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SENATE
S.B. No. 2120

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Introduced by Senator Sergio Osmeña III

**AN ACT AMENDING REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS
THE GOVERNMENT PROCUREMENT REFORM ACT, AND FOR OTHER
PURPOSES**

EXPLANATORY NOTE

The Government Procurement Reform Act

The procurement of goods and services for government contracts is governed by Republic Act No. 9184, otherwise known as the Government Procurement Reform Act (GPRA). Apart from promoting transparency and accountability in the procurement process and the implementation of government contracts, the GPRA also counts competitiveness as a governing principle, by seeking to extend equal opportunities to eligible and qualified private contracting parties.

However, the principle of competitiveness in the GPRA is diluted by its adoption of the domestic preference policy embodied in a 78-year-old law- Commonwealth Act No. 138 (CA 138). CA 138 was enacted in 1936, at a time when limitations in infrastructure and technology confined the need to remain competitive primarily within territorial boundaries. Times have clearly changed. Technology has improved by leaps and bounds, facilitating freer and more efficient movement of goods and services across borders. In the 21st century, competition has taken on a new, global dimension.

Competition And Procurement Reform

Regional free trade agreements, such as the developing Trans Pacific Partnership Agreement (TPP), must be considered to keep us competitive. The procurement chapter of the TPP would require that all firms operating in any signatory country be provided equal access as domestic firms in government procurement contracts. The United States, for example, would have to agree to waive “Buy American” and “Buy Local” procurement policies for all such foreign firms. Countries such as Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam are currently part of negotiations to join the TPP, and therefore represent potential markets that the Philippines will either be a part of or excluded from.

The World Trade Organization (WTO) Agreement on Government Procurement (GPA) is undergoing revision to increase international competition in government procurement contracts by providing for a more level playing field for foreign bidders in countries that are Parties to the GPA. Joining as a Party to the GPA may mean that a country’s national government would have to implement policies that call for non-discriminatory treatment to foreign suppliers. Parties to the GPA include Canada, Israel, Japan, Norway, Switzerland, the United States, and the 15 states of the European Union (Australia, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom). Within the ASEAN, Singapore is already a Party to the GPA, while Indonesia, Malaysia and Vietnam joined as Observers to the GPA in 2012.

The procurement chapter of Singapore’s Free Trade Agreement with the European Union (EU-Singapore FTA) demonstrates the kind of uniform treatment that allows domestic and foreign supplies to compete fairly. Under the EU-Singapore FTA, Singapore and its procuring entities are committed to treating goods, services, and supplies from the EU no less favorably than it would its own domestic goods, services and suppliers. Singapore is likewise committed to not discriminating among local suppliers on the basis of their foreign affiliation or ownership. This should mean that a local supplier that is partly owned by nationals of EU member countries would not be treated less favorably than a 100% Singapore owned company. The EU has the same commitments.

Philippine law still discriminates against foreign suppliers, and we have not taken steps toward joining the TPP or the WTO GPA as a Party or as an Observer. But the repercussions of being excluded from these significant trading blocks should be urgently considered in the context of positioning the Philippines more competitively in the global procurement market. Therefore, this bill seeks to provide a level playing field, and extend equal opportunities to eligible and qualified domestic and foreign bidders to participate in government procurement contracts.



SERGIO OSMEÑA III
Senator



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

1 **Section 1.** Section 4 of Republic Act No. 9184 is hereby amended to read as
2 follows:

3 “Sec. 4. Scope and Application. – This act shall apply to the
4 Procurement of Infrastructure Projects, Goods and Consulting
5 Services, regardless of source of funds, whether local or foreign, by all
6 branches and instrumentalities of government, its departments, offices
7 and agencies, including government-owned and/or-controlled
8 corporations and local government units [subject to the provisions of
9 Commonwealth Act No. 138]. Any treaty or international or executive
10 agreement affecting the subject matter of this Act to which the
11 Philippine government is a signatory shall be observed.”

1 **Sec. 2.** Section 76 of Republic Act No. 9184 is hereby amended to read as
2 follows:

3 “Sec. 76. *Repealing Clause.*- This law repeals **COMMONWEALTH**
4 **ACT NO. 138, ENTITLED “AN ACT TO GIVE NATIVE PRODUCTS**
5 **AND DOMESTIC ENTITIES THE PREFERENCE IN THE PURCHASE**
6 **OF ARTICLES FOR THE GOVERNMENT”**; Executive Order No. 40,
7 series of 2001, entitled “Consolidating Procurement Rules and
8 Procedures for all National Government Agencies, Government-
9 Owned-or-Controlled Corporations and/or Government Financial
10 Institutions, and requiring the Use of the Government Electronic
11 Procurement System”; Executive Order No. 262, series of 2000,
12 entitled “Amending Executive Order No. 302, series of 1996, entitled
13 “Providing Policies, Guidelines, Rules and Regulations for the
14 Procurement of Goods/Supplies by the National Government” and
15 Section 3 of Executive Order No. 201, series of 2000, entitled
16 “Providing Additional Policies and Guidelines in the Procurement of
17 Goods/Supplies by the National Government”; Executive Order No.
18 302, series of 1996, entitled “Providing Policies, Guidelines, Rules and
19 Regulations for the Procurement of Goods/Supplies by the National
20 Government” and Presidential Decree No. 1594 dated June 11, 1978,
21 entitled “Prescribing Policies; Guidelines, Rule and Regulations for
22 Government Infrastructure Contracts.” This law amends Title Six,
23 Book Two of Republic Act No. 7160, otherwise known as the “Local

1 Government Code of 1991'; the relevant provisions of Executive Order
2 No. 164, series of 1987, entitled "Providing Additional Guidelines in the
3 processing and Approval of Contracts of the National Government";
4 and the relevant provisions of Republic Act No. 7898 dated February
5 23, 1995, entitled "An Act Providing for the Modernization of the Armed
6 Forces of the Philippines and for Other Purposes." Any other law,
7 presidential decree or issuance, executive order, letter of instruction,
8 administrative order, proclamation, charter, rule or regulation and/or
9 parts thereof contrary to or inconsistent with the provisions of this Act
10 is hereby repealed, modified or amended accordingly."

11 **Sec. 3. Separability Clause.** - If any portion or provision of this Act is
12 declared unconstitutional, the remainder of this Act or any provisions not affected
13 thereby shall remain in force and effect.

14 **Sec. 4. Effectivity Clause.** – This Act shall take effect fifteen (15) days after
15 its publication in the Official Gazette or two (2) newspapers of general circulation.

16 Approved.