

CHAPTER 10: THE GOVERNMENT PROCUREMENT ACT (R.A. 9184)

[REPUBLIC ACT NO. 9184]

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

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:

SEC. 4. Scope and Application. – This Act shall apply to the Procurement of Infrastructure Projects, Goods, and Consulting Services,

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

- **ABC (Approved Budget for the Contract)**
- **BAC (Bids and Awards Committee)**
- **Bidding Documents** - refers to documents issued by the Procuring Entity as the basis for Bids.
- **Bid-** refers to a signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor or consultant in response to the Bidding Documents.
- **Competitive Bidding** - refers to a method of procurement which is open to participation by any interested party.

- **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.
- **G-EPS (Government Electronic Procurement System)**
- **Goods** - refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects.
- **GPPB (Government Procurement Policy Board)**
- **Infrastructure Projects –** include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components and other related construction projects of government.
- **IRR (Implementing Rules and Regulations)**
- **Portal –** refers to a website that aggregates a wide variety of content for the purpose of attracting a large number of users.

- **Procurement –** refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity.
- **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.

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.

SEC. 8. Procurement By Electronic Means. – To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures.

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 III: 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.

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:

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:

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.

SEC. 15. Honoraria of BAC Members. – The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds.

SEC. 16. Professionalization of BAC, BAC Secretariat and Technical Working Group Members. – The GPPB shall establish a sustained training program for developing the capacity of the BACs, BAC Secretariats and Technical Working Groups of Procuring Entities, and professionalize the same.

ARTICLE VI: PREPARATION OF BIDDING DOCUMENTS

SEC. 17. Form and Contents of Bidding Documents. – The Bidding Documents shall be prepared by the Procuring Entity following the standard forms and manuals prescribed by the GPPB. The Bidding Documents shall include the

Following:

(a) Approved Budget for the Contract;

(b) Instructions to Bidders, including criteria for eligibility, bid evaluation and post qualification, as well as the date, time and place of the pre-bid Conference (where applicable), submission of bids and opening of bids;

(c) Terms of Reference;

(d) Eligibility Requirements;

(e) Plans and Technical Specifications;

(f) Form of Bid, Price Form, and List of Goods or Bill of Quantities;

(g) Delivery Time or Completion Schedule;

(h) Form and Amount of Bid Security;

(i) Form and Amount of Performance Security and Warranty; and,

(j) Form of Contract, and General and Special Conditions of Contract.

The Procuring Entity may require additional document requirements or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

SEC. 18. Reference to Brand Names.

– Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

SEC. 19. Access to Information.

– In all stages of the preparation of the Bidding Documents, the Procuring Entity shall ensure equal access to information. Prior to their official release, no aspect of the Bidding Documents shall be divulged or released to any prospective bidder or person having direct or indirect interest in the project to be procured.

ARTICLE VII: INVITATION TO BID

SEC. 20. Pre-Procurement Conference

Prior to the issuance of the Invitation to Bid, the BAC is **mandated to hold a pre-procurement conference on each and every procurement**, *except those contracts below a certain level or amount specified in the IRR*, in which case, the holding of the same is optional.

Sec. 21 Advertising and Contents of the Invitation to Bid

All Invitations to Bid for contracts under competitive bidding **shall be advertised by the Procuring Entity in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible dissemination thereof, such as, but not limited to, posting in the Procuring Entity's premises, in newspapers of general circulation, the G-EPS and the website of the Procuring.**

Sec. 22 Pre-bid Conference

At least one pre-bid conference shall be conducted for each procurement, unless otherwise provided in the IRR. Subject to the approval of the BAC, a **pre-bid conference may also be conducted upon the written request of any prospective bidder.**

The pre-bid conference(s) shall be held within a reasonable period before the deadline for receipt of bids to allow prospective bidders to adequately prepare their bids, which shall be specified in the IRR.

ARTICLE VIII: RECEIPT AND OPENING OF BIDS

SEC. 23: Eligibility Requirements for the Procurement of Goods and Infrastructure Projects

The eligibility requirements shall provide for fair and equal access to all prospective bidders. **The documents submitted in satisfaction of the eligibility requirements shall be made under oath by the prospective bidder or by his duly authorized representative certifying to the correctness of the statements made and the completeness and authenticity of the documents submitted.**

A prospective bidder may be allowed to **submit his eligibility requirements electronically.**

SEC. 24. Eligibility Requirements and Short Listing for Consulting Services

Shall be determined by their **compliance with the eligibility requirements prescribed for the Competitive Building concerned, within the period stated in the Invitation to Bid.**

The eligible prospective bidders shall then be evaluated using **numerical ratings on the basis of the short listing requirements prescribed for the**

Competitive Bidding concerned, within the period stated in the Invitation to Bid to determine the short list of bidders who shall be allowed to submit their respective bids.

