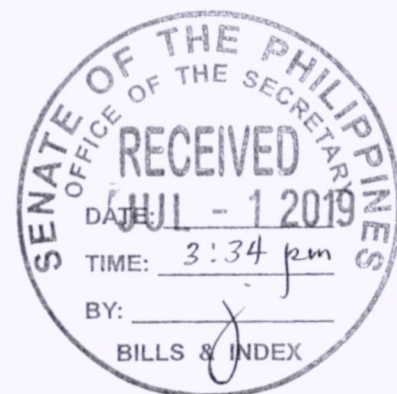


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



S E N A T E
S. No. 94

Introduced by Senator Aquilino “Koko” Pimentel III

AN ACT
PROVIDING FOR A VALUE FOR MONEY PROCUREMENT,
AMENDING FOR THIS PURPOSE REPUBLIC ACT NO. 9184,
OTHERWISE KNOWN AS
“THE GOVERNMENT PROCUREMENT REFORM ACT,”
AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Philippine Government procurement is replete with reports of poor quality of goods acquired, as well as infrastructure projects that are not completed within the specified period, are defective, or below internationally recognized standards.

Notably, President Rodrigo R. Duterte, on various occasions, made the pronouncement that the “lowest bidder policy” in government procurement is a cause of these substandard goods and infrastructures, as well as a source of corruption in government.

The current system ties the hands of our procurement personnel to award the contract to bidders who may have offered the lowest bid and made it appear that they will comply with the minimum specifications, when in reality, they will not.

The current system also puts the burden on our procurement planners to come up with exhaustive technical specifications for needed goods and services, when expert knowledge undeniably rests on the market operators or players, who are the manufacturers, distributors, suppliers, service providers and contractors themselves.

This system cripples the government from achieving the best value for taxpayers' money. This should therefore be revisited and improved accordingly.

Hence, this bill introduces a way to shift from cost-based procurements towards value-based procurement through the principle of Value for Money (VfM) procurement, where procurement for Goods and Infrastructure Projects should yield the best return for every peso spent in terms of price, but more importantly in terms of quality, quantity, timeliness, and source.

To realize this, VfM procurement allows for performance-based specifications or the fitness-for-purpose proposal, which simply means the contractor agrees to meet the procuring entity's (PE) identified needs, and that the project would actually work as intended. This follows the practice in the private sector where the burden of crafting the best mix of specifications to address the needs of the client rests on the prospective contractor.

Implementation of some projects by phases has been shown to be prone to abuse and result in splitting of contracts. This enables PEs to do away with competitive bidding for the succeeding phases, resulting in overpricing and awarding of contracts to favored contractors. To prevent this, the bill mandates that for projects to be implemented by phases, the PEs shall ensure that the total project cost is already reflected in the annual procurement plan, and that for each phase, there is a clear and structurally sound delineation of work.

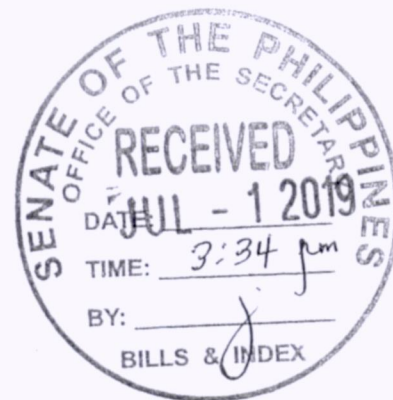
As the country adopts VfM procurement and other international trends in procurement, procurement officials and employees need to be equipped with adequate training and tools to improve their capacity in planning, procurement, contract implementation, and asset management. They also need to be protected from frivolous and baseless suits, and other threats that tend to impede full performance of their functions.

Thus, in addition to strengthening the capacity building program for them, this bill requires key procurement personnel to complete a procurement certification program and pass its examinations. As regard to legal protection, this bill now clearly includes the members of the Bids and Awards Committee (BAC) secretariat, technical working group, and the head of the procuring entity as those entitled to engage the services of private lawyers and indemnification for injuries incurred in the performance of their functions.

In view of the foregoing, the immediate passage of this bill is earnestly sought.


AQUILINO "KOKO" PIMENTEL III

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



S E N A T E
S. No. 94

Introduced by Senator Aquilino “Koko” Pimentel III

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“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. *SHORT TITLE.* – THIS ACT SHALL BE KNOWN
2 AS THE “VALUE FOR MONEY PROCUREMENT ACT.”
3

4 SEC. 2. *DECLARATION OF POLICY.* – IT IS HEREBY
5 DECLARED THE POLICY OF THE STATE TO SHIFT FROM A
6 COST-BASED PROCUREMENT TO A VALUE-BASED
7 PROCUREMENT, THAT WILL ENSURE THE BEST VALUE
8 FOR THE PUBLIC’S MONEY, HAVING DUE REGARD TO
9 PROPRIETY AND REGULARITY.
10

11 SEC. 3. Section 3 of R.A. 9184 is hereby amended to read as follows:
12

13 SEC. 3. Governing Principles on Government
14 Procurement.

15
16 xxx xxx xxx

17
18 (b) Competitiveness by extending equal opportunity to enable
19 private contracting parties who are eligible and qualified to
20 participate in public bidding, **WITHOUT**

1 **COMPROMISING ON QUALITY, DELIVERY, AND**
2 **OTHER PRICE AND NON-PRICE FACTORS.**

3
4 (c) Streamlined procurement process that will uniformly
5 apply to all government procurement. The procurement
6 process shall be simple **YET THOROUGHLY**
7 **EVALUATED AND RATIONALIZED**, and made
8 adaptable to advances in [modern] technology in order to
9 ensure an effective and efficient method.

10
11 xxx xxx xxx

12
13 **(F) VALUE FOR MONEY BY TAKING INTO**
14 **ACCOUNT THE LIFE CYCLE COSTS AND QUALITY**
15 **OF THE GOODS AND SERVICES TO MEET THE**
16 **END-USER'S REQUIREMENTS AND OBJECTIVES.**

17
18 **SEC. 4.** Section 5 is hereby amended to read as follows:

19
20 SEC. 5. Definition of Terms.

21
22 xxx xxx xxx

23
24 **(E) BLACKLISTING – REFERS TO AN**
25 **ADMINISTRATIVE PENALTY DISQUALIFYING A**
26 **PERSON OR AN ENTITY FROM PARTICIPATING IN**
27 **ANY GOVERNMENT PROCUREMENT FOR A**
28 **GIVEN PERIOD.**

29
30 **(F)** [(e)] Competitive Bidding - xxx

31
32 **(G)** [(f)] Consulting Services - xxx

33
34 [(g) G-EPS – refers to the Government Electronic
35 Procurement System as provided in Section 8 of this Act.]

36
37 (h) Goods - xxx

38
39 (i) GPPB - xxx

40
41 (j) Head of the Procuring Entity **(HOPE)** - xxx

42
43 (k) Infrastructure Projects - xxx

1
2 (I) IRR - xxx
3

4 (M) LIFE CYCLE COST – ALSO KNOWN AS
5 WHOLE-LIFE COST, IS THE TOTAL COST OF
6 OWNERSHIP OF A GOOD, INCLUDING ITS COST
7 OF ACQUISITION, OPERATION, MAINTENANCE,
8 AND DISPOSAL.
9

10 (N) PERFORMANCE-BASED SPECIFICATIONS –
11 REFERS TO A SPECIFICATION DESCRIBING THE
12 DESIRED OUTCOMES OR RESULTS IN TERMS OF
13 FUNCTIONAL OR PERFORMANCE
14 REQUIREMENTS RATHER THAN IN TERMS OF
15 TECHNICAL DETAILS. THIS SPECIFICATION IS
16 USED IN CASES WHEN THE PROCURING ENTITY
17 IS UNCERTAIN OF THE BEST PROCESS OR
18 METHOD TO DELIVER THE REQUIREMENTS,
19 WHEN HIGH-LEVEL TECHNOLOGY IS REQUIRED,
20 WHEN SUPPLIERS ARE KNOWN TO HAVE THE
21 CAPABILITY TO DESIGN FIT FOR PURPOSE
22 SOLUTIONS, OR WHEN PAST PERFORMANCE OR
23 OTHER NON-FINANCIAL CONSIDERATIONS MAY
24 BE BENEFICIAL IN THE PROCUREMENT.
25

