

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



SENATE
S. B. No. 1707

Introduced by **SENATOR IMEE R. MARCOS**

AN ACT
ESTABLISHING A DEFENSE PROCUREMENT SYSTEM FOR THE
DEPARTMENT OF NATIONAL DEFENSE AND ITS BUREAUS IN SUPPORT OF
THE ARMED FORCES OF THE PHILIPPINES MODERNIZATION, AND FOR
OTHER PURPOSES

EXPLANATORY NOTE

Article II, Section 3 of the 1987 Constitution provides that *"the Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory."*

On 1995, Republic Act No. 7898 or the *"AFP Modernization Act"* was enacted, as later amended by Republic Act No. 10379 in 2012. One of the major components of the Armed Forces of the Philippines (AFP) Modernization Program is the *"Capability, Materiel and Technology Development (CMTD)"* to be implemented in three (3) phases, namely: Horizon 1 for the years 2012-2017; Horizon 2 for the years 2018-2022; and Horizon 3 for the years 2023-2027.

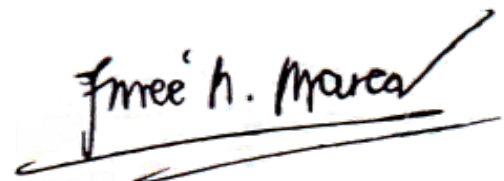
However, the rigid requirements provided for under Republic Act No. 9184 or the *"Government Procurement Reform Act"* in relation to the acquisition of defense equipment, materiel, ordnance, services, facilities and integrated military systems, among others, prove to be one of the main factors that stifle the AFP Modernization Program. In the case of CMTD, while it was given the biggest bulk of the budget, only

a meager twenty-one (21) out of the one hundred fifty two (152) projects have been completed as of August 2019 under Horizon 1. Worse, some twenty five (25) are still in various stages of procurement.

Provisions of Republic Act No. 9184 also opens to the public nearly everything for monitoring. This "general public participation" compromises the confidential nature of certain goods and services lined up for procurement. While transparency is an essential element in government spending, it does not mean "full disclosure" as there are "trade secrets" that only few people need to know, such as the purchase of major and highly classified defense materiel which, if revealed, may pose an imminent threat to national security.

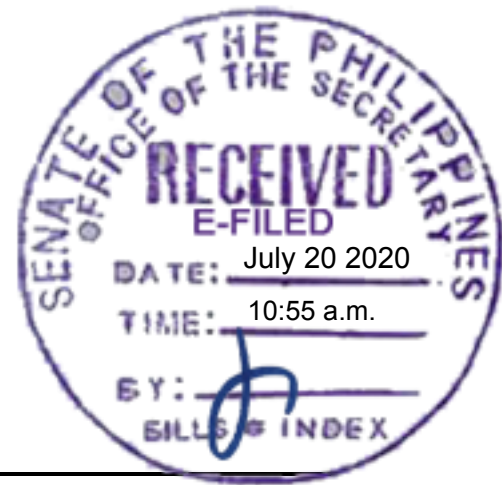
This bill seeks to provide a defense procurement system that is devoted solely for the furtherance of the AFP Modernization Program by allowing the Department of National Defense (DND) to resort to other modes of procurement other than public bidding, under specific conditions, and mandates the confidentiality of the procurement of defense materiel, as herein provided.

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

A handwritten signature in black ink that reads "Imee R. Marcos". The signature is written in a cursive style and is positioned above a horizontal line.

IMEE R. MARCOS

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

ARTICLE I

GENERAL PROVISIONS

1
2
3 **SECTION 1.** *Short Title.* – This Act shall be known as the “*Defense Procurement*
4 *Act.*”

5 **SEC. 2.** *Declaration of the Policy.* – It is the policy of the State to secure its
6 sovereignty and the integrity of its national territory. Towards this end, the
7 procurement of defense equipment, facilities, materiel, ordnance, services and
8 integrated military systems under the Armed Forces of the Philippines (AFP) shall be
9 given utmost priority.

10 **SEC. 3.** *Governing Principles.* – This Act shall be governed by the following
11 principles:

- 12 a. Expeditious and specialized process in the procurement of defense
13 materiel, systems, military facilities and installations, and services;
14 b. Simple and adaptable to the advances in modern technology in order to
15 ensure an effective and efficient procurement process;

- 1 c. Quality, reliability and sustainability of defense equipment, facilities,
2 services, systems, critical components, and other critical requirements
3 through the adoption of appropriate criteria in determining the best-rated
4 offer;
- 5 d. Confidentiality throughout the procurement process;
- 6 e. Self-reliant defense posture to support defense requirements of the
7 Department of National Defense (DND) and its bureaus and promote the
8 development of local defense industry, reduce foreign exchange outflow,
9 generate local employment, and enhance technology transfer; and
- 10 f. Accountability and integrity through special monitoring of defense
11 procurement procedures and implementation of awarded contracts.

