

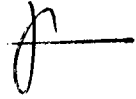
EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

20 MAR -9 P 2 :46

SENATE

S.B. No. 1405

RECEIVED BY



INTRODUCED BY: SENATOR EMMANUEL D. PACQUIAO

AN ACT
TO STRENGTHEN THE BIDDING STRUCTURE AND PROJECT
IMPLEMENTATION LIABILITY PROVISIONS IN THE GOVERNMENT
PROCUREMENT REFORM ACT, AMENDING FOR THAT PURPOSE
REPUBLIC ACT NO. 9184, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

Republic Act No. 9184 has declared it a policy of the State “to promote the ideals of good governance in all its branches, departments, agencies, subdivisions, and instrumentalities, including government-owned and/or -controlled corporations and local government units.” It is a good policy of the State, as inferred from the objectives of the said Act, to obtain only reasonable and viable bids for the Government’s procurement activities. The said Act further recognized among the guiding principles of government procurement the obtaining of a “System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.”

Two things that negate the foregoing policies and principle, and that subvert the good objectives of the said Act are the practice by bidders to submit a bid that is commonly referred to as a “dive”, and the practice of public officials or government employees who instead of ensuring compliance by prospective bidders or contractors with the terms of reference for the project and/or the terms and conditions of its corresponding contract, negligently or fraudulently fail to do so. The “dive”, which is the practice of a prospective bidder of submitting a very low bid amount that questionably borders on or is below recognizable viability to ensure a winning bid, in the end contradicts the good objectives of the said Act, because in order to recover a profit from an award of the project, the contractor will cut its contract performance costs by using, provisioning, stocking for future delivery and/or supplying low quality, bargain obsolete or near-obsolete, or inappropriate although usable materials, supplies and equipment, or will extend repairs even when replacement is imperative, or will pass-off as brand new only reconditioned items, or will violate labor laws or tax laws, among other nefarious practices, all to the eventual disadvantage of government because of the substandard result and easy deterioration and diminution of value of the project. The aforesaid second negating thing, which is the negligence or fraudulent practice of public officials or government employees that result in failure to ensure compliance by prospective bidders or contractors with the terms of

reference for a project, especially the approval, confirmation, or passing-off to government superiors or the procuring entity of qualification or requirement documents submitted by prospective bidders that turn out, if there was proper inspection or confirmation by them, to be erroneous, inappropriate for the project or even fraudulent, and/or their failure to perform proper inspection during the contractor's execution or implementation of the project resulting in violation(s) of terms and conditions of the contract for the project, in both cases whether or not done in connivance with the prospective bidder or contractor.

The above acts inevitably lead to the disadvantage of government because of the substandard result and easy deterioration and diminution of value of the project, including key resources and critical infrastructure that are essential to the economy and development of the country and to the performance by government of its public service. The alarming continuation of such acts, have now created a seriousness of situation that must be addressed by the State.

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

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line, positioned above the printed name.

EMMANUEL D. PACQUIAO

SENATE

20 MAR -9 P 2 :46

S.B. No. 1405

RECEIVED BY



INTRODUCED BY: SENATOR EMMANUEL D. PACQUIAO

AN ACT
TO STRENGTHEN THE BIDDING STRUCTURE AND PROJECT
IMPLEMENTATION LIABILITY PROVISIONS IN THE GOVERNMENT
PROCUREMENT REFORM ACT, AMENDING FOR THAT PURPOSE
REPUBLIC ACT NO. 9184, AND FOR OTHER PURPOSES

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

1 **Section 1.** *Declaration of Policy.* – This act reiterates the stated policies and principles of
2 Republic Act No. 9184, and further declares a policy of the State to obtain only reasonable and
3 viable bids for the Government’s procurement activities.
4

5 **Section 2.** Section 5 of Article I of Republic Act No. 9184 is hereby amended to add a
6 subparagraph (p) that will read as follows:
7