26 (O) PHILGEPS – REFERS TO THE PHILIPPINE
27 GOVERNMENT ELECTRONIC PROCUREMENT
28 SYSTEM AS PROVIDED IN SECTION 8 OF THIS
29 ACT.
30

31 (P) [(m)] Portal - xxx
32

33 (Q) [(n)] Procurement - xxx
34

35 (S) [(o)] Procuring Entity - xxx
36

37 (T) VALUE FOR MONEY (VFM) – REFERS TO THE
38 PRINCIPLE OF EFFECTIVE, EFFICIENT,
39 ECONOMIC, AND ETHICAL USE OF RESOURCES,
40 WHICH REQUIRES THE EVALUATION OF
41 RELEVANT COSTS AND BENEFITS, ALONG WITH
42 AN ASSESSMENT OF RISKS, NON-PRICE
43 ATTRIBUTES, AND/OR LIFE CYCLE COSTS, AS

1 **APPROPRIATE. IN THE APPLICATION OF THIS**
2 **PRINCIPLE, PRICE ALONE MAY NOT**
3 **NECESSARILY REPRESENT VFM.**

4
5 **SEC. 5.** Section 7 is hereby amended to read as follows:

6
7 SEC. 7. Procurement Planning and Budgeting Linkage. –

8
9 **(A)** All procurement should be within the approved budget
10 of the Procuring Entity and should be meticulously and
11 judiciously planned by the Procuring Entity concerned.
12 Consistent with government fiscal discipline measures, only
13 those considered crucial to the efficient discharge of
14 governmental functions shall be included in the Annual
15 Procurement Plan (**APP**) to be specified in the IRR.

16
17 **(B)** No government procurement shall be undertaken unless
18 it is in accordance with the approved **APP** of the Procuring
19 Entity. The **APP** shall be approved by the [Head of the
20 Procuring Entity] **HOPE** and must be consistent with its duly
21 approved yearly budget. The **APP** shall be formulated and
22 revised only in accordance with the guidelines set forth in the
23 IRR. In the case of Infrastructure Projects, the **APP** shall
24 include engineering design and acquisition of right-of-way.

25
26 **(C) IN CASES OF INFRASTRUCTURE PROJECTS**
27 **WITH A TOTAL PROJECT COST OF AT LEAST ONE**
28 **HUNDRED MILLION PESOS (P100,000,000), VALUE**
29 **ENGINEERING SHALL BE CONDUCTED**
30 **ACCORDING TO ACCEPTED STANDARDS AND**
31 **PRACTICES AND GUIDELINES TO BE ISSUED BY**
32 **THE GPPB.**

33
34 **VALUE ENGINEERING IS DEFINED AS THE**
35 **SYSTEMATIC AND ORGANIZED PROCESS OF**
36 **REVIEWING AND ASSESSING A PROJECT, DURING**
37 **THE PLANNING, DEVELOPMENT, AND DESIGN**
38 **PHASES, IN ORDER TO ACHIEVE ANY OF THE**
39 **FOLLOWING OBJECTIVES:**

- 40
41 **1. PROVIDE THE NEEDED PROJECT FUNCTIONS**
42 **SAFELY, RELIABLY, EFFICIENTLY, AND AT**

1 THE LOWEST OVERALL LIFE CYCLE COST
2 OF THE PROJECT;

3
4 2. IMPROVE THE QUALITY AND ENSURE THE
5 BEST VALUE FOR THE PROJECT; AND

6
7 3. REDUCE THE TIME TO COMPLETE THE
8 PROJECT.

9
10 THE THRESHOLD VALUE OF ONE HUNDRED
11 MILLION PESOS (P100,000,000) SHALL BE
12 ADJUSTED BY THE NATIONAL ECONOMIC
13 DEVELOPMENT AUTHORITY (NEDA), WHENEVER
14 NECESSARY, TO ITS PRESENT VALUE USING THE
15 CONSUMER PRICE INDEX (CPI) AS PUBLISHED BY
16 THE PHILIPPINE STATISTICS AUTHORITY (PSA).

17
18 THE ABOVE AMOUNT SHALL BE SUBJECT TO A
19 PERIODIC REVIEW BY THE GPPB, WITH THE
20 ASSISTANCE OF THE NEDA, TO DETERMINE IF
21 THERE IS A NEED TO INCREASE OR DECREASE
22 THE SAID AMOUNT IN ORDER TO REFLECT
23 CHANGES IN ECONOMIC CONDITIONS AND FOR
24 OTHER JUSTIFIABLE REASONS.

25
26 (D) IN CASE THE INFRASTRUCTURE PROJECT
27 SHALL BE DONE BY PHASES, THE PROCURING
28 ENTITY SHALL INDICATE IN THE APP OR AN
29 ATTACHED DOCUMENT TO BE PROVIDED IN THE
30 IRR:

31
32 1. THE TOTAL PROJECT COST;

33
34 2. THE DESCRIPTION OF THE WHOLE
35 PROJECT;

36
37 3. THE PROGRAM OF WORKS FOR EACH OF
38 THE PHASES; AND

39
40 4. THE APPROVED BUDGET FOR THE
41 CONTRACT THEREOF.

42

1 THE PROCURING ENTITY SHALL ENSURE THAT
2 EACH PHASE IS USABLE AND FUNCTIONAL UPON
3 COMPLETION OF SUCH PHASE.
4

5 (E) IN CASES OF PROJECTS REQUIRING
6 PERFORMANCE-BASED SPECIFICATIONS OR
7 WHEN IT IS IN THE BEST INTEREST OF THE
8 PROCURING ENTITY, AS DETERMINED BY THE
9 END-USER UNIT AND SUBJECT TO THE
10 APPROVAL OF THE HOPE, THE PROCURING
11 ENTITY SHALL HAVE THE OPTION TO UTILIZE
12 VFM CONTRACTING IN THE PROCUREMENT OF
13 GOODS OR INFRASTRUCTURE PROJECTS. THE
14 PROCURING ENTITY SHALL STATE THE SAME IN
15 THE APP.
16

17 WHEN CONDUCTING A VFM PROCUREMENT, THE
18 PROCURING ENTITY SHALL CONSIDER THE
19 RELEVANT FINANCIAL AND NON-FINANCIAL
20 FACTORS OF EACH SUBMISSION INCLUDING, BUT
21 NOT LIMITED TO:
22

- 23 1. THE QUALITY OF THE GOODS AND
24 SERVICES;
25
- 26 2. FITNESS FOR PURPOSE OF THE PROPOSAL;
27
- 28 3. THE POTENTIAL BIDDER'S RELEVANT
29 EXPERIENCE AND PERFORMANCE HISTORY;
30
- 31 4. FLEXIBILITY OF THE PROPOSAL,
32 INCLUDING INNOVATION AND
33 ADAPTABILITY OVER THE LIFE CYCLE OF
34 THE PROCUREMENT;
35
- 36 5. ENVIRONMENTAL SUSTAINABILITY OF THE
37 PROPOSED GOODS AND INFRASTRUCTURES,
38 SUCH AS ENERGY EFFICIENCY AND
39 ENVIRONMENTAL IMPACT;
40
- 41 6. LIFE CYCLE COSTS, INCLUDING
42 MAINTENANCE COSTS, UTILITY COSTS,
43 DISPOSAL COSTS, LICENSING COSTS (WHEN
44 APPLICABLE), THE COST OF ADDITIONAL

1 FEATURES PROCURED AFTER THE INITIAL
2 PROCUREMENT, AND CONSUMABLE COSTS;

3
4 7. TIMELINESS;

5
6 8. COST OF NECESSARY TRAINING;

7
8 9. QUALIFICATIONS OF TECHNICAL
9 PERSONNEL INVOLVED IN THE
10 PROCUREMENT OF GOODS AND
11 INFRASTRUCTURE SERVICES;

12
13 10. REALISTIC RISK ASSESSMENT OF THE
14 PROPOSED SOLUTION; AND

15
16 11. AVAILABILITY AND COST OF TECHNICAL
17 SUPPORT.