12
13 **SEC. 4. *Scope and Application.*** – This Act shall apply to the procurement of
14 defense materiel, services, ordnance, systems, and facilities of the Department of
15 National Defense and its bureaus pursuant to the objectives of the AFP Modernization
16 Program. In so far as practicable, the Defense System of Management (DSOM)
17 process, as prescribed by the Secretary of National Defense (SND), shall be used in
18 the determination of requirements to be procured under this Act.

19 Procurement under this Act shall be done with due regard to war-fighting
20 capability, operational flexibility, and value-for-money.

21
22 **SEC. 5. *Definition of Terms.*** – For purposes of this Act, the following terms,
23 words or phrases shall mean or be understood as follows:

- 24 a. *Best Rated Offer* – is the offer with the best calculated rating based on
25 criteria/parameters including, but not limited to financial capacity, technical
26 capabilities of appropriate upgrade, and others such as life-cycle cost, after
27 sales support, willingness to transfer technology, warranty, perquisites and
28 price as determined by the end user.
- 29 b. *Bid Security* – cash, certified check, cashier’s check, manager’s check, bank
30 draft or irrevocable letter of credit, bank guarantee, surety bond callable
31 upon demand or foreign government guarantee in the amount at least equal

1 to, and not lower than, a percentage of the approved budget for the contract
2 to be bid, as advertised by the procuring entity which shall serve as a
3 guarantee that, after receipt of Notice of Award, the winning bidder shall
4 enter into contract with the Procuring Entity within the stipulated time and
5 furnish the required performance security.

6 c. *Counter Trade* – refers to various forms of trade financing methods in which
7 an international sale of products, services and technology is conditioned
8 upon a sale in the opposite direction involving payment primarily in goods
9 or services in lieu of money.

10 d. *Defense System of Management (DSOM)* - is defined as strategy-driven,
11 capability-based multi-planning and execution process where capability
12 development strategy is linked to resource management.

13 e. *Facilities/Infrastructure* – includes the construction, improvement,
14 rehabilitation, demolition, repair, restoration or maintenance of naval vessels
15 or station and aircraft and bases, roads and bridges, railways, airports,
16 seaports, communication facilities, civil works components of information
17 technology projects, irrigation, flood control and drainage, water supply,
18 sanitation, sewerage and solid waste management systems, shore
19 protection, energy/power and electrification facilities, national buildings,
20 hospital buildings, and other related defense construction projects of
21 government.

22 f. *Head of Procurement Entity (HoPE)* – refers to the Head of the agency or
23 body, or his duly authorized official in the procurement of defense materiel,
24 ordnance, facilities, services and integrated military systems.

25 g. *In-country Enterprises* – shall refer to (1) Filipino-owned enterprises
26 engaged in the manufacturing, servicing and operation of materiel in the
27 Philippines, or (2) foreign-owned enterprises engaged in the manufacturing,
28 servicing and operation of materiel provided however that such foreign-
29 owned enterprises locate a substantial portion of their production wit in the
30 Philippines.

31 h. *Materiel* – refers to all items (including ships, tanks, self-propelled weapons,
32 aircraft, etc. and related spares, repair parts, and support equipment but

1 excluding real property, installations, and utilities) necessary to equip,
2 operate, maintain, and support military activities without distinction as to its
3 application for administrative or combat purposes.

- 4 i. *Military Specifications* – refers to the project/product standard based on
5 local/international publication recognized and/or made by the AFP;
- 6 j. *Ordnance* – refer to explosives, chemicals, pyrotechnics, and similar stores,
7 such as bombs, guns, ammunitions, flares, or smoke.
- 8 k. *Performance Security* – cash or manager’s check issued by a universal or
9 commercial bank, bank draft or bank guarantee or irrevocable letter of credit
10 issued by a universal or commercial bank, or surety bond callable upon
11 demand or foreign government guarantee to ensure the faithful
12 performance by the winning bidder of its obligation under the contract in
13 accordance with the Bidding Documents.
- 14 l. *Procurement* – refers to the acquisition of defense equipment, materiel,
15 ordnance, services, facilities and integrated military systems, inclusive of
16 computer applications and e-solutions.
- 17 m. *Services* – refers to all defense-related services.
- 18 n. *Systems* – refers to the organization of hardware, software, materiel,
19 facilities, personnel, data, and services needed to perform a designated
20 function with specified results, such as gathering of specified data, its
21 processing, and delivery to user. A combination of two (2) or more
22 interrelated equipment’s (set) arranged in a functional package to perform
23 an operational function or to satisfy a requirement.