8 “(p) Projected Lowest Viable Bid (PLVB) – refers to that bid amount
9 within the ABC that is projected and calculated by the procuring
10 entity to be the minimum amount necessary for the viable
11 execution and/or delivery by contractors of its project according to
12 the procuring entity’s objectives, the requirements and purposes of
13 the project, and other conditions that said procuring entity may
14 deem proper to consider.
15

16 **Section 3.** Subparagraph (a) of Section 17 of Article VI of Republic Act No. 9184 is hereby
17 amended to read as follows:
18

19 “(a) Approved Budget for the Contract **AND, EXCEPT IN CASE OF**
20 **PROJECTED LOWEST VIABLE BID;**”
21

22
23 **Section 4.** Subparagraph (d) of Section 21 of Article VII of Republic Act No. 9184 is hereby
24 amended to read as follows:
25

26 (d) The Approved Budget for the Contract to be bid **AND, EXCEPT**
27 **IN THE CASES COVERED BY ARTICLE XVI OF**
28 **REPUBLIC ACT NO. 9184, THE CORRESPONDING**
29 **PROJECTED LOWEST VIABLE BID;**
30

1 **Section 5.** Section 31 of Article IX of Republic Act No. 9184 is hereby amended to read as
2 follows:

3
4 **“Section 31. Ceiling and Floor for Bid Prices.** - The ABC shall be the
5 upper limit or ceiling for the Bid prices. Bid prices that exceed this ceiling shall
6 be disqualified outright from further participating in the bidding. [THERE
7 SHALL BE NO LOWER LIMIT TO THE AMOUNT OF THE AWARD.]
8 **THE PLVB SHALL BE THE LOWER LIMIT OR FLOOR FOR THE**
9 **BID PRICES. BID PRICES BELOW THIS FLOOR SHALL BE**
10 **DISQUALIFIED OUTRIGHT FROM FURTHER PARTICIPATING IN**
11 **THE BIDDING.**

12
13 **Section 6.** Section 48 of Article XVI of Republic Act. No. 9184 is hereby amended to read as
14 follows,
15

16 **“Section 48. Alternative Methods.** – Subject to the prior approval of the Head
17 of the Procuring Entity or his duly authorized representative, and whenever justified by
18 the conditions provided in this Act, the Procuring Entity may, in order to promote
19 economy and efficiency, resort to any of the following alternative methods of
20 Procurement:

21 (a) Limited Source Bidding, otherwise known as Selective Bidding – a method of
22 Procurement that involves direct invitation to bid by the Procuring Entity from a set of
23 pre- selected suppliers or consultants with known experience and proven capability
24 relative to the requirements of a particular contract;

25 “xxx xxx xxx

26 In all instances, the Procuring Entity shall ensure that the most advantageous price for
27 the Government is obtained.”

28 **NO PROJECTED LOWEST VIABLE BID SHALL BE CALCULATED,**
29 **REQUIRED OR DISCLOSED IN THE CASES COVERED BY ARTICLE XVI**
30 **OF REPUBLIC ACT NO. 9184.**

31
32 **Section 7.** Subparagraphs (a) and (b) of Section 62 of Article XIX of Republic Act No. 9184
33 is hereby amended to read as follows:
34

35 **“Section 62. Warranty.** - (a) For the procurement of Goods **AND OF**
36 **INFRASTRUCTURE PROJECTS,** in order to assure that manufacturing
37 **AND PERFORMANCE** defects **AS WELL AS HIDDEN DEFECTS**
38 **SUBSEQUENTLY DISCOVERED** shall be corrected by the supplier,
39 manufacturer, [OR] distributor, **OR CONTRACTOR,** as the case maybe, for a
40 specific time after performance of the contract, a warranty shall be required
41 from the contract awardee for such period of time as may be provided in the
42 IRR, the obligation for which shall be covered by either retention money in the
43 amount equivalent to a percentage of every progress payment, or a special bank
44 guarantee equivalent to a percentage of the total contract price, to be provided
45 in the IRR. The said amounts shall only be released after the lapse of the