18
19 THE PROCUREMENT PLANNING
20 DOCUMENTATION SHALL PROVIDE ACCURATE
21 AND CONCISE INFORMATION ON:

22
23 1. THE REQUIREMENT FOR THE
24 PROCUREMENT; AND

25
26 2. A STATEMENT OR EXPLANATION ON HOW
27 VFM CONTRACTING WAS CONSIDERED AND
28 ACHIEVED.

29
30 (G) NATIONAL GOVERNMENT AGENCIES,
31 LOCAL GOVERNMENT UNITS, CONSTITUTIONAL
32 OFFICES, AND STATE UNIVERSITIES AND
33 COLLEGES SHALL REQUEST THE DEPARTMENT
34 OF BUDGET AND MANAGEMENT (DBM) FOR THE
35 ISSUANCE OF A MULTI-YEAR CONTRACTUAL
36 AUTHORITY (MYCA) PRIOR TO ENTERING INTO
37 CONTRACTS TO COVER THE TOTAL PROJECT
38 COSTS OF MULTI-YEAR PROJECTS, WHETHER
39 LOCALLY-FUNDED OR FOREIGN-ASSISTED. IN
40 THE CASE OF GOVERNMENT-OWNED AND/OR
41 CONTROLLED CORPORATIONS (GOCCS), THEY
42 SHALL SECURE PRIOR AUTHORITY FROM THEIR
43 RESPECTIVE GOVERNING BOARDS BEFORE

1 ENTERING INTO MULTI-YEAR PROJECTS AND
2 PROCEEDING WITH THEIR PROCUREMENT.

3
4 MULTI-YEAR PROJECT REFERS TO THE
5 PROGRAM OR PROJECT WHICH WILL TAKE
6 MORE THAN ONE (1) YEAR TO COMPLETE THAT
7 REQUIRES MULTI-YEAR APPROPRIATIONS.

8
9 THE DBM OR GOVERNING BOARD, AS THE CASE
10 MAY BE, SHALL IDENTIFY THE REQUIREMENTS
11 AND/OR PRESCRIBE GUIDELINES BEFORE
12 PROCURING ENTITIES MAY ENTER INTO MULTI-
13 YEAR CONTRACTS AND THE ISSUANCE OF A
14 MYCA.

15
16 ALL EXISTING MULTI-YEAR OBLIGATIONAL
17 AUTHORITY (MYOA) SHALL BE UNDERSTOOD TO
18 REFER TO THE MYCA.

19
20 (H) TO ENSURE FULL BUDGET UTILIZATION,
21 TIMELY CONTRACT IMPLEMENTATION, AND
22 EFFICIENT DELIVERY OF SERVICES, THE
23 PROCURING ENTITIES ARE AUTHORIZED TO
24 UNDERTAKE PROCUREMENT ACTIVITIES FROM
25 PRE-PROCUREMENT CONFERENCE UNTIL POST-
26 QUALIFICATION OF BIDS BASED ON THEIR
27 PROPOSED BUDGET IN THE NATIONAL
28 EXPENDITURE PROGRAM (NEP), CORPORATE
29 OPERATING BUDGETS, OR APPROPRIATIONS
30 ORDINANCE.

31
32 THE PROCURING ENTITIES SHALL PROCEED
33 WITH THE AWARDING OF CONTRACT ONLY
34 UPON APPROVAL OR ENACTMENT OF THEIR
35 RESPECTIVE APPROPRIATIONS OR BUDGET
36 AUTHORIZATION DOCUMENT, AS THE CASE MAY
37 BE, AND ON THE BASIS OF THE AMOUNT
38 AUTHORIZED THEREIN.

39
40 **SEC. 6.** Section 8 is hereby amended to read as follows:

41
42 SEC 8. Procurement by Electronic Means.

1 To promote transparency and efficiency, information and
2 communications technology shall be utilized in the conduct
3 of procurement procedures. Accordingly, there shall be single
4 portal that shall serve as the primary source of information on
5 all government procurement. The [G-EPS] **PHILGEPS** shall
6 serve as the primary and definitive source of information on
7 government procurement. Further, the GPPB is authorized to
8 approve changes in the procurement process to adapt to
9 improvements in modern technology, provided that such
10 modifications are consistent with provisions of Section 3 of
11 this Act.

12
13 [To take advantage of the significant built-in-efficiencies of
14 the G-EPS and the volume discounts inherent in bulk
15 purchasing, all Procuring Entities shall utilize the G-EPS for
16 the procurement of common supplies in accordance with the
17 rules and procedures to be established by the GPPB. With
18 regard to the procurement of non-common use items,
19 infrastructure projects and consulting services, agencies may
20 hire service providers to undertake their electronic
21 procurement provided these service providers meet the
22 minimum requirements set by the GPPB.]

23
24 **ALL PROCURING ENTITIES SHALL UTILIZE THE**
25 **PHILGEPS FOR THE PROCUREMENT OF GOODS**
26 **AND SERVICES IN ACCORDANCE WITH THE**
27 **RULES AND PROCEDURES TO BE ESTABLISHED**
28 **BY THE GPPB.**

29
30 **SEC. 7.** Section 9 is hereby amended to read as follows:

31
32 SEC. 9. [Security, Integrity and Confidentiality.]
33 **PROCUREMENT OF REPEATEDLY PROCURED**
34 **SUPPLIES AND EQUIPMENT IN THE**
35 **BUREAUCRACY.**

36
37 [The G-EPS shall ensure the security, integrity and
38 confidentiality of documents submitted through the system. It
39 shall include feature that provides for an audit trail for on-line
40 transactions and allow the Commission on Audit to verify the
41 security and integrity of the systems at any time.]

1 TO TAKE ADVANTAGE OF THE VOLUME
2 DISCOUNTS INHERENT IN BULK PURCHASING,
3 ALL PROCURING ENTITIES SHALL UTILIZE
4 FRAMEWORK AGREEMENTS FOR THE
5 PROCUREMENT OF REPEATEDLY PROCURED
6 SUPPLIES AND EQUIPMENT IN ACCORDANCE
7 WITH THE RULES AND PROCEDURES TO BE
8 ESTABLISHED BY THE GPPB.

9
10 **SEC. 8.** Section 12 is hereby amended to read as follows:

11
12 SEC 12. Functions of the BAC – The BAC shall have the
13 following functions:

14
15 xxx xxx xxx

16
17 xxx and perform such other related functions as may be
18 necessary, including the creation of a Technical Working
19 Group (**TWG**) from a pool of technical, financial and/or legal
20 experts to assist in the procurement process, **SUBJECT TO**
21 **THE APPROVAL OF THE HOPE.**

22
23 **SEC. 9.** Section 16 is hereby amended to read as follows:

24
25 SEC 16. Professionalization of BAC, BAC Secretariat and
26 Technical Working Group Members. - The GPPB shall
27 establish a sustained training program for developing the
28 capacity of the BACs, BAC Secretariats, Technical Working
29 Groups, **AND THE PROCUREMENT UNITS OF**
30 **PROCURING ENTITIES**, and professionalize the same.

31
32 **FOR THIS PURPOSE, THE GPPB SHALL DEVELOP**
33 **A PROCUREMENT CERTIFICATION PROGRAM**
34 **FOR THE MAJORITY OF THE BAC AND THE**
35 **PERSONNEL IN THE PROCUREMENT UNITS OF**
36 **PROCURING ENTITIES—OR FOR ANYONE**
37 **INTERESTED TO WORK AS SUCH IN THE**
38 **GOVERNMENT, TO GAIN NATIONALLY**
39 **RECOGNIZED QUALIFICATIONS AND**
40 **CERTIFICATIONS AND TO MEET THE**
41 **REQUIREMENTS OF QUALIFICATION**
42 **STANDARDS FOR PROCUREMENT POSITIONS IN**

1 THE GOVERNMENT TO BE PRESCRIBED BY THE
2 CIVIL SERVICE COMMISSION.

3
4 THE PERSONNEL OF THE PROCUREMENT UNITS
5 OF PROCURING ENTITIES SHOULD
6 SATISFACTORILY COMPLETE SUCH PROGRAM
7 AND PASS THE EXAMINATIONS THEREOF,
8 CONDUCTED, AUTHORIZED, OR ACCREDITED BY
9 THE GPPB.