24 **ARTICLE II**

25 **PROCUREMENT, PLANNING, BUDGETING AND EXECUTION**

26
27
28 **SEC. 6.** *Defense Procurement, Planning and Budgeting (DPPB).* – The DPPB is
29 a collaboratively developed procurement plan with realistic financial programs that
30 meet identified capability requirements in a timely manner. Only those priority needs
31 and/ or crucial to the efficient discharge of functions shall be included in the DPPB.

1 (a) *Preparation of Procurement Plan and Budget (PPB)* – The PPB
2 must be consistent with the duly approved budget of the Department of
3 National Defense and shall bear the approval of the concerned HoPE.

4 i. *Short Term Procurement Plan and Budget (SPPB)* – It is a 3-year
5 defense procurement program to be funded through the General
6 Appropriations Act.

7 ii. For the AFP, the approving authority shall be the Chief of Staff of the
8 Armed Forces of the Philippines (AFP).

9 iii. For DND Civilian Bureaus, the approving authority shall be the Head
10 Bureaus.

11
12 (b) *Midterm Procurement Plan and Budget (MPPB)* – A 5-year
13 defense procurement program to be funded through the General
14 Appropriations Act and/ or other sources as enumerated in R.A. 7898,
15 otherwise known as “AFP Modernization Act”, as amended. The MPPB shall
16 be approved by the Secretary of National Defense.

17 i. *Modes of Payment* – In order to have uniform and standard modes
18 of payment, the same shall be limited to the following:

19 a. *For Foreign Suppliers* – The modes of payment shall be
20 limited to Letters of Credit and Electronic Wire Transfer.

21 b. *For Local Suppliers* – The modes of payment shall be limited
22 to Local Letters of Credit or Direct Payment, except when
23 counter-trade is resorted to as a mode of transaction.

24 (c) *Budgetary Requirement* – The Secretary of National Defense
25 shall submit to the President, Congress and Secretary of Budget and
26 Management the required budgets for defense procurement.

27 (d) *Release of Funds by the Department of Budget and*
28 *Management (DBM)* – The DBM shall release the amounts to support the
29 funding requirements for the procurement of materiel, systems, facilities
30 and services of the DND proper and its bureaus in accordance with the
31 AFP Modernization Act.

1 (e) *Execution* – The DND proper and its bureaus shall execute the
2 allocated amount for the procurement of materiel, systems, ordnance,
3 facilities and services in accordance with the existing government
4 accounting and auditing rules and regulations.

5 (f) *Review* – The Office of the Assistant Secretary for Financial
6 Management (OASFM) shall be responsible in the conduct of quarterly
7 review and assessment of the financial performance of the DND proper
8 and its bureaus for the procurement of the materiel, systems, facilities and
9 services based on the guidelines set forth in the Implementing Rules and
10 Regulations (IRR).

11 **ARTICLE III**
12 **MODES OF PROCUREMENT**

13
14 **SEC. 7. *Modes of Procurement.*** – As a general rule, all procurement shall
15 be through Competitive Bidding. However, subject to objective evaluation and
16 approval of Secretary of National Defense and whenever justified by the
17 conditions provided in this Act, the DND may, in order to promote economy and
18 efficiency, and in case of national emergency and/or calamity, resort to any of
19 the following modes of procurement:

20 (a) *Direct Procurement* – The procurement of defense equipment maybe
21 in any of the following mode:

22 i. *Open Competition* – refers to a method of procurement which is open
23 to participation by any interested party or entity who can meet the
24 specified requirements. The procuring entity may enter into a framework
25 agreement as necessary.

26 ii. *Limited/Selective Competition* – is a method of procurement that
27 limits the participants in the procurement process to known legitimate
28 manufacturers/suppliers. This mode is used mainly for security reasons;
29 often where the requirements have been deemed classified such that the
30 same may not be disclosed freely through an open competition. It involves

1 direct invitation to at least two (2) manufacturers by the Procuring Entity
2 from the list of pre-selected suppliers with known experience and proven
3 capability. The pre-selection shall be based upon the capability and
4 resources of the manufacturers to perform the contract taking into account
5 their experience and past performance on similar contracts, capabilities
6 with respect to personnel equipment or manufacturing facilities, and
7 financial position.

8 iii. *Single-sourced* – refers to the mode of procurement where the
9 Procuring Entity negotiates with one (1) manufacturer/supplier in view of
10 national security or emergency or other urgent strategic considerations.

11 1. *Government-to-Government* – refers to an arrangement involving
12 negotiation with a State with which the Philippines has a Treaty or
13 International or Executive Agreements.

14 2. *Emergency Procurement* – refers to the type of single-sourced
15 procurement of defense materiel and other defense requirements
16 necessary to support and sustain defense operations, in any of the
17 following situations:

18 a. During a state of calamity or emergency;

19 b. Where immediate procurement is necessary either to prevent
20 loss of life or damage to property; or, to rehabilitate, rebuild and
21 develop an area which has been damaged by an armed conflict.