SEC. 25 Submission and Receipts of Bids

A bid shall have two (2) components, namely the **technical and financial components** which should be in separate sealed envelopes and which shall be submitted simultaneously. The bids shall be received by the BAC on such date , time, and place specified in the Invitation to Bid. The deadline shall also consider the urgency of the procurement involved.

Bids submitted **after the deadline** shall be accepted.

SEC. 26. Modification and Withdrawal of Bids

A bidder may, through a letter, withdraw his bid or express his intention not to participate in the bidding **before the deadline for the receipt of bids.** In such case, he **shall no longer** be allowed to submit another Bid for

the same contract either directly or indirectly.

SEC. 27. Bid Security

All Bids shall be accompanied by a Bid security, which **shall serve as a guarantee that, after receipt of the Notice of Award, the winning bidder shall enter into contract with the Procuring Entity** within the stipulated time and furnish the required performance security. The specific amounts and allowable forms of the Bid security shall be prescribed in the IRR.

SEC. 28. Bid Validity

Bids and Bid securities shall be **valid for such reasonable period of time indicated in the Bidding Documents**. The duration for each undertaking shall take into account the time involved in the process of Bid evaluation and award of contract.

SEC. 29. Bid Opening

The BAC shall **publicly open all bids at the time, date, and place specified in the bidding documents**. The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee.

ARTICLE IX: BID EVALUATION

SEC. 30. Preliminary Examination of Bids

BAC shall examine first the technical components of the bids **using "pass/fail" criteria** to determine whether all required documents are present. Only bids that are determined to contain all the bid requirements of the technical component shall be considered for opening and evaluation of their financial components

The ABC shall be the **upper limit or ceiling for the Bid prices**. Bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be **no lower limit to the amount of the award**

SEC. 31. Ceiling for Bid Prices

The **ABC** shall be the **upper limit or ceiling for the Bid prices**. Bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be **no lower limit to the amount of the award**.

SEC. 32. Bid for the Procurement of Goods and Infrastructure Projects

BAC shall evaluate the financial component of the bids. The bids that passed the

preliminary examination shall be **ranked from lowest to highest in terms of their corresponding calculated prices.**

The bid with the lowest calculated price shall be referred to as the **"Lowest Calculated Bid.**

SEC. 33. Bid Evaluation of Short Listed Bidders for Consulting Services

For the Procurement of Consulting Services, the Bids of the **short listed bidders shall be evaluated and ranked using numerical ratings in accordance with the evaluation criteria** The Bid with the highest calculated rating shall be the **"Highest Rated Bid."**

After approval by the Head of the Procuring Entity of the Highest Rated Bid, the BAC shall invite the bidder concerned for negotiation and/or clarification on the following items: **financial proposal submitted by the bidder, terms of reference, scope of services, methodology and work program, personnel to be assigned to the job, services/facilities/data to be**

provided by the Procuring Entity concerned, and provisions of the contract.

ARTICLE X : POST-QUALIFICATION

SEC. 34. Objective and Process of Post-qualification

Post-qualification is the stage where the bidder with the Lowest Calculated Bid.

If the bidder with the Lowest Calculated Bid or Highest Rated Bid passes all the criteria for post-qualification, his Bid shall be considered the **"Lowest Calculated Responsive Bid,"** in the case of Goods and Infrastructure or the **"Highest Rated Responsive Bid,"** in the case of Consulting Services.

However, if a **bidder fails** to meet any of the requirements or conditions, he shall be "post-disqualified" and the BAC shall **conduct the post-qualification on the bidder with the second Lowest Calculated Bid or Highest Rated Bid.**

SEC. 35. Failure of Bidding

There shall be a failure of bidding if:

(a) No bids are received;

(b) No bid qualifies as the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid; or,

(c) Whenever the bidder with the highest rated/lowest calculated responsive bid refuses, without justifiable cause to accept the award of contract, as the case may be.

SEC. 36. Single Calculated/Rated and Responsive Bid Submission

A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:

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

(b) If after the advertisement, more than one prospective bidder applies for eligibility check, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements; or