1 warranty period **AND AFTER PROPER RECONFIRMATION BY**
2 **APPROPRIATE PUBLIC OFFICIALS OR QUALIFIED**
3 **GOVERNMENT EMPLOYEES OF CONTINUING COMPLIANCE TO**
4 **THE TERMS OF REFERENCE FOR THE PROJECT AND TO THE**
5 **TERMS AND CONDITIONS OF ITS CORRESPONDING CONTRACT**
6 **THAT IS CONDUCTED ACCORDING TO THE PROCEDURE AND**
7 **REQUIREMENTS AS MAY BE STATED IN THE IRR, ESPECIALLY**
8 **FOR MANUFACTURED OR MODIFIED GOODS [, PROVIDED THAT**
9 **THE GOODS SUPPLIED ARE FREE FROM DEFECTS AND ALL THE**
10 **CONDITIONS IMPOSED UNDER THE CONTRACT HAVE BEEN FULLY**
11 **MET.]**
12

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

25 “The contractor shall undertake the repair works, at his own expense, of
26 any defect or damage to the infrastructure projects on account of the use of
27 materials of inferior quality within ninety (90) days from the time the Head of
28 the Procuring Entity has issued an order to undertake repair. In case of failure
29 or refusal to comply with this mandate, the governments shall undertake such
30 repair works and shall be entitle to full reimbursement of expenses incurred
31 therein upon demand. **THE REPAIR OF DEFECT(S) BY THE**
32 **CONTRACTOR SHALL IN NO CASE EXEMPT THE APPROPRIATE**
33 **PUBLIC OFFICIAL(S) AND/OR GOVERNMENT EMPLOYEES FROM**
34 **APPLICABLE CRIMINAL, CIVIL OR ADMINISTRATIVE LIABILITY**
35 **UNDER ANY LAW OR REGULATION FOR HIS OR THEIR FAILURE**
36 **TO PERFORM A TIMELY AND/OR PROPER INSPECTION DURING**
37 **THE CONTRACTOR’S EXECUTION OR IMPLEMENTATION OF**
38 **THE PROJECT RESULTING IN LATE RECOGNITION OF**
39 **VIOLATION(S) OF THE TERMS OF REFERENCE FOR THE**
40 **PROJECT OR THE TERMS AND CONDITIONS ITS**
41 **CORRESPONDING CONTRACT.**
42

43 “Any contractor who fails to comply with the preceding paragraphs shall
44 suffer perpetual disqualification from participating in any public bidding and
45 his property or properties shall be subject to attachment or garnishment
46 proceedings to recover the costs. All payables of government in his favor shall
47 be offset to recover the costs.
48

49 **Section 8.** The enumeration following subparagraph (a) of Section 65 of Article XXI of
50 Republic Act No. 9184 shall be retained, and further add numbers that will read as follows:

1
2 “(a) Without prejudice to the provisions of Republic Act No. 3019, otherwise
3 known as the "Anti-Graft and Corrupt Practice Act" and other penal laws, public
4 officers who commit any of the following acts shall suffer the penalty of imprisonment
5 of not less than six (6) years and one (1) day, but not more than fifteen (15) years.:

6
7 “xxx xxx xxx

8
9 **“6. WHETHER OR NOT BY HIMSELF OR IN CONNIVANCE**
10 **WITH OTHERS, HE NEGLIGENTLY OR BY FRAUD COMMITS A FAILURE**
11 **TO ENSURE COMPLIANCE OF PROSPECTIVE BIDDERS OR**
12 **CONTRACTORS WITH THE TERMS OF REFERENCE FOR A PROJECT BY**
13 **APPROVING OR CONFIRMING AT HIS LEVEL, AND/OR PASSING-OFF**
14 **TO HIS GOVERNMENT SUPERIORS OR TO THE PROCURING ENTITY**
15 **ANY QUALIFICATION OR REQUIREMENT DOCUMENT BY OR FOR**
16 **PROSPECTIVE BIDDERS THAT TURN OUT, IF THERE WAS PROPER**
17 **INSPECTION OR CONFIRMATION MADE BY HIM, TO BE ERRONEOUS,**
18 **INAPPROPRIATE FOR THE PROJECT, NOT AUTHENTIC, OR**
19 **FRAUDULENT;**