22 iv. *Anticipated Emergency Procurement* – refers to the type of single-sourced
23 procurement of defense materiel necessary in anticipation of a disaster that
24 poses in imminent danger to life or damage to property.

25 v. *Direct Purchase* – refers to the type of single-sourced method/mode that
26 allows procurement directly from pre-selected supplier, manufacturer, and/or
27 contractor. It may be resorted to under any of the following circumstances:

- 1 1. For the procurement of readily available and off-the-shelf goods not
2 available to the Procurement Service of the Department of Budget
3 and Management, subject to the threshold prescribed in the IRR.
- 4 2. In order to obtain and maintain the desired standardization and
5 interoperability of defense materiel based on the defense inventory
6 of the DND and/or is Bureaus.
- 7 3. Procurement of Goods of proprietary nature which can be obtained
8 only from the proprietary source, i.e. when patent, trade secrets,
9 and copyrights prohibit others from manufacturing the same item.

10
11 vi. *Assumption of Contracts* – Assumption of contract by a specific
12 supplier/manufacturer whenever a contract under any of the methods of
13 procurement of this Act is terminated or rescinded for causes provided for in
14 the contract and existing laws. In the case of Open and Limited Competition,
15 all the ranked offerors shall be considered prior to sending of REIs.

16 In all cases, a bid security shall be required to ensure that the successful
17 bidder will not default on its offer and enter into contract with the procuring
18 entity within a specific period of time as indicated in the instructions to bidders.

19
20 (b) *Special Defense Materiel Procurement* – Upon approval by the President of
21 the Philippines, and when the procurement for use by the AFP involves major defense
22 equipment or materiel and/or defense related consultancy services, when the expertise
23 or capability required is not available locally, and the Secretary of National Defense
24 has determined that the interests of the country shall be protected by negotiating
25 directly with an agency or instrumentality of another country with which the Philippines
26 has entered into a defense cooperation agreement or otherwise maintain diplomatic
27 relations, the AFP may be allowed to resort to negotiated procurement: *Provided*, That
28 the performance by the supplier of its obligations under the procurement contract shall
29 be covered by a performance security.

30 Prior to the signing of the contract, the winning bidder shall, as a means of
31 guarantee for the faithful performance and compliance to the obligations under the

1 contract prepared in accordance with the bidding documents, be required to post a
2 performance security in such form and amount as specified in the bidding document.

3 (c) *Donation* – refers to an act of liberality whereby private companies,
4 institutions, local government units (LGUs), government agencies and other foreign
5 governments or institutions disposes gratuitously of assorted items/equipment to the
6 DND and its attached bureaus: *Provided, That,* acceptance of foreign donations shall
7 be subject to the approval of the President, upon the recommendation of the
8 Secretaries of Defense and Foreign Affairs.

9 (d) *Counter Trade and Promotion of National Defense Industry* – as far as
10 practicable and applicable, counter trade for defense-related procurement shall be
11 significant, meaningful and must benefit the national defense industry. The
12 Department of Trade and Industry (DTI) is mandated to identify and develop, in
13 consultation with DND and other relevant offices, a list of goods/services or industries
14 which may be subject of a countertrade.

15

16 **SEC. 8.** *Procurement for the Development of Self-Reliant Defense Posture*
17 *(SRDP).* – The DND shall adopt a continuous and aggressive research and
18 development program for purposes of utilizing new technology or otherwise upgrading
19 existing inventory of equipment and weapons systems. The necessary funding for this
20 program shall be sourced from the appropriations provided for under the AFP
21 Modernization Program.

22

23 **SEC. 9.** *Capability, Materiel and Technology Development.* – The AFP
24 modernization program entails the development and employment of certain
25 capabilities that can address the assessed threats: *Provided, That* the procurement
26 of air force, navy and army equipment and materiel of such types and quantities shall
27 be made in accordance with the need to develop AFP capabilities pursuant to its
28 modernization objectives: *Provided, Further,* That procurement of new equipment and
29 weapons systems shall be synchronized with the phase-out of uneconomical and
30 obsolete major equipment and weapons systems in the AFP inventory: *Provided, even*

1 *Further, That*, with the exception of locally- manufactured major equipment, weapons
2 system and advanced or frontier technologies which are of proven quality and
3 reliability, no major equipment, weapons system and advanced or frontier
4 technologies shall be purchased if the same are not being used by the armed forces
5 in the country of origin or used by armed forces of at least two countries: *Provided,*
6 *Furthermore,* That only offers from suppliers who are themselves the manufacturers
7 shall be entertained: *Provided, Finally,* That no contract shall be entered into unless
8 it provides for, in clear and unambiguous terms, after-sales services and the availability
9 of spare parts.