10
11 THE GPPB SHALL PROVIDE GUIDANCE AND
12 POLICY DIRECTIONS IN RELATION TO THE
13 CONDUCT OF TRAINING, THE PREPARATION OF
14 CERTIFICATION EXAMINATIONS, AND THE
15 CREATION OF TRAINING INSTITUTE(S) AND/OR
16 ACCREDITATION OF TRAINING INSTITUTIONS,
17 INCLUDING TRAINING OF TRAINERS.

18
19 **SEC. 10.** Section 17 is hereby amended to read as follows:

20
21 SEC. 17. Form and Contents of Bidding Documents. -

22
23 (j) Form of Contract, xxx xxx xxx

24
25 **FOR VFM CONTRACTING, PROCURING ENTITIES**
26 **SHALL INCLUDE THE RELEVANT FINANCIAL**
27 **AND NON-FINANCIAL EVALUATION CRITERIA IN**
28 **THE BIDDING DOCUMENTS AND THE INVITATION**
29 **TO BID TO ENABLE THE PROPER**
30 **IDENTIFICATION, ASSESSMENT, AND**
31 **COMPARISON OF SUBMISSIONS ON A FAIR,**
32 **EQUITABLE, AND REASONABLY TRANSPARENT**
33 **BASIS.**

34
35 The Procuring Entity xxx xxx xxx

36
37 **SEC. 11.** Section 18 is hereby amended to read as follows:

38
39 SEC. 18. Reference to Brand Names. — Specifications for
40 the Procurement of Goods, **AND GOODS COMPONENT**
41 **OF INFRASTRUCTURE PROJECTS AND**
42 **CONSULTING SERVICES,** shall be based on relevant
43 characteristics and/or performance requirements. Reference

1 to brand names shall [not be allowed] **BE AVOIDED. IN**
2 **CASES WHERE IT IS NECESSARY TO QUOTE A**
3 **BRAND NAME OF A PARTICULAR**
4 **MANUFACTURER, THE PHRASE “OR**
5 **EQUIVALENT” SHALL BE ADDED AFTER SUCH**
6 **REFERENCE. THE SPECIFICATIONS SHALL**
7 **PERMIT THE ACCEPTANCE OF OFFERS WHICH**
8 **HAVE SIMILAR CHARACTERISTICS AND WHICH**
9 **PROVIDE PERFORMANCE AND QUALITY**
10 **EQUIVALENT TO THAT SPECIFIED.**

11
12 **REFERENCE TO BRAND NAMES SHALL BE**
13 **ALLOWED FOR GOODS THAT ARE COMPATIBLE**
14 **WITH THE PROCURING ENTITY’S EXISTING**
15 **FLEET OR EQUIPMENT OF THE SAME MAKE AND**
16 **BRAND, AND TO MAINTAIN THE PERFORMANCE,**
17 **FUNCTIONALITY, AND USEFUL LIFE OF THE**
18 **EQUIPMENT.**

19
20 **SEC. 12.** Section 31 is hereby amended to read as follows:

21 **SEC. 31. Ceiling AND FLOOR For Bid Prices.** - The ABC shall
22 be the upper limit or ceiling for the Bid prices. Bid prices that
23 exceed this ceiling **OR ARE LOWER THAN FIFTY (50%) OF**
24 **THE ABC** shall be disqualified outright from further participating
25 in the bidding.

26
27 **SEC. 13.** Section 32 is hereby amended to read as follows:

28
29 **SEC. 32. Bid for the Procurement of Goods and**
30 **Infrastructure Projects.**

31
32 xxx xxx xxx

33
34 **FOR VFM CONTRACTING, THE TECHNICAL**
35 **PROPOSAL SHALL BE CONSIDERED IN THE**
36 **EVALUATION OF PROJECTS. THE TECHNICAL**
37 **PROPOSALS SHALL BE EVALUATED USING THE**
38 **CRITERIA SET OUT IN THE BIDDING**
39 **DOCUMENTS.**

40
41 **THE BAC SHALL RANK THE BIDDERS IN**
42 **DESCENDING ORDER BASED ON THEIR**

1 TECHNICAL PROPOSALS AND IDENTIFY THE
2 HIGHEST RANKING BIDDER, WHICH SHALL BE
3 CONSIDERED AS THE "MOST ADVANTAGEOUS
4 PROPOSAL". AFTER APPROVAL BY THE HOPE OF
5 THE MOST ADVANTAGEOUS PROPOSAL, THE
6 FINANCIAL PROPOSAL SHALL THEN BE OPENED.

7
8 THE BAC SHALL INVITE THE BIDDER
9 CONCERNED FOR NEGOTIATION AND/OR
10 CLARIFICATION ON THE FOLLOWING ITEMS: (1)
11 FINANCIAL PROPOSAL SUBMITTED BY THE
12 BIDDER, (2) TERMS OF REFERENCE, (3) SCOPE OF
13 SERVICES, (4) METHODOLOGY AND WORK
14 PROGRAM, (5) PERSONNEL TO BE ASSIGNED TO
15 THE JOB, (6) SERVICES/FACILITIES/DATA TO BE
16 PROVIDED BY THE PROCURING ENTITY
17 CONCERNED, AND (7) PROVISIONS OF THE
18 CONTRACT. WHEN NEGOTIATIONS WITH THE
19 FIRST-IN-RANK BIDDER FAILS, THE FINANCIAL
20 PROPOSAL OF THE SECOND RANK BIDDER
21 SHALL BE OPENED FOR NEGOTIATIONS;
22 PROVIDED, THAT THE AMOUNT INDICATED IN
23 THE FINANCIAL ENVELOPE SHALL BE MADE AS
24 THE BASIS FOR NEGOTIATIONS AND THE TOTAL
25 CONTRACT AMOUNT SHALL NOT EXCEED THE
26 AMOUNT INDICATED IN THE ENVELOPE AND
27 THE ABC. WHENEVER NECESSARY, THE SAME
28 PROCESS SHALL BE REPEATED UNTIL THE BID IS
29 AWARDED TO THE WINNING BIDDER.

30
31 FOR VFM CONTRACTING, THE BAC'S DECISION
32 SHALL BE BASED ON A COMPARATIVE
33 ASSESSMENT OF PROPOSALS AGAINST ALL
34 CRITERIA STATED IN THE INVITATION TO BID
35 AND THE BIDDING DOCUMENTS. THE DECISION
36 SHALL BE DOCUMENTED, AND THE
37 DOCUMENTATION OF THE BAC DECISION SHALL
38 INCLUDE THE RATIONALE FOR ANY BUSINESS
39 JUDGMENTS AND TRADEOFFS MADE OR RELIED
40 UPON BY THE BAC. THE DECISION SHALL
41 REPRESENT EACH OF THE BAC MEMBER'S
42 INDEPENDENT JUDGMENT.

1 **UPON APPROVAL BY THE HOPE IN ACCORDANCE**
2 **WITH SECTION 37 OF THIS ACT, THE BAC'S**
3 **DECISION SHALL BE POSTED IN THE PROCURING**
4 **ENTITY'S PREMISES AND WEBSITE, IF ANY.**

5
6 **SEC. 14.** Section 34 is hereby amended to read as follows:

7
8 **SEC. 34.** Objective and Process of Post-qualification. -
9 Post-qualification is the stage where the bidder with the
10 Lowest Calculated Bid, **OR MOST ADVANTAGEOUS**
11 **PROPOSAL**, in the case of Goods and Infrastructure
12 Projects, or the Highest Rated Bid, in the case of Consulting
13 Services, undergoes verification and validation **AND/OR**
14 **INSPECTION AND TESTING** whether [he] **THE**
15 **BIDDER** has passed all the requirements and conditions as
16 specified in the Bidding Documents.

