

[REPUBLIC ACT NO. 9184, January 10, 2003]

**AN ACT PROVIDING FOR THE MODERNIZATION,
STANDARDIZATION AND REGULATION OF THE PROCUREMENT
ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES**

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

ARTICLE I

GENERAL PROVISIONS

SECTION 1. *Short Title.* — This Act shall be known as the "Government Procurement Reform Act."

SEC. 2. *Declaration of Policy.* — It 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.

SEC. 3. *Governing Principles on Government Procurement.* — All procurement of the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions and local government units, shall, in all cases, be governed by these principles:

- a. Transparency in the procurement process and in the implementation of procurement contracts.
- b. Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.
- c. Streamlined procurement process that will uniformly apply to all government procurement. The procurement process shall be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method.
- d. System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.
- e. Public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of this Act and its implementing rules and regulations, and that all these contracts are performed strictly according to specifications.

SEC. 4. *Scope and Application.* — This Act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed.

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

- a. *Approved Budget for the Contract (ABC)*-refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act and/or continuing appropriations, in the case of National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O. No, 518, series of 1979, in the case of Government-Owned and/or Controlled Corporations, Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units.
- b. *BAC* - refers to the Bids and Awards Committee established in accordance with Article V of this Act.
- c. *Bidding Documents* - refer to documents issued by the Procuring Entity as the basis for Bids, furnishing all information necessary for a prospective bidder to prepare a bid for the Goods, Infrastructure Projects, and Consulting Services to be provided.
- d. *Bid* - refers to a signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor or consultant in response to the Bidding Documents.
- e. *Competitive Bidding*-- refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.
- f. *Consulting Services*- refer to services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.
- g. *G-EPS* - refers to the Government Electronic Procurement System as provided in Section 8 of this Act.
- h. *Goods* - refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling,

janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services.

- i. *GPPB*- refers to the Government Procurement Policy Board established in accordance with Article XX of this Act.
- j. *Head of the Procuring Entity*- refers to: (i) the head of the agency or his duly authorized official, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned and/or -controlled corporations; or (iii) the local chief executive, for local government units. *Provided*, That in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency.
- k. *Infrastructure Projects* - include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings and other related construction projects of the government.
- l. *IRR*-refer to the implementing rules and regulations to be promulgated in accordance with Section 75 of this Act.
- m. *Portal* - refers to a website that aggregates a wide variety of content for the purpose of attracting a large number of users.
- n. *Procurement* - refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes", and other applicable laws, rules and regulations.
- o. *Procuring Entity* - refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

SEC. 6. *Standardization of Procurement Process and Forms*. — To systematize the procurement process, avoid confusion and ensure transparency, the procurement process, including the forms to be used, shall be standardized insofar as practicable.

For this purpose, the GPPB shall pursue the development of generic procurement manuals and standard bidding forms, the use of which once issued shall be mandatory upon all Procuring Entities.

ARTICLE II

PROCUREMENT PLANNING

SEC. 7. *Procurement Planning and Budgeting Linkage*. — All procurement should be within the approved budget of the Procuring Entity and should be meticulously and judiciously planned by the Procuring Entity concerned. Consistent with government

fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan to be specified in the IRR.

No government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity. The Annual Procurement Plan shall be approved by the Head of the Procuring Entity and must be consistent with its duly approved yearly budget. The Annual Procurement Plan shall be formulated and revised only in accordance with the guidelines set forth in the IRR. In the case of Infrastructure Projects, the Plan shall include engineering design and acquisition of right-of-way.

ARTICLE III

PROCUREMENT BY ELECTRONIC MEANS

SEC. 8. *Procurement By Electronic Means.* — To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Accordingly, there shall be a single portal that shall serve as the primary source of information on all government procurement. The G-EPS shall serve as the primary and definitive source of information on government procurement. Further, the GPPB is authorized to approve changes in the procurement process to adapt to improvements in modern technology, provided that such modifications are consistent with the provisions of Section 3 of this Act.

To take advantage of the significant built-in efficiencies of the G-EPS and the volume discounts inherent in bulk purchasing, all Procuring Entities shall utilize the G- EPS for the procurement of common supplies in accordance with the rules and procedures to be established by the GPPB. With regard to the procurement of non-common use items, infrastructure projects and consulting services, agencies may hire service providers to undertake their electronic procurement provided these service providers meet the minimum requirements set by the GPPB.

SEC. 9. *Security, Integrity and Confidentiality.* — The G-EPS shall ensure the security, integrity and confidentiality of documents submitted through the system. It shall include a feature that provides for an audit trail for on-line transactions and allow the Commission on Audit to verify the security and integrity of the systems at any time.

ARTICLE IV

COMPETITIVE BIDDING

SEC. 10. *Competitive Bidding.* — All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

ARTICLE V

BIDS AND AWARDS COMMITTEE

SEC. 11. *The BAC and its Composition.* — Each procuring entity shall establish a single BAC for its procurement. The BAC shall have at least five (5) members, but

not more than seven (7) members. It shall be chaired by at least a third ranking permanent official of the procuring entity other than its head, and its composition shall be specified in the IRR. Alternatively, as may be deemed fit by the head of the procuring entity, there may be separate BACs where the number and complexity of the items to be procured shall so warrant. Similar BACs for decentralized and lower level offices may be formed when deemed necessary by the head of the procuring entity. The members of the BAC shall be designated by the Head of Procuring Entity. However, in no case shall the approving authority be a member of the BAC.

Unless sooner removed for a cause, the members of the BAC shall have a fixed term of one (1) year reckoned from the date of appointment, renewable at the discretion of the Head of the Procuring Entity. In case of resignation, retirement, separation, transfer, re-assignment, removal, the replacement shall serve only for the unexpired term; *Provided*, That in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension. For justifiable causes, a member shall be suspended or removed by the Head of the Procuring Entity.

SEC. 12. *Functions of the BAC.* — The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: *Provided*, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical- financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

SEC. 13. *Observers.* — To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: *Provided, however*. That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

SEC. 14. *BAC Secretariat* — To assist the BAC in the conduct of its functions, the Head of the Procuring Entity shall create a Secretariat that will serve as the main support unit of the BAC. The Head of the Procuring Entity may also designate an existing organic office within the agency to serve as the Secretariat.