10
11 **SEC. 10.** *Exemption from Single Largest Completed Contract.* – In-country
12 enterprises participating in the acquisition and production of materiel by the DND and
13 its bureaus shall be exempt from the Single Largest Completed Contract (SLCC)
14 requirement upon effectivity of this Act. For this purpose, there should be accreditation
15 from the Office of the Undersecretary for Procurement, Defense Technology Research
16 and Industry Development.

17
18 **SEC. 11.** *Terms and Conditions for the Use of Procurement.* – The specific
19 terms and conditions including the limitations and restrictions, for the application of
20 each of the procurement methods in this article shall be specified in the IRR.

21
22 **ARTICLE IV**
23 **SECURITY AND CONFIDENTIALITY**
24

25 **SEC. 12.** *Security and Confidentiality.* – Whenever necessary, an offeror or
26 bidder may be required to sign a Non-Disclosure Agreement.

27 In procurement involving and affecting national security, the disclosure of
28 specific components of the procurement documents, such as technical specifications,
29 requirements and components, shall be dependent on the HoPE, having due regard

1 to the nature, classification, sensitivity and confidentiality of the relevant documents
2 vis-à-vis the purpose and reason for the request for bid documents.

3
4 **ARTICLE V**
5 **ORGANIZATIONAL STRUCTURE**

6
7 **SEC.13.** *Head of Procurement Entity (HoPE).* – The Secretary of National
8 Defense and the Bureau Heads shall be the Head of the Procurement Entity for the
9 DND and their respective bureaus.

10 The HoPEs shall be responsible for establishing and maintaining a transparent,
11 effective, and efficient procurement process in their respective agencies.

12
13 **SEC. 14.** *Creation of Office of the Undersecretary for Defense Procurement,*
14 *Technology Research and Industry Development.* – There shall be created in the
15 Department of National Defense (DND) an Office of the Undersecretary for Defense
16 Procurement, Technology Research and Industry Development.

17 The Office shall be charged with the responsibility of advising and assisting the
18 Secretary of National Defense in formulating DND programs, policies, and directives
19 on matters of defense procurement, defense technology research and industry
20 development.

21
22 **SEC. 15.** *Office of the Defense Procurement and Sustainment (ODPS).* – The
23 ODPS shall formulate and implement an procurement and sustainment strategy, plan
24 and manage the Department’s procurement activities and recruit, develop, and retain
25 a diverse procurement and sustainment workforce. It shall also enable the swift and
26 cost-efficient delivery and sustainment of secure and resilient capabilities of the DND.

27 The ODPS shall have divisions to include: (1) a Human Capital Initiatives Division
28 which shall handle procurement workforce development; (2) a Procurement Planning
29 and Management Division which shall handle procurement planning and management
30 services; (3) a Defense Procurement Secretariat Division which shall provide secretariat
31 services to Bids and Awards Committee (BAC); and (4) a contract management division
32 which shall provide post contract services.

1 IRR. The rules and guidelines shall include standard general and special conditions for
2 contracts.

3
4 **SEC. 22. *Warranties.*** – In order to ensure the integrity of the materiel acquired
5 and the supplier’s obligation to repair or replace the same when warranted, a warranty
6 security shall be required from the supplier for a period as specified in the contract.

7
8 **SEC. 23. *Review and Assessment.*** – The HoPE may create a Procurement
9 Review Committee to assess the procurement activities of the Department and its
10 bureaus on a quarterly basis in accordance with the guidelines and procedures
11 provided for in the IRR.

12
13 **SEC. 24. *Suppletory Application.*** – Republic Act No. 9184, otherwise known as
14 the "*Government Procurement Reform Act*" shall apply suppletorily to the provisions
15 of this Act.

16 **ARTICLE VII**
17 **SANCTIONS**

18
19 **SEC. 25. *Liquidated damages.*** – All contracts executed in accordance with this
20 Act and its IRR shall contain a provision on liquidated damages which shall be payable
21 by the contractor or supplier in case of breach as specified in the contract.

22
23 **SEC. 26. *Blacklisting.*** – Corporations, companies, board members, single
24 proprietorships, their principals, and duly authorized representatives or agents shall
25 be blacklisted in accordance with the grounds and procedures as provided for in the
26 IRR. The period of Blacklisting shall be as follows:

- 27
28 a. 1st Blacklisting – one (1) year.
29 b. 2nd Blacklisting – two (2) years.
30 c. 3rd Blacklisting - perpetual disqualification from participating in the
31 procurement process of the DND.