17
18 If the bidder with the Lowest Calculated Bid, **OR MOST**
19 **ADVANTAGEOUS PROPOSAL**, or Highest Rated Bid
20 passes all the criteria for post-qualification, **SUCH** Bid shall
21 be considered the "Lowest Calculated Responsive Bid, **OR**
22 **MOST ADVANTAGEOUS RESPONSIVE PROPOSAL**
23 in the case of Goods and Infrastructure or the Highest Rated
24 Responsive Bid, in the case of Consulting Services.
25 However, if a bidder fails to meet any of the requirements or
26 conditions, [he] **THE BIDDER** shall be "post-disqualified"
27 and the BAC shall conduct the post-qualification on the
28 bidder with the second Lowest Calculated Bid, **OR MOST**
29 **ADVANTAGEOUS PROPOSAL**, or Highest Rated Bid. If
30 the bidder with the second Lowest Calculated Bid, **OR**
31 **MOST ADVANTAGEOUS PROPOSAL**, or Highest Rated
32 Bid is post-disqualified, the same procedure shall be repeated
33 until the Lowest Calculated Responsive Bid, **OR MOST**
34 **ADVANTAGEOUS RESPONSIVE PROPOSAL**, or
35 Highest Rated Responsive Bid is finally determined.

36
37 In all cases, the contract shall be awarded only to the bidder
38 with the Lowest Calculated Responsive Bid, **OR MOST**
39 **ADVANTAGEOUS RESPONSIVE PROPOSAL**, or
40 Highest Rated Responsive Bid.

1 **SEC. 15.** Section 35 is hereby amended to read as follows:

2
3 SEC. 35. Failure of Bidding. - There shall be a failure of
4 bidding if:

5
6 a. If after advertisement, only one prospective bidder
7 [submits a Letter of Intent and/or] applies for eligibility
8 check, and meets the eligibility requirements or criteria,
9 after which it submits a bid, which is found to be
10 responsive to the bidding requirements;

11
12 b. No bid qualifies as the Lowest Calculated Responsive Bid,
13 **OR MOST ADVANTAGEOUS RESPONSIVE**
14 **PROPOSAL**, or Highest Rated Responsive Bid;

15
16 c. Whenever the bidder with the highest rated/lowest
17 calculated/**MOST ADVANTAGEOUS** responsive bid
18 refuses, without justifiable cause to accept the award of
19 contract, as the case may be;

20
21 **D. NON-COMPLIANCE WITH THE REQUIREMENTS**
22 **FOR THE AWARD OF CONTRACT; OR**

23
24 **E. FAILURE TO ENTER INTO CONTRACT AND**
25 **POST-PERFORMANCE SECURITY**

26
27 XXX XXX XXX

28
29 **SEC. 16.** Section 36 is hereby amended to read as follows:

30 XXX XXX XXX

31
32 a. XXX XXX XXX; **AND**

33
34 [b. If after the advertisement, more than one prospective
35 bidder applies for eligibility check, but only one bidder meets
36 the eligibility requirements or criteria, after which it submits
37 a bid which is found to be responsive to the bidding
38 requirements; or]

39
40 XXX XXX XXX

1 **SEC. 17.** Section 37 is hereby amended to read as follows:
2

3 SEC. 37. Notice and Execution of Award. - Within a
4 period not exceeding fifteen (15) [calendar] **WORKING**
5 days from the determination and declaration by the BAC of
6 the Lowest Calculated Responsive Bid, **OR MOST**
7 **ADVANTAGEOUS RESPONSIVE PROPOSAL**, or
8 Highest Rated Responsive Bid, and the recommendation of
9 the award, the [Head of the Procuring Entity] **HOPE** or [his]
10 A duly authorized representative **OF SUCH HEAD** shall
11 approve or disapprove the said recommendation. In case of
12 approval, the [Head of the Procuring Entity] **HOPE** or [his]
13 A duly authorized representative **OF SUCH HEAD** shall
14 immediately issue the Notice of Award to the bidder with the
15 **SINGLE/Lowest Calculated Responsive Bid, OR MOST**
16 **ADVANTAGEOUS RESPONSIVE PROPOSAL**, or
17 **SINGLE/Highest Rated Responsive Bid.**

18
19 **DEBRIEFINGS, WHICH PROVIDES FOR A**
20 **HELPFUL AND PROFESSIONAL FEEDBACK,**
21 **SHALL BE MADE AVAILABLE UPON REQUEST TO**
22 **UNSUCCESSFUL BIDDERS, OUTLINING THE**
23 **REASONS FOR THE UNSUCCESSFUL SUBMISSION,**
24 **AS PROVIDED FOR IN THE RULES.**

25
26 Within ten (10) [calendar] **WORKING** days from receipt of
27 the Notice of Award, the Winning bidder shall formally enter
28 into contract with the Procuring Entity. When further
29 approval of higher authority is required, the approving
30 authority for the contracts shall be given a maximum of
31 twenty (20) [calendar] **WORKING** days to approve or
32 disapprove it.

33
34 In the case of government-owned and/or –controlled
35 corporations, the concerned board shall take action on the
36 said recommendation within thirty (30) [calendar]
37 **WORKING** days from receipt thereof.

38
39 The Procuring Entity shall issue the Notice to Proceed to the
40 winning bidder not later than seven (7) [calendar]
41 **WORKING** days from the date of approval of the contract
42 by the appropriate authority. All notices called for by the

1 terms of the contract shall be effective only at the time of
2 receipt thereof by the contractor.

3
4 XXX

XXX

XXX
5

6 **SEC. 18.** Section 40 is hereby amended to read as follows:

7
8 SEC. 40. Failure to Enter into Contract and Post
9 Performance Security. – If the bidder with the Lowest
10 Calculated Responsive Bid, **OR MOST**
11 **ADVANTAGEOUS RESPONSIVE PROPOSAL**, or
12 Highest Rated Responsive Bid fails, refuses, or is otherwise
13 unable to enter into contract with the Procuring Entity, or if
14 the bidder fails to post the required performance security
15 within the period stipulated in the Bidding Documents, the
16 BAC shall disqualify the said bidder and shall undertake
17 post-qualification for the next-ranked Lowest Calculated Bid,
18 **OR MOST ADVANTAGEOUS PROPOSAL**, or Highest
19 Rated Bid. This procedure shall be repeated until an award is
20 made. However, if no award is possible, the contract shall be
21 subjected to a new bidding.

22
23 **SEC. 19.** Section 42 is hereby amended to read as follows:

24 SEC. 42. Contract Implementation and Termination. – (A)
25 **THE PROCURING ENTITY OR ITS**
26 **REPRESENTATIVE SHALL HAVE THE RIGHT TO**
27 **INSPECT AND/OR TEST THE GOODS IN ORDER TO**
28 **CONFIRM THEIR COMPLIANCE WITH THE**
29 **TECHNICAL SPECIFICATIONS. THE CONTRACT**
30 **SHALL SPECIFY KEY PERFORMANCE**
31 **INDICATORS (KPI), THE REQUIRED INSPECTIONS**
32 **AND/OR TESTS, AND WHERE THEY ARE TO BE**
33 **CONDUCTED. THE PROCURING ENTITY SHALL**
34 **BEAR ALL THE COSTS AND EXPENSES THAT IT**
35 **WILL INCUR TO ATTEND THE TESTS AND/OR**
36 **INSPECTIONS INCLUDING, BUT NOT LIMITED TO,**
37 **TRAVELLING AND BOARD AND LODGING**
38 **EXPENSES.**

39
40 **THE PROCURING ENTITY MAY REJECT ANY**
41 **GOODS OR ANY PART THEREOF THAT FAIL TO**
42 **PASS ANY TEST AND/OR INSPECTION OR DO NOT**

1 CONFORM TO THE SPECIFICATIONS. THE
2 SUPPLIER SHALL EITHER RECTIFY OR REPLACE
3 SUCH REJECTED GOODS OR PARTS THEREOF OR
4 MAKE ALTERATIONS NECESSARY TO MEET THE
5 SPECIFICATIONS, AT NO COST TO, AND AS MAY
6 BE REASONABLY DETERMINED BY, THE
7 PROCURING ENTITY. THE SUPPLIER SHALL
8 REPEAT THE TEST AND/OR INSPECTION, AT NO
9 COST TO THE PROCURING ENTITY.

10
11 NEITHER THE EXECUTION OF A TEST AND/OR
12 INSPECTION OF THE GOODS OR ANY PART
13 THEREOF, NOR THE ATTENDANCE BY THE
14 PROCURING ENTITY OR ITS REPRESENTATIVE
15 THEREIN, SHALL RELEASE THE SUPPLIER FROM
16 ANY WARRANTIES OR OTHER OBLIGATIONS
17 UNDER THE CONTRACT.

