

SENATE
S. No. 2433

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Introduced by Senator Francis "Tol" N. Tolentino

AN ACT
AMENDING SECTION 53 OF REPUBLIC ACT NO. 9184,
OTHERWISE KNOWN AS THE "GOVERNMENT PROCUREMENT
REFORM ACT"

EXPLANATORY NOTE

The emergence of the Covid-19 pandemic served as a wake-up call in determining the gaps in current laws. The pandemic laid bare disparities in our laws, particularly those related to health care, travel, transportation, and procurement, among others. Republic Act No. 9184, or the "Government Procurement Reform Act", is one such law. It should be amended in order for procurement to be more efficient and to promote and sustain good governance.

Section 2 of RA 9184 provides that "*[i]t is the declared 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.*" Transparency should always be promoted in all aspects of the procurement process. Equal opportunity should be extended to all who are eligible and qualified to participate in such procurement process.

To do this, it is vital that the law is able to provide in sufficient detail what is expected of implementing agencies. One of those provisions that should be updated

is Section 53 of RA 9184 on negotiated procurement. A negotiated procurement may be had in case of extraordinary circumstances whereby the government directly negotiates a contract with a technically, legally, and financially capable supplier, contractor, or consultant.

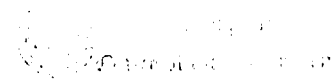
However, the law fails to provide how to determine whether a supplier, contractor, or consultant is financially capable. This is important since the government and its instrumentalities should make sure that those that they choose to enter into contract with have the financial capability to fulfill their contractual obligations.

This bill seeks to update the provisions on negotiated procurement to require the presentation of documentation that will prove bidders' financial capacity to fulfill the requirements of the government.

The immediate enactment of this proposed legislation is earnestly sought.



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

1 Section 1. Section 53 of Republic Act No. 9184 is hereby amended to read as follows:

2 "Section 53. *Negotiated Procurement.* - Negotiated Procurement shall be
3 allowed only in the following instances:

4 a. In cases of two (2) failed biddings, as provided in Section 35
5 hereof;

6 b. In case of imminent danger to life or property during a state
7 of calamity, or when time is of the essence arising from natural
8 or man-made calamities or other causes where immediate action
9 is necessary to prevent damage to or loss of life or property, or
10 to restore vital public services, infrastructure facilities and other
11 public utilities;

1 c. Take-over of contracts, which have been rescinded or
2 terminated for causes provided for in the contract and existing
3 laws, where immediate action is necessary to prevent damage to
4 or loss of life or property, or to restore vital public services,
5 infrastructure facilities and other public utilities;

6 d. Where the subject contract is adjacent or contiguous to an on-
7 going infrastructure project, as defined in the IRR: *Provided,*
8 *however,* That the original contract is the result of a Competitive
9 Bidding; the subject contract to be negotiated has similar or
10 related scopes of work; it is within the contracting capacity of the
11 contractor; the contractor uses the same prices or lower unit
12 prices as in the original contract less mobilization cost; the
13 amount involved does not exceed the amount of the ongoing
14 project; and, the contractor has no negative slippage: *Provided,*
15 *further,* That negotiations for the procurement are commenced
16 before the expiry of the original contract. Wherever applicable,
17 this principle shall also govern consultancy contracts, where the
18 consultants have unique experience and expertise to deliver the
19 required service; or,

20 e. Subject to the guidelines specified in the IRR, purchases of
21 Goods from another agency of the government, such as the
22 Procurement Service of the DBM, which is tasked with a
23 centralized procurement of commonly used Goods for the
24 government in accordance with Letters of Instruction No. 755 and
25 Executive Order No. 359, series of 1989.

26 **IN ALL CASES OF NEGOTIATED PROCUREMENT, ALL**
27 **SUPPLIERS, CONTRACTORS, AND CONSULTANTS ARE**
28 **MANDATED TO SUBMIT DOCUMENTS TO PROVE THEIR**
29 **FINANCIAL CAPACITY. THE PROCURING ENTITY SHALL**
30 **ASCERTAIN THE FINANCIAL, TECHNICAL, AND LEGAL**

1 **CAPACITY OF SUPPLIERS, CONTRACTORS, OR**
2 **CONSULTANTS."**

3 Section 2. *Separability Clause.* - If any provision of this Act is declared invalid
4 or unconstitutional, such parts not affected by such declaration shall remain in full
5 force and effect.

6 Section 3. *Repealing Clause.* - All laws, orders, rules and regulations and other
7 issuances, or parts thereof, which are inconsistent with this Act are hereby repealed,
8 amended or modified accordingly.

9 Section 4. *Effectivity.* - This Act shall take effect fifteen (15) days after its
10 publication in the *Official Gazette* or in a newspaper of general circulation.

 Approved,