1 The non-performance of an obligation under the warranty shall be a ground for
2 blacklisting.

3 **ARTICLE VIII**
4 **PENAL CLAUSE**

5
6 **SEC. 27. Offenses and Penalties. –**

7 (a) Without prejudice to the provisions of R.A. 3019, otherwise known as the
8 "*Anti-Graft and Corrupt Practices Act*" and other penal laws, public officers who commit
9 any of the following acts shall suffer the penalty of imprisonment of not less than six
10 (6) years and one (1) day, but not more than fifteen (15) years:

11 i. Opening any sealed bid including but not limited to Bids that may have been
12 submitted through the electronic system and any and all documents required to be
13 sealed or divulging their contents, prior to the appointed time for the public opening
14 of Bids or other documents.

15 ii. Delaying, without justifiable cause, the screening for eligibility, opening of
16 bids, evaluation and post evaluation of bids, and awarding of contracts beyond the
17 prescribed periods of action provided for in this IRR.

18 iii. Unduly influencing or exerting undue pressure on any member of the BAC
19 or any officer or employee of the Procuring Entity to take a particular action which
20 favors, or tends to favor a particular bidder.

21 iv. Splitting of contracts which exceed procedural purchase limits to avoid
22 competitive bidding or to circumvent the limits of approving or procurement authority.

23 v. Abuse by the HoPE of his power to reject any and all bids as mentioned under
24 Section 41 of the Act and this IRR, with manifest preference to any bidder who is
25 closely related to him.

26 When any of the foregoing acts is done in collusion with private individuals, the
27 private individuals shall likewise be liable for the offense.

28 In addition, the public officer involved shall also suffer the penalty of temporary
29 disqualification from public office, while the private individual shall be permanently
30 disqualified from transacting business with the Government.

31 (b) Private individuals who commit any of the following acts, and any public
32 officer who conspires with them, shall upon conviction, suffer the penalty of

1 imprisonment of not less than six (6) years and one (1) day but not more than fifteen
2 (15) years:

3 i. When two or more bidders agree and submit different bids as *bona fide*
4 bidders, all the while knowing that the bid(s) of one or more of them was so much
5 higher than the other that the latter could not be honestly accepted and that the
6 contract will surely be awarded to the pre-arranged lowest bid.

7 ii. When a bidder maliciously submits different bids through two or more
8 persons, corporations, partnerships or any other business entity in which he has an
9 interest, to create the appearance of competition that does not in fact exist so as to
10 be adjudged as the winning bidder.

11 iii. When two or more bidders enter into an agreement which calls upon one or
12 more of them to refrain from bidding for procurement contracts, or which requires
13 one or more of them to withdraw Bids already submitted, in order to secure an undue
14 advantage to any one of them.

15 iv. When a bidder, by himself or in connivance with others, employs schemes
16 which tend to restrain the natural rivalry of the parties or operates to stifle or suppress
17 competition and thus produce a result disadvantageous to the public.

18 In addition, the public officer persons involved shall also suffer the penalty of
19 temporary or perpetual disqualification from public office and the private individual
20 shall be permanently disqualified from transacting business with the Government.

21

22 (c) Private individuals who commit any of the following acts, and any public
23 officer conspiring with them, shall upon conviction, suffer the penalty of imprisonment
24 of not less than six (6) years and one (1) day but not more than fifteen (15) years:

25 i. Submitting eligibility requirements of whatever kind and nature that contain
26 false information or falsified documents calculated to influence the outcome of the
27 eligibility screening process or conceal such information in the eligibility requirements
28 when the information will lead to a declaration of ineligibility from participating in
29 competitive bidding.

30 ii. Submitting Bidding Documents of whatever kind and nature that contain false
31 information or falsified documents or conceal such information in the Bidding
32 Documents, in order to influence the outcome of the competitive bidding.

1 iii. Participating in a competitive bidding using the name of another or allowing
2 another to use one’s name for the purpose of participating in a competitive bidding.

3 iv. Withdrawing a bid, after it shall have qualified as the Lowest Calculated
4 Bid/Highest Rated Bid, or refusing to accept an award, without just cause or for the
5 purpose of forcing the Procuring Entity to award the contract to another bidder. This
6 shall include the non-submission within the prescribed time, or delaying the
7 submission of requirements such as, but not limited to, performance security,
8 preparatory to the final award of the contract.

9
10 (d) It is understood that the above penalties and offenses shall cover all types
11 of procurement whether done manually or electronically.

12
13 (e) When the bidder is a juridical entity, criminal liability and the accessory
14 penalties shall be imposed on its directors, officers or employees who actually commit
15 any of the foregoing acts. If a person previously held liable or found guilty under the
16 provisions of the Act and this IRR has a controlling interest in a prospective bidder-
17 entity, the said bidder-entity shall be disqualified to participate in any procurement
18 activity being conducted by the Government.

19
20 **SEC. 28. Jurisdiction.** – Jurisdiction over the offenses defined under this Rule
21 shall belong to the appropriate courts, according to laws existing at the time of the
22 commission of the offenses.