18
19 (B) FAILURE OF THE SUPPLIER, CONTRACTOR,
20 OR CONSULTANT TO DELIVER THE QUALITY
21 REQUIRED UNDER THE CONTRACT SHALL
22 CONSTITUTE THE CRIME OF ESTAFA,
23 PUNISHABLE UNDER THE PROVISIONS OF
24 ARTICLE 315, PARAGRAPH 1 (a) OF ACT NO. 3815,
25 OTHERWISE KNOWN AS THE REVISED PENAL
26 CODE. IF THE VIOLATION OR OFFENSE IS
27 COMMITTED BY A CORPORATION,
28 PARTNERSHIP, ASSOCIATION, OR OTHER
29 JURIDICAL ENTITIES, THE PENALTY SHALL BE
30 IMPOSED UPON THE DIRECTORS, OFFICERS,
31 EMPLOYEES, OR OTHER OFFICIALS OR PERSONS
32 THEREIN RESPONSIBLE FOR THE CRIME,
33 WITHOUT PREJUDICE TO THE CIVIL LIABILITIES
34 ARISING FROM THE CRIMINAL OFFENSE AND
35 OTHER ADMINISTRATIVE LIABILITIES.

36
37 (C) TO PROMOTE TRANSPARENCY AND
38 EFFICIENCY, INFORMATION AND
39 COMMUNICATIONS TECHNOLOGY, SUCH AS BUT
40 NOT LIMITED TO, GEO-TAGGING AND
41 AUTOMATED PROJECT MONITORING SYSTEM,
42 SHALL BE UTILIZED BY THE PROCURING ENTITY
43 IN THE IMPLEMENTATION OF CONTRACTS,

1 REGARDSLESS OF THE AMOUNT, AND SHALL BE
2 POSTED IN THE WEBSITE OF THE PROCURING
3 ENTITY.

4
5 (D) TO ENSURE THE ACTUAL PERFORMANCE OF
6 PROJECTS AND THE DELIVERY OF GOODS AND
7 INFRASTRUCTURE PROJECTS, THE PROCURING
8 ENTITY SHALL INVITE MONITORS FROM A DULY
9 RECOGNIZED PRIVATE GROUP OR A NON-
10 GOVERNMENT ORGANIZATION IN A SECTOR OR
11 DISCIPLINE RELEVANT TO THE PROJECT AT
12 HAND DURING THE IMPLEMENTATION OF
13 CONTRACTS EXCEPT THOSE PROCURED
14 THROUGH NEGOTIATED PROCUREMENT IN
15 EMERGENCY CASES, SHOPPING, OR SMALL-
16 VALUE PROCUREMENT AS DEFINED IN THE
17 RULES: *PROVIDED*, HOWEVER, THAT BOTH THE
18 INVITED ENTITY AND/OR THE INDIVIDUALS DO
19 NOT HAVE ANY DIRECT OR INDIRECT INTEREST
20 IN THE CONTRACT BEING IMPLEMENTED. THE
21 MONITORS SHOULD BE DULY REGISTERED WITH
22 THE SECURITIES AND EXCHANGE COMMISSION
23 (SEC) AND SHOULD MEET THE CRITERIA FOR
24 CONTRACT IMPLEMENTATION MONITORS AS
25 SET FORTH IN THE RULES.

26
27 (E) ALL PROCURING ENTITIES IMPLEMENTING
28 GOVERNMENT INFRASTRUCTURE PROJECTS
29 ARE MANDATED TO EVALUATE THE
30 PERFORMANCE OF THEIR CONTRACTORS USING
31 THE NEDA-APPROVED CONSTRUCTORS
32 PERFORMANCE EVALUATION SYSTEM (CPES)
33 GUIDELINES FOR THE TYPE OF PROJECT BEING
34 IMPLEMENTED. CPES EVALUATION SHALL BE
35 UNDERTAKEN DURING CONSTRUCTION AND
36 UPON COMPLETION OF EACH GOVERNMENT
37 PROJECT. TO ENSURE CONTINUOUS
38 IMPLEMENTATION OF CPES, ALL PROCURING
39 ENTITIES CONCERNED ARE REQUIRED TO
40 INCLUDE IN THEIR PROJECTS' ENGINEERING
41 AND ADMINISTRATIVE OVERHEAD COST THE
42 BUDGET FOR THE IMPLEMENTATION OF CPES
43 PURSUANT TO THE NEDA GUIDELINES.

1
2 FOR GOODS AND CONSULTING SERVICES, THE
3 PROCURING ENTITIES ARE MANDATED TO
4 EVALUATE THE PERFORMANCE OF THEIR
5 SUPPLIERS AND CONSULTANTS USING THE
6 CONTRACT PERFORMANCE ASSESSMENT
7 REPORT SYSTEM (CPARS) PURSUANT TO THE
8 GUIDELINES TO BE ISSUED BY THE GPPB.

9
10 PURSUANT TO SECTION 8 OF R.A. 9184, THE
11 PHILGEPS SHALL HAVE A CENTRALIZED
12 ELECTRONIC DATABASE OF ALL
13 MANUFACTURERS, SUPPLIERS, DISTRIBUTORS,
14 CONTRACTORS, AND CONSULTANTS, WITH
15 THEIR CORRESPONDING REGISTRATION
16 NUMBERS WITH CONTRACTS WITH THE
17 GOVERNMENT FOR FEEDBACK MECHANISM AND
18 PERFORMANCE TRACKING. THE REGISTRATION
19 NUMBER SHALL BE A PRE-REQUISITE FOR
20 PARTICIPATION IN ANY GOVERNMENT
21 PROCUREMENT.

22
23 THE GPPB SHALL PROVIDE THE DETAILS AND
24 MECHANICS FOR THE IMPLEMENTATION OF THE
25 FEEDBACK MECHANISM WHICH SHALL BE FAIR
26 AND EQUITABLE. AFTER PROPER
27 VERIFICATION, THE RESULTS THEREOF SHALL
28 BE MADE AVAILABLE TO OTHER GOVERNMENT
29 AGENCIES TO ENSURE THAT THE GOVERNMENT
30 ONLY DOES BUSINESS WITH MANUFACTURERS,
31 SUPPLIERS, DISTRIBUTORS, CONTRACTORS, AND
32 CONSULTANTS THAT PROVIDE QUALITY
33 PRODUCTS AND SERVICES IN A TIMELY
34 MANNER.

35
36 (F) The **OTHER** rules and guidelines for the implementation
37 and termination of contracts awarded pursuant to the
38 provisions of this Act shall be prescribed in the IRR. The
39 rules and guidelines shall include standard general and
40 special conditions for contracts.

41
42 **SEC. 20.** Sections 44 and 45 of R.A. 9184 on Bidding of Provincial
43 Projects are hereby repealed.

1 **SEC. 21.** Section 48 is hereby amended to read as follows:

2
3 SEC. 48. Alternative Methods. –

4
5 xxx xxx xxx

6
7 e. Negotiated Procurement – xxx

8
9 **THE APPROVAL OF THE HOPE OR THE DULY**
10 **AUTHORIZED REPRESENTATIVE IN THE APP**
11 **SHALL CONSTITUTE AS CERTIFICATION BY THE**
12 **HOPE THAT THE CONTRACT FALLS WITHIN THE**
13 **EXCEPTIONS FROM PUBLIC BIDDING, IS BEING**
14 **ENTERED INTO IN FAITHFUL COMPLIANCE WITH**
15 **ALL APPLICABLE LAWS AND REGULATIONS, AND**
16 **IS ADVANTAGEOUS TO THE GOVERNMENT.**

17
18 xxx xxx xxx

19
20 **SEC. 22.** Section 52 is hereby amended to read as follows:

21 SEC. 52. Shopping. – Shopping may be resorted to under any
22 of the following instances:

23
24 (a) When there is an unforeseen contingency requiring
25 immediate purchase: Provided, however, That the amount
26 shall not exceed [Fifty Thousand Pesos (P50,000)] **TWO**
27 **HUNDRED THOUSAND PESOS (P200,000);** or

