



SENATE

13 JUL -4 18:08

S. B. No. 433

RECEIVED BY: 

Introduced by Senator FRANCIS G. ESCUDERO

#### 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.

FRANCIS G. ESCUDERO



SENATE

'13 JUL -4 AB 08

S. B. No. 433

RECEIVED BY: *[Signature]*

Introduced by Senator FRANCIS G. ESCUDERO

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 read as follows:

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

14                   **ACCORDINGLY, NOTWITHSTANDING THE PROVISIONS**  
15                   **OF SECTION 1 OF REPUBLIC ACT NO. 8555, THIS ACT SHALL**  
16                   **LIKEWISE COVER PROCUREMENT OF INFRASTRUCTURE**  
17                   **PROJECTS, GOODS AND CONSULTING SERVICES FUNDED BY A**  
18                   **LOAN, CREDIT OR INDEBTEDNESS CONTRACTED OR ENTERED**  
19                   **INTO BY THE PHILIPPINE GOVERNMENT PURSUANT TO THE**  
20                   **OFFICIAL DEVELOPMENT ASSISTANCE (ODA) ACT OR**  
21                   **REPUBLIC ACT NO. 8182, AS AMENDED.**

22  
23           **SEC. 2.**       Section 13 of Republic Act (RA) No. 9184 is also hereby amended to read  
24 as follows:

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

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

18           “**Section 36. Single Calculate/Rated and Responsive Bid Submission.** - A  
19 single calculated/rated and responsive bid shall be considered for award  
20 **SUBJECT TO THE APPROVAL OF THE GPPB AND** if it falls under  
21 any of the following circumstances:

22                   a. If after advertisement, only one prospective bidder submits a  
23 Letter of Intent and/or applies for eligibility check, and meets  
24 the eligibility requirements or criteria, after which it submits a  
25 bid, which is found to be responsive to the bidding  
26 requirements;

27                   b. If after the advertisement, more than one prospective bidder  
28 applies for eligibility check, but only one bidder meets the  
29 eligibility requirements or criteria, after which in submits a bid  
30 which is found to be responsive to the bidding requirements; or

31                   c. If after the eligibility check, more than one bidder meets the  
32 eligibility requirements, but only one bidder submits a bid, and  
33 its bid is found to be responsive to the bidding requirements.

34                   In all instances, the Procuring Entity shall ensure that the ABC reflects  
35 the most advantageous prevailing price for the government.”

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

3  
4           ”Section 36-A. *Transparency.* The calculated ratings of all bidders, their bid  
5 prices and the ratings given by each member of the BAC as provided for  
6 under RA No. 9184 shall be posted on the agency or the Government  
7 Procurement Policy Board (GPPB) website from the end of evaluation to  
8 sixty (60) days after award of contract.”

9  
10          All bidders shall include all those who submitted bids regardless of  
11 completeness of requirements and responsiveness.”

12  
13          **SEC. 5.**        *Separability Clause.* If any provision or part hereof is held invalid or  
14 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain  
15 valid and subsisting.

16  
17          **SEC. 6.**        *Repealing Clause.* All laws, presidential decrees, executive orders,  
18 proclamations and/or administrative regulations which are inconsistent with the provisions of  
19 this Act are hereby amended, modified, superseded or repealed accordingly.

20  
21          **SEC. 7.**        *Effectivity Clause.* This Act shall take effect fifteen (15) days from its  
22 publication in at least two newspapers of national circulation.

23  
24          *Approved,*