23 **ARTICLE IX**
24 **CIVIL LIABILITY**

25
26 **SEC. 29. Civil Liability in Case of Conviction.** – Without prejudice to
27 administrative sanctions that may be imposed in proper cases, a conviction under the
28 Act and this IRR or R.A. 3019, otherwise known as the "*Anti-Graft and Corrupt*
29 *Practices Act*", shall carry with it civil liability, which may either consist of restitution
30 for the damage done or the forfeiture in favor of the government of any unwarranted
31 benefit derived from the act or acts in question, or both, at the discretion of the courts.

1 **SEC. 30. Liquidated Damages.** – All contracts executed in accordance with the
2 Act and this IRR shall contain a provision on liquidated damages which shall be payable
3 by the contractor in case of breach thereof. For the procurement of Goods,
4 Infrastructure Projects and Consulting Services, the amount of the liquidated damages
5 shall be at least equal to one-tenth of one percent (0.001) of the cost of the
6 unperformed portion for every day of delay. Once the cumulative amount of liquidated
7 damages reaches ten percent (10%) of the amount of the contract, the Procuring
8 Entity may rescind or terminate the contract, without prejudice to other courses of
9 action and remedies available under the circumstances

10
11 **ARTICLE X**
12 **ADMINISTRATIVE SANCTIONS**

13
14 **SEC. 31. Imposition of Administrative Penalties.** –

15 (a) The HoPE, subject to the authority delegated to the BAC, if any, shall impose
16 on bidders or prospective bidders, the administrative penalty of suspension for one
17 (1) year for the first offense, and suspension of two (2) years for the second offense
18 from participating in the competitive bidding process, as well as disqualification from
19 further participating in the competitive bidding being undertaken by the Procuring
20 Entity concerned, where applicable, for the following violations:

21 i. Submission of eligibility requirements containing false information or falsified
22 documents.

23 ii. Submission of Bids that contain false information or falsified documents, or
24 the concealment of such information in the Bids in order to influence the outcome of
25 eligibility screening, or any other stage of the competitive bidding.

26 iii. Allowing the use of one’s name, or using the name of another for purposes
27 of competitive bidding.

28 iv. Withdrawal of a bid, or refusal to accept an award, or enter into contract
29 with the Government without justifiable cause, after he had been adjudged as having
30 submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

31 v. Refusal or failure to post the required performance security within the
32 prescribed time.

- 1 vi. Termination of the contract due to the default of the bidder.
- 2 vii. Refusal to clarify or validate in writing its bid during post-qualification within
3 a period of seven (7) calendar days from receipt of the request for clarification.
- 4 viii. Any documented attempt by a bidder to unduly influence the outcome of
5 the bidding in his favor.
- 6 ix. All other acts that tend to defeat the purpose of the competitive bidding,
7 such as habitually withdrawing from bidding, submitting late Bids or patently
8 insufficient bid, for at least three (3) times within a year, except for valid reasons.

9

10 (b) In addition to the penalty of suspension, the bid security or the performance
11 security posted by the concerned bidder or prospective bidder shall also be forfeited.

12

13 (c) The HoPE may delegate to the BAC the authority to impose the
14 aforementioned administrative penalties.

15

16 **SEC. 32. Preventive Suspension.** – The HoPE may preventively suspend any
17 member of the Technical Working Group or the Secretariat, or the BAC, if there are
18 strong reasons or prima facie evidence showing that the officials or employees
19 concerned are guilty of the charges filed against them under Rules XXI and XXII of
20 this IRR, or for dishonesty as defined by the Civil Service Laws. For uniformed
21 personnel of the AFP, the substantive and procedural due process under its justice
22 system shall be applied. In all cases, due process as mandated by the Constitution
23 and Civil Service laws, rules and regulations, shall be strictly observed.

24

25 **SEC. 33. Lifting of Suspension and Removal of Administrative Disabilities.** –
26 Lifting of preventive suspension pending administrative investigation, as well as
27 removal of administrative penalties and disabilities shall be in accordance with the
28 provisions of Sections 52 and 53, Chapter 6, Subtitle A (Civil Service Commission),
29 Title I, Book V of E.O. 292, otherwise known as the Administrative Code of 1987.

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31 **ARTICLE XI**

32 **SETTLEMENT OF DISPUTES**

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SEC. 34. *Protest on Decisions of the ODPS.* – Decisions of the ODPS in all stages of procurement may be protested to the HoPE and shall be in writing. Decisions of the ODPS may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

SEC. 35. *Resolution of Protests.* – The protests shall be resolved strictly on the basis of records of the BAC. The decisions of the HoPE shall be final.

SEC. 36. *Non-interruption of the Procurement Process.* – In no case shall any protest taken from any decision treated in this article stay or delay the acquisition process.