28
29 (b) Procurement of ordinary or regular office supplies and
30 equipment not available in the Procurement Service involving
31 an amount not exceeding [Two Hundred Fifty Thousand
32 Pesos (P250,000)] **ONE MILLION PESOS (P1,000,000):**
33 Provided, however, That the procurement does not result in
34 Splitting of Contracts: Provided, further, That at least three
35 (3) price quotations from bona fide suppliers shall be
36 obtained. **IN CASE THE REQUIRED NUMBER OF**
37 **QUOTATIONS FROM BONA FIDE SUPPLIERS ARE**
38 **NOT RECEIVED, THE PROCURING ENTITY, AFTER**
39 **EXTENDING THE DEADLINE FOR SUBMISSION OF**
40 **QUOTATIONS AT LEAST ONCE, MAY CANVASS ON**
41 **ITS OWN FOR THE ITEM TO BE PROCURED FROM**

1 AT LEAST THREE (3) SUPPLIERS, INCLUDING
2 THOSE WHO MAY HAVE ALREADY SUBMITTED
3 THEIR QUOTATIONS, WHO ARE KNOWN TO BE
4 CONSISTENTLY SUPPLYING QUALITY GOODS AT
5 ACCEPTABLE AND REASONABLE PRICE. THE
6 PROCURING ENTITY IS ALSO TASKED TO KNOW
7 THE REASONS WHY NOT ENOUGH SUPPLIERS
8 SUBMITTED QUOTATIONS IN ORDER FOR THE
9 PROCURING ENTITY, IN COORDINATION WITH
10 THE GPPB, TO ADDRESS THE PROBLEM(S), IF
11 ANY, FOR ITS FUTURE PROCUREMENTS.

12
13 PROCUREMENT OF GOODS INVOLVING AN
14 AMOUNT NOT EXCEEDING FIVE THOUSAND
15 PESOS (P5,000) UNDER THE PETTY CASH FUND IN
16 ACCORDANCE WITH THE RULES AND
17 REGULATIONS OF THE COMMISSION ON AUDIT
18 SHALL NOT REQUIRE ANY QUOTATION OR
19 CANVASS: *PROVIDED*, HOWEVER, THAT THE
20 OFFICIAL RECEIPT SHALL BE SUBMITTED AS
21 PROOF OF PAYMENT AND SUCH OTHER
22 REQUIREMENTS AS MAY BE REQUIRED IN THE
23 IRR UNDER THIS ACT; *PROVIDED*,
24 FURTHER, THAT THE PROCUREMENT DOES NOT
25 RESULT IN SPLITTING OF CONTRACTS.

26 XXX

XXX

XXX

27 **SEC. 23.** Section 53 is hereby amended to read as follows:

28
29 SEC. 53. Negotiated Procurement. - Negotiated
30 Procurement shall be allowed only in the following instances:

31
32 XXX

XXX

XXX

33
34 (b) In case of imminent danger to life or property
35 **BEFORE**, during, **OR AFTER**, a state of calamity, or when
36 time is of the essence arising from natural or man-made
37 calamities or other causes where immediate action is
38 necessary to prevent damage to or loss of life or property, or
39 to restore vital public services, infrastructure facilities and
40 other public utilities;

41
42 XXX

XXX

XXX

1
2 (d) Where the subject contract is adjacent or contiguous to
3 an on-going infrastructure project [, as defined in the
4 IRR]: *Provided, however,* That the original contract is the
5 result of a Competitive Bidding; the subject contract to be
6 negotiated has similar or related scopes of work; it is within
7 the contracting capacity of the contractor, **TAKING INTO**
8 **ACCOUNT THE SUM OF THE VALUE OF THE**
9 **REMAINING WORKS FOR THE EXISTING**
10 **CONTRACT AND THE APPROVED BUDGET FOR**
11 **THE CONTRACT OF THE CONTIGUOUS OR**
12 **ADJACENT WORK**; the contractor uses the same prices or
13 lower unit prices as in the original contract less mobilization
14 cost; the amount involved does not exceed the amount of the
15 ongoing project; and, the contractor has no negative
16 slippage: *Provided, further,* That negotiations for the
17 procurement are commenced before the expiry of the original
18 contract. Whenever applicable, this principle shall also
19 govern consultancy contracts, where the consultants have
20 unique experience and expertise to deliver the required
21 service: **PROVIDED, FINALLY, THAT IN**
22 **INFRASTRUCTURE PROJECTS, THE PHRASE**
23 **“ADJACENT OR CONTIGUOUS” REFERS TO**
24 **PROJECTS THAT ARE IN ACTUAL PHYSICAL**
25 **CONTACT WITH EACH OTHER OR IN THE**
26 **IMMEDIATE VICINITY, SUCH THAT THE**
27 **REQUIRED EQUIPMENT AND OTHER RESOURCES**
28 **CAN EASILY BE MOBILIZED; WHILE IN**
29 **CONSULTING SERVICES, THE PHRASE**
30 **“ADJACENT OR CONTIGUOUS” REFERS TO THE**
31 **LINKAGE OR RELATIONSHIP OF THE SUBJECT**
32 **MATTERS, OUTPUTS, OR DELIVERABLES**
33 **REQUIRED. WHENEVER THERE IS A NECESSITY**
34 **TO INTRODUCE NEW ITEMS THAT ARE RELATED**
35 **TO THE SCOPE OF WORK OF THE ORIGINAL**
36 **CONTRACT, THE PROCURING ENTITY SHALL**
37 **ENSURE THAT THE UNIT PRICES OF THE NEW**
38 **ITEMS ARE EQUAL TO OR LOWER THAN THE**
39 **PREVAILING MARKET PRICES;**

40
41 (e) Subject to the guidelines specified in the IRR, purchases
42 of Goods from another agency of the Government, such as
43 the Procurement Service of the DBM, which is tasked with a

1 centralized procurement of commonly used Goods for the
2 government in accordance with Letters of Instruction No. 755
3 and Executive Order No. 359, series of 1989. **THE PS-**
4 **DBM OR SUCH OTHER GOVERNMENT AGENCIES**
5 **SHALL CREATE A CUSTOMER SATISFACTION**
6 **METRIC AS A TOOL IN MONITORING AND**
7 **MANAGING THE EXPECTATIONS OF THE END-**
8 **USERS, ANALYZE THE RESULTS THEREOF, MAKE**
9 **RECOMMENDATIONS FOR IMPROVEMENT TO**
10 **PREVENT REPEATED FUTURE PROBLEMS, AND**
11 **IMPLEMENT NECESSARY CHANGES.**

12
13 **SEC. 24.** Section 56 is hereby amended to read as follows:

14
15 SEC. 56. Resolution of Protests and Non-Interruption of the
16 Bidding Process.

17
18 The protest shall be resolved xxx xxx

19
20 **IN NO CASE SHALL ANY REQUEST FOR**
21 **RECONSIDERATION AND PROTEST STAY OR**
22 **DELAY THE BIDDING PROCESS. REQUEST FOR**
23 **RECONSIDERATIONS AND PROTESTS MUST FIRST**
24 **BE RESOLVED BEFORE ANY AWARD IS MADE.**

25
26 **SEC. 25.** Section 57 is hereby amended to read as follows:

27
28 SEC. 57. [In no case shall any protest taken from any
29 decision treated in this Article stay or delay the bidding
30 process. Protests must first be resolved before any award is
31 made.] **INDEPENDENT PROCUREMENT REVIEW**
32 **BODY (IPRB). – DECISIONS OF THE HOPE ON**
33 **PROTESTS MAY BE BROUGHT TO AN**
34 **INDEPENDENT PROCUREMENT REVIEW BODY TO**
35 **BE ESTABLISHED BY THE GPPB.**

36
37 **SEC. 26.** Section 58 is hereby amended to read as follows:

38 SEC. 58 **RESORT** [Report] to Regular Courts;
39 Certiorari.- Court action may be resorted to only after the
40 protests contemplated in this Section shall have been
41 completed. Cases that are filed in violation of the process
42 specified in this Article shall be dismissed for lack of

1 jurisdiction. The regional trial court shall have jurisdiction
2 over final decisions of the [head of the procuring entity]
3 **IPRB OR HOPE. THE REGIONAL TRIAL COURTS**
4 **DESIGNATED AS COMMERCIAL COURTS BY THE**
5 **SUPREME COURT SHALL HAVE JURISDICTION**
6 **OVER DECISIONS OF THE IPRB OR HOPE.** Court
7 actions shall be governed by Rule 65 of the 1997 Rules of
8 Civil Procedure.

