

FOURTEENTH CONGRESS OF THE }
REPUBLIC OF THE PHILIPPINES }
First Regular Session }

SENATE

S. No. 1963

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 recently 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.

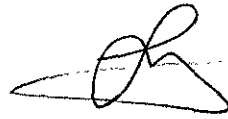
Secondly, it also proposes to strengthen and advance transparency by mandating the posting of the decisions of the BAC (or the Bids and Awards Committee) relative to criteria, ratings and calculations of bids as well as all other bids, responsive or otherwise, on the procuring agency's website or that 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 read 'Francis G. Escudero', with a long horizontal stroke extending to the left.

FRANCIS G. ESCUDERO

FOURTEENTH CONGRESS OF THE }
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SENATE
S. No. 1963

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
2 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 foreign,
6 by all branches and instrumentalities of government, its
7 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 the
11 subject matter of this Act to which the Philippine government is
12 a signatory shall be observed: PROVIDED, HOWEVER, THAT
13 THE PROVISIONS OF THIS ACT SHALL BE MADE TO
14 APPLY IN THE NEGOTIATION AND CONCLUSION OF
15 SUCH TREATY OR INTERNATIONAL OR EXECUTIVE
16 AGREEMENT.

1 ACCORDINGLY, NOTWITHSTANDING THE
2 PROVISIONS OF SECTION 1 OF REPUBLIC ACT NO. 8555,
3 THIS ACT SHALL LIKEWISE COVER PROCUREMENT OF
4 INFRASTRUCTURE PROJECTS, GOODS AND
5 CONSULTING SERVICES FUNDED BY A LOAN, CREDIT
6 OR INDEBTEDNESS CONTRACTED OR ENTERED INTO
7 BY THE PHILIPPINE GOVERNMENT PURSUANT TO THE
8 OFFICIAL DEVELOPMENT ASSISTANCE (ODA) ACT OR
9 REPUBLIC ACT NO. 8182, AS AMENDED.

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

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

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

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

7 a. If after advertisement, only one prospective
8 bidder submits a *Letter of Intent and/or* applies
9 for eligibility check, and meets the eligibility
10 requirements or criteria, after which it submits a
11 bid, which is found to be responsive to the bidding
12 requirements;

13 b. If after the advertisement, more than one
14 prospective bidder applies for eligibility check, but
15 only one bidder meets the eligibility requirements
16 or criteria, after which in submits a bid which is
17 found to be responsive to the bidding
18 requirements; or

19 c. If after the eligibility check, more than one
20 bidder meets the eligibility requirements, but only
21 one bidder submits a bid, and its bid is found to be
22 responsive to the bidding requirements.

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

26 **SEC. 4.** Republic Act No. 9184 is further amended to include a new Section
27 36-A to read as follows:

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

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

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

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

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

Approved,