

FIFTEENTH CONGRESS OF THE )  
REPUBLIC OF THE PHILIPPINES )  
*First Regular Session* )

SECRET  
OFFICE OF THE SECRETARY

10 JUL 27 AM '29

SENATE

S. B. No. **2089**

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Introduced by Senator FRANCIS G. ESCUDERO

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### EXPLANATORY NOTE

This bill basically seeks to address three (3) points in the currently existing government procurement system embodied in Republic Act No. 9184 in view of the anomalous contracts such as the ZTE and Cyber-Ed projects favored and concluded by the government.

Firstly, it puts under the coverage of RA No. 9184 the procurement of infrastructure projects, goods and consulting services funded by loan or credit under the Official Development Assistance (ODA) Act, RA No. 8182, as amended.

This is in light of the interpretation that the procurement of certain infrastructure projects, goods and services can be made exempt from the operation of RA No. 9184 on the basis of Section 4 of said law which mandates the observation of treaties or international or executive agreements affecting procurement in relation to Section 1 of RA No. 8555 which on the other hand empowers the President of the Republic to waive the application of any law in deference to the contracting of a loan or credit with a lending institution.

Secondly, it also proposes to strengthen and advance transparency by mandating the posting of the decisions of the BAC (or the Bids and Awards Committee) relative to criteria, ratings and calculations of bids as well as all other bids, responsive or otherwise, on the procuring agency's website or that of the GPPB (or the Government Procurement Policy Board). This is envisioned to bolster and reinforce accountability of public officials by making public how BAC members decide and why. Thus, if there be any anomaly in the bidding the responsible BAC member/s may be identified.

And thirdly, it lessens the discretion of procuring agencies, specifically in the consideration of single calculated/rated and responsive bid submission, and the use of observers.

On the consideration of single calculated/rated and responsive bid submission, a procuring agency can only do so by, in addition to the current requisites provided for in RA No. 9184, subjecting it to the approval of the GPPB. It is submitted that in this manner the procuring agency will have the inability to rig biddings through a consensus amongst competing contractors or bidders in that agency.

And on the use of observers, the invitation of observers is made strict by limiting the number of times an observer can be invited by a procuring agency. This is being proposed in consideration of the fact that observers, who become regulars of the BAC become friendly, if not, even cohorts in anomalous biddings and transactions.

In view of the foregoing and if only to address the problems and issues that have resulted from the ZTE and Cyber-Ed projects, passage of this bill is sought.

A handwritten signature in black ink, appearing to be 'Francis G. Escudero', written over a horizontal line.

FRANCIS G. ESCUDERO

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AN ACT  
AMENDING REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE  
GOVERNMENT PROCUREMENT REFORM ACT

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

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

3        **"Section 4. Scope and Application.-** This Act shall apply to the  
4 Procurement of Infrastructure Projects, Goods and Consulting  
5 Services, regardless of source of funds, whether local or  
6 foreign, by all branches and instrumentalities of government,  
7 its departments, offices and agencies, including government-  
8 owned and/or-controlled corporations and local government  
9 units, subject to the provisions of Commonwealth Act No. 138.  
10 Any treaty or international or executive agreement affecting  
11 the subject matter of this Act to which the Philippine  
12 government is a signatory shall be observed: **PROVIDED,**  
13 **HOWEVER, THAT THE PROVISIONS OF THIS ACT**  
14 **SHALL BE MADE TO APPLY IN THE NEGOTIATION OR**  
15 **CONCLUSION OF SUCH TREATY OR INTERNATIONAL**  
16 **OR EXECUTIVE AGREEMENT.**

17        **ACCORDINGLY, NOTWITHSTANDING THE**  
18 **PROVISIONS OF SECTION 1 OF REPUBLIC ACT NO.**  
19 **8555, THIS ACT SHALL LIKEWISE COVER**  
20 **PROCUREMENT OF INFRASTRUCTURE PROJECTS,**  
21 **GOODS AND CONSULTING SERVICES FUNDED BY A**  
22 **LOAN, CREDIT OR INDEBTEDNESS CONTRACTED OR**