SEC. 37. *Resort to Regular Courts; Certiorari.* – Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Act shall be dismissed for lack of jurisdiction. The Regional Trial Court (RTC) shall have jurisdiction over final decisions of the HoPE. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure or its amendment as the case maybe and as applicable.

SEC. 38. *Arbitration.* – Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provision of Republic Act No. 876, otherwise known as the "*Arbitration Law*": *Provided, That,* disputes that are within the competence of the Construction Industry Arbitration Commission (CIAC) to resolve shall be referred thereto. The process or arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: *Provided, Further That,* by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

1 **SEC. 39. Appeals.** – The arbitral award and any decision rendered in
2 accordance with the foregoing Section shall be appealable by way of a Petition for
3 Review to the Court of Appeals (CA). The petition shall raise pure questions of law
4 and shall be governed by the Rules of Court.

5
6 **ARTICLE XII**
7 **LEGAL ASSISTANCE**

8
9 **SEC. 40. Legal Assistance.** – The legal office of the DND or its equivalent for
10 DND bureaus is authorized to represent in all stages of the case for its members of or
11 any or all persons involved in the procurement process immediately upon receipt of
12 Court Notice that a civil, criminal, or Ombudsman case, suit or proceeding is filed
13 against them.

14
15 **SEC. 41. Private Legal Assistance.** – In case of inability of the legal office of
16 the DND or its equivalent for DND bureaus, the Procuring Entity shall provide for the
17 lawyer’s fee subject to guidelines as provided for under the IRR.

18
19 **ARTICLE XIII**
20 **MISCELLANEOUS PROVISIONS**

21
22 **SEC. 42. Multi-Year Contracts and other Contractual Arrangements.** – For the
23 purpose of procurement under this Act, notwithstanding existing laws to the contrary,
24 the DND and its bureaus shall be authorized to enter into multi-year contracts and
25 other multi-year contractual arrangements. The Congress shall, upon issuance of
26 multi-year obligation authority by the DBM, make the corresponding appropriation for
27 the ensuing fiscal years.

28
29 **SEC. 43. Issuance of Import Licenses and other Licenses.** - All procurement
30 under this Act shall be exempt from import and other licenses imposed by other
31 agencies of the government. In lieu thereof, the Secretary of National Defense shall

1 issue an Authority to Import and other certification that the goods, services, systems
2 and equipment being imported are acquired pursuant to this Act.

3
4 **SEC. 44. *Exemption from Custom Duties and Other Taxes for Donated Goods.***

5 – The donation of defense equipment or items to the DND, which are directly and
6 exclusively used for its projects, undertakings, activities, services and programs under
7 this Act, shall be exempted from custom duties and other taxes.

8
9 **SEC. 45. *Procurement of Units Deployed Overseas.*** – Units deployed overseas

10 such as the DAFA, U.N. Peace-Keepers and the likes are authorized to acquire certain
11 reasonable requirements in connection with the discharge of their functions within the
12 country where they are deployed, subject to the guidelines provided for in the IRR.

13
14 **SEC. 46. *Exemption from Value-Added Tax, Customs Duties and other Taxes.***

15 – The sale and/or importation of weapons, equipment and ammunitions to and by the
16 AFP, which are directly and exclusively used for its projects, undertakings and activities
17 and programs under the Revised AFP Modernization Act, shall be exempt from the
18 value added tax, customs duties and other taxes.

19 **ARTICLE XIV**

20 **FINAL PROVISIONS**

21
22 **Sec. 47. *Implementing Rules and Regulations; Supplementary Regulations.*** –

23 Within sixty (60) days from the promulgation of this Act, the necessary rules and
24 regulations for the proper implementation of its provisions shall be formulated by the
25 DND. The said rules and regulations shall be approved by the President of the
26 Philippines. The President thru the Secretary of National Defense is authorized to
27 implement this Act, formulate and amend, whenever necessary, the implementing
28 rules and regulations and standard forms necessary for the implementation of this Act,
29 and issue supplemental regulations to hasten and facilitate the implementation of this
30 Act.

1 **Sec. 48. *Rule of Interpretation.*** – Rights and Obligations existing on the date
2 of effectivity of this Act and arising out of contract shall be governed by the original
3 terms and conditions of said contract or law in force at that time such rights were
4 vested.

5
6 **Sec. 49. *Repealing Clause.*** – All provisions of existing laws, orders and
7 regulations contrary to or inconsistent with this Act are hereby repealed or modified
8 accordingly.

9
10 **Sec. 50. *Separability Clause.*** – If for any reason any part or provision of this
11 Act shall be deemed unconstitutional or invalid, the other sections or provisions hereof
12 shall not be affected and shall remain in force and effect.

13
14 **Sec. 51. *Effectivity.*** – This Act shall take effect fifteen (15) days following its
15 publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,