20
21 **“7. WHETHER OR NOT BY HIMSELF OR IN CONNIVANCE**
22 **WITH OTHERS, HE NEGLIGENTLY OR BY FRAUD COMMITS A FAILURE**
23 **TO PERFORM PROPER INSPECTION DURING THE CONTRACTOR’S**
24 **EXECUTION OR IMPLEMENTATION OF THE PROJECT OR AT THE**
25 **REQUIRED RECONFIRMATION PRIOR TO RELEASE OF WARRANTY,**
26 **RESULTING IN VIOLATION(S) OF THE TERMS OF REFERENCE FOR THE**
27 **PROJECT OR THE TERMS AND CONDITIONS OF ITS CORRESPONDING**
28 **CONTRACT.**

29
30 **Section 9.** The enumeration following subparagraph (b) of Section 65 of Article XXI of
31 Republic Act No. 9184 shall be retained, and further add numbers that will read as follows:

32
33 “(b) Private individuals who commit any of the following acts, including any
34 public officer, who conspires with them, shall suffer the penalty of imprisonment of not
35 less than six (6) years and one (1) day but not more than fifteen (15) years:

36
37 “xxx xxx xxx

38
39
40 **“5. WHEN A BIDDER, BY HIMSELF OR IN CONNIVANCE WITH**
41 **OTHERS, AND IN THE CASES WHERE A PLVB APPLIES, KNOWINGLY**
42 **SUBMITS A BID AMOUNT THAT IS BELOW THE PLVB AND SAID**
43 **SUBMISSION RESULTS IN A FAILURE OF THE BIDDING;**

44
45 **“6. WHEN A BIDDER, BY HIMSELF OR IN CONNIVANCE WITH**
46 **OTHERS, SUBMITS BY WAY OF SUPPOSED COMPLIANCE TO BIDDING**
47 **TERMS OF REFERENCE OR OTHER BIDDING CONDITIONS, ANY**
48 **QUALIFICATION OR REQUIREMENT DOCUMENT THAT TURN OUT,**
49 **AFTER INSPECTION OR CONFIRMATION, TO BE ERRONEOUS, NOT**

1 **AUTHENTIC OR FRAUDULENT, WITHOUT PREJUDICE TO LIABILITY**
2 **FOR VIOLATIONS OF OTHER APPLICABLE LAWS;**

3
4 **“7. WHEN A BIDDER, BY HIMSELF OR IN CONNIVANCE WITH**
5 **OTHERS, DELIVERS OR PASSES-OFF TO THE PROCURING ENTITY AS**
6 **COMPLIANT TO THE TERMS OF REFERENCE OF THE PROJECT OR TO**
7 **ITS CORRESPONDING CONTRACT THE PROCURED GOODS OR**
8 **INFRASTRUCTURE PROJECT, OR STAGES THEREOF, THAT IS**
9 **CONFIRMED OR RECONFIRMED TO BE DEFECTIVE OR WITH HIDDEN**
10 **DEFECTS, OR IS OTHERWISE VIOLATIVE OR NON-COMPLIANT TO**
11 **THE TERMS OF REFERENCE OF THE PROJECT OR TO ITS**
12 **CORRESPONDING CONTRACT, WITHOUT PREJUDICE TO LIABILITY**
13 **FOR VIOLATIONS OF OTHER APPLICABLE LAWS.**

14
15
16 **Section 10.** All other laws, presidential decrees and issuances, executive orders, rules and
17 regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or
18 modified accordingly.

19
20 **Section 11.** If, for any reason or reasons, any part of the provision of this Act shall be held to
21 be unconstitutional or invalid, other parts or provisions hereof which are not affected thereby
22 shall continue to be in full force and effect.

23
24 **Section 12.** This Act shall take effect fifteen (15) days after its publication in two (2) national
25 newspapers of general circulation. The publication shall not be later than seven (7) days after
26 the approval hereof.

27
28
29 Approved,