1 ENTERED INTO BY THE PHILIPPINE GOVERNMENT  
2 PURSUANT TO THE OFFICIAL DEVELOPMENT  
3 ASSISTANCE (ODA) ACT OR REPUBLIC ACT NO. 8182,  
4 AS AMENDED.  
5

6 SEC. 2. Section 13 of Republic Act (RA) No. 9184 is also hereby  
7 amended to read as follows:

8 "Section 13. *Observers.*- To enhance the transparency of the  
9 process, the BAC shall, in all stages of the procurement  
10 process, invite, in addition to the representative of the  
11 Commission on Audit, at least two(2) observers to sit in its  
12 proceedings, one(1) from a duly recognized private group in a  
13 sector or discipline relevant to the procurement at hand, and  
14 the other from a non-government organization: Provided,  
15 however, That they do not have any direct or indirect interest  
16 in the contract to be bid out. **PROVIDED, FURTHER, THAT**  
17 **IN NO CASE THEY SHALL BE INVITED BY THE BAC**  
18 **MORE THAN THREE (3) TIMES A YEAR.** The observers  
19 should be [duly registered with the Securities and Exchange  
20 Commission] **MEMBERS IN GOOD STANDING OF THE**  
21 **SECTOR OR DISCIPLINE OR NON-GOVERNMENT**  
22 **ORGANIZATION TO WHICH THEY BELONG AS DULY**  
23 **CERTIFIED BY THEIR PRESIDENT, HEAD OR**  
24 **CHAIRPERSON** and should meet the criteria for observers as  
25 set forth in the IRR."

26 SEC. 3. Section 36 of Republic Act (RA) No. 9184 is likewise hereby  
27 amended to read as follows:

28 "Section 36. *Single Calculate/Rated and Responsive Bid*  
29 *Submission.* - A single calculated/rated and responsive bid  
30 shall be considered for award **SUBJECT TO THE APPROVAL**  
31 **OF THE GPPB AND** if it falls under any of the following  
32 circumstances:

1 a. If after advertisement, only one prospective  
2 bidder submits a Letter of Intent and/or applies  
3 for eligibility check, and meets the eligibility  
4 requirements or criteria, after which it submits a  
5 bid, which is found to be responsive to the  
6 bidding requirements;

7 b. If after the advertisement, more than one  
8 prospective bidder applies for eligibility check,  
9 but only one bidder meets the eligibility  
10 requirements or criteria, after which in submits a  
11 bid which is found to be responsive to the  
12 bidding requirements; or

13 c. If after the eligibility check, more than one  
14 bidder meets the eligibility requirements, but  
15 only one bidder submits a bid, and its bid is  
16 found to be responsive to the bidding  
17 requirements.

18 In all instances, the Procuring Entity shall ensure that  
19 the ABC reflects the most advantageous prevailing price for  
20 the government."

21 **SEC. 4.** Republic Act No. 9184 is further amended to include a new  
22 Section 36-A to read as follows:

23  
24 "Section 36-A. *Transparency.* The calculated ratings of all  
25 bidders, their bid prices and the ratings given by each member  
26 of the BAC as provided for under RA No. 9184 shall be posted  
27 on the agency or the Government Procurement Policy Board  
28 (GPPB) website from the end of evaluation to sixty (60) days  
29 after award of contract."

30  
31 All bidders shall include all those who submitted bids  
32 regardless of completeness of requirements and  
33 responsiveness."

1  
2       **SEC. 5.**       *Separability Clause.* If any provision or part hereof is held  
3 invalid or unconstitutional, the remainder of the law or the provision not  
4 otherwise affected shall remain valid and subsisting.  
5

6       **SEC. 6.**       *Repealing Clause.* All laws, presidential decrees, executive  
7 orders, proclamations and/or administrative regulations which are inconsistent  
8 with the provisions of this Act are hereby amended, modified, superseded or  
9 repealed accordingly.  
10

11       **SEC. 7.**       *Effectivity Clause.* This Act shall take effect fifteen (15) days  
12 from its publication in at least two newspapers of national circulation.  
13

14       *Approved,*