought.


ANTONIO "SONNY" F. TRILLANES IV
Senator

¹ Information accessed from <http://www.oecd.org/site/sigma/publicationsdocuments/49102610.pdf> on 8/30/2013.

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

'13 SEP 16 P3:06

SENATE

S. No. 1657

RECEIVED BY: *ja*

Introduced by Sen. Antonio "Sonny" F. Trillanes IV

AN ACT
AMENDING SECTION 53 OF REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS
THE "GOVERNMENT PROCUREMENT REFORM ACT", AND FOR OTHER
PURPOSES

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

1 **SECTION 1.** Section 53 of Republic Act No. 9184, otherwise known as "Government
2 Procurement Reform Act", is hereby amended by adding a new subsection (f), to read as follows:

4 *"Sec. 53. Negotiated Procurement - Negotiated*

5 procurement shall be allowed in the following instances:

- 6 a) x x x
- 7
- 8 b) x x x
- 9
- 10 c) x x x
- 11
- 12 d) x x x
- 13
- 14 e) x x x
- 15
- 16

17 **F) IN THE CASE OF PROCUREMENT FOR**
18 **THE USE BY THE ARMED FORCES OF THE**
19 **PHILIPPINES (AFP) INVOLVING MAJOR DEFENSE**
20 **EQUIPMENT AND MATERIEL, WHEN THE CAPABILITY**
21 **REQUIRED IS NOT AVAILABLE LOCALLY AND WHEN**
22 **THE SECRETARY OF NATIONAL DEFENSE HAS**
23 **DETERMINED THAT IN VIEW OF SECURITY AND**
24 **OTHER STRATEGIC CONSIDERATIONS, INCLUDING**

1 CONFIDENTIALITY, INTEROPERABILITY, AND/OR
2 THE EXISTENCE DEFENSE PARTNERSHIPS, THE
3 PROCUREMENT BY THE AFP OF THE
4 ABOVEMENTIONED EQUIPMENT SHOULD BE
5 EXEMPTED FROM THE REQUIREMENT OF PUBLIC
6 BIDDING UNDER THIS ACT: *PROVIDED THAT*, SAID
7 DETERMINATION IS SUPPORTED BY THE APPROVAL
8 BY THE PRESIDENT AND CONCURRED IN BY BOTH
9 CHAIRMEN OF THE NATIONAL DEFENSE AND
10 SECURITY COMMITTEES OF THE SENATE AND THE
11 HOUSE OF REPRESENTATIVES, *PROVIDED, FURTHER*,
12 THAT THE PERFORMANCE BY THE SUPPLIER OF ITS
13 OBLIGATIONS UNDER THE PROCUREMENT
14 CONTRACT SHALL BE COVERED BY SECTION 39 OF
15 THIS ACT: *PROVIDED, FINALLY* THAT MAJOR
16 DEFENSE EQUIPMENT AND MATERIEL SHALL REFER
17 TO AIRCRAFT, VESSELS, TANKS, ARMORED
18 VEHICLES, HIGH TECH COMMUNICATION
19 EQUIPMENT, RADAR SYSTEMS, SOPHISTICATED
20 WEAPONS SYSTEMS AND HIGH-POWERED FIREARMS
21 NOT OTHERWISE LOCALLY AVAILABLE.
22

23 **SECTION 2. *Repealing Clause.*** - All laws, executive orders, rules and regulations
24 inconsistent with or contrary to this Act are hereby deemed accordingly repealed or amended.
25

26 **SECTION 3. *Effectivity Clause.*** - This Act shall take effect fifteen (15) days after its
27 publication in the *Official Gazette* or in at least two (2) newspapers of national circulation.

Approved,