9
10 xxx xxx xxx

11 **SEC. 27.** Section 62 (b) is hereby amended to read as follows:

12
13 SEC. 62. Warranty

14
15 xxx xxx xxx

16
17 b. For the procurement of infrastructure projects, the
18 contractor shall assume full responsibility for the contract
19 work from the time project construction commenced up to a
20 reasonable period as defined in the IRR and taking into
21 consideration the scale and coverage of the project, from its
22 final acceptance by the government, and shall be held
23 responsible for any damage or construction of works except
24 those occasioned by force majeure. The contractor shall be
25 fully responsible for the safety, protection, security, and
26 convenience of his personnel, third parties, and the public at
27 large, as well as the works, equipment, installation and the
28 like to be affected by his construction work and shall be
29 required to put up a warranty security **FOR ONE YEAR** in
30 the form of cash, bank guarantee, letter of credit,
31 Government Service Insurance System bond, or callable
32 surety bond.

33
34 **BUT IN NO CASE SHALL THE WARRANTY**
35 **AGAINST STRUCTURAL DEFECTS AND FAILURES**
36 **BE LESS THAN TEN (10) YEARS FOR SEMI-**
37 **PERMANENT STRUCTURES AND FIFTEEN (15)**
38 **YEARS FOR PERMANENT STRUCTURES. DURING**
39 **THIS PERIOD, THE CONTRACTOR, CONSULTANT,**
40 **PROCURING ENTITY REPRESENTATIVES, THIRD**
41 **PARTIES, AND/OR USERS MAY BE HELD**
42 **RESPONSIBLE.**

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xxx xxx xxx

SEC. 28. Section 69 is hereby amended to read as follows:

SEC. 69. Imposition of Administrative Penalties.

(a) xxx xxx xxx

Refusal to clarify or validate in writing its Bid during post-qualification within a period of seven (7) [calendar] **WORKING** days from receipt of the request for clarification.

(b) xxx xxx xxx

(C) [The Head of the Procuring Entity may delegate to the BAC the authority to impose the aforementioned administrative penalties.] **ANY SUPPLIER, CONTRACTOR, OR CONSULTANT THAT IS BLACKLISTED BY A PROCURING ENTITY AND/OR INCLUDED IN THE GPPB CONSOLIDATED BLACKLISTING REPORT SHALL NOT BE ALLOWED TO PARTICIPATE IN THE BIDDING OF ALL GOVERNMENT PROJECTS DURING THE PERIOD OF DISQUALIFICATION.**

A JOINT VENTURE OR CONSORTIUM WHICH IS BLACKLISTED OR WHICH HAS BLACKLISTED MEMBER(S) AND/OR PARTNER(S) AS WELL AS A PERSON/ENTITY WHO IS A MEMBER OF A BLACKLISTED JOINT VENTURE OR CONSORTIUM ARE, LIKEWISE, NOT ALLOWED TO PARTICIPATE IN ANY GOVERNMENT PROCUREMENT DURING THE PERIOD OF DISQUALIFICATION.

IN THE CASE OF CORPORATIONS, A SINGLE STOCKHOLDER, TOGETHER WITH HIS/HER RELATIVES UP TO THE THIRD (3RD) CIVIL DEGREE OF CONSANGUINITY OR AFFINITY, AND THEIR ASSIGNEES, HOLDING AT LEAST TWENTY PERCENT (20%) OF THE SHARES THEREIN, ITS CHAIRMAN OR PRESIDENT REGARDLESS OF THE

1 NUMBER OF SHARES THEY HOLD IN SUCH
2 CORPORATION OF WHICH THEY ARE CHAIRMAN
3 OR PRESIDENT, SHALL BE BLACKLISTED AFTER
4 THEY HAVE BEEN DETERMINED TO HOLD THE
5 SAME CONTROLLING INTEREST IN ANOTHER
6 BLACKLISTED CORPORATION. THE
7 CORPORATIONS OF WHICH THEY ARE PART
8 SHALL ALSO BE BLACKLISTED.

9
10 BIDDERS BLACKLISTED OR BARRED FROM
11 BIDDING BY OTHER FOREIGN
12 GOVERNMENT/FOREIGN OR INTERNATIONAL
13 FINANCING INSTITUTION ARE ALSO NOT
14 ALLOWED TO PARTICIPATE IN THE BIDDING OF
15 ALL GOP AGENCIES.

16
17 THE GPPB SHALL ISSUE THE NECESSARY
18 GUIDELINES FOR THIS PURPOSE.

19
20 XXX XXX XXX

21
22 **SEC. 29.** Section 72 is hereby amended to read as follows:

23
24 SEC. 72. Private Legal Assistance. — All the members of
25 the BAC, **INCLUDING ITS SUPPORT STAFF, SUCH**
26 **AS THE BAC SECRETARIAT, TWG,**
27 **PROCUREMENT SERVICE/UNIT AND THE HOPE,**
28 are hereby authorized to engage the services of private
29 lawyers or extend counsel immediately upon receipt of court
30 notice that a civil or criminal action, suit or proceeding is
31 filed against them. The lawyer's fee shall be part of the
32 indemnification package for the BAC members, subject to
33 the provisions of Section 73 hereof.”

34
35 **SEC. 30.** Section 73 is hereby amended to read as follows:

36
37 SEC. 73. Indemnification of BAC Members.

38
39 XXX XXX XXX

40
41 The members of the BAC, [and the BAC Secretariat],
42 **INCLUDING ITS SUPPORT STAFF, SUCH AS THE**
43 **BAC SECRETARIAT, TWG, PROCUREMENT**

1 **SERVICE/UNIT AND THE HOPE**, shall also be entitled
2 to medical assistance for injuries incurred in the performance
3 of their functions.

4
5 **SEC. 31.** Section 74 is hereby amended to read as follows:

6
7 SEC. 74. Oversight Committee. – There is hereby created a
8 Joint Congressional Oversight Committee to oversee the
9 implementation of this Act for a period not exceeding five (5)
10 years from **ITS** [the] effectivity **AND UNDERTAKE A**
11 **MANDATORY REVIEW** of this Act **AT LEAST ONCE**
12 **EVERY FIVE (5) YEARS AND AS OFTEN AS IT MAY**
13 **DEEM NECESSARY, WITH THE END IN VIEW OF**
14 **PROVIDING A PROCUREMENT PROCESS THAT IS**
15 **SIMPLE AND REASONED AND ALLOWS FOR**
16 **EFFECTIVE, EFFICIENT, ECONOMIC, AND**
17 **ETHICAL USE OF GOVERNMENT RESOURCES.** The
18 Committee shall be composed of the Chairman of the Senate
19 Committee on **FINANCE** [Constitutional Amendments and
20 Revision of Laws] and two **(2)** members thereof appointed by
21 the Senate President, and the Chairman of the House
22 Committee on Appropriations, and two **(2)** members thereof
23 to be appointed by the Speaker of the House of
24 Representatives.

25
26 **SEC. 32. *Implementing Rules and Regulations and Standard***
27 ***Forms.*** – Within sixty (60) days from the promulgation of this Act,
28 the necessary rules and regulations for the proper implementation
29 of its provisions shall be formulated by the GPPB. For a period not
30 later than thirty (30) days upon the approval of the implementing
31 rules and regulations the standard forms for Procurement shall be
32 formulated and approved.

33
34 **SEC. 33. *Separability Clause.*** – If any provision of this Act is declared
35 invalid or unconstitutional, the other provisions not affected by such
36 declaration shall remain in full force and effect.

37
38 **SEC. 34. *Repealing Clause.*** – All laws, executive and administrative
39 orders, rules and regulations inconsistent with the foregoing provisions
40 are hereby repealed or modified accordingly.

1 **SEC. 35. *Effectivity.*** – This Act shall take effect fifteen (15) days after
2 its publication in the Official Gazette or in a newspaper of general
3 circulation.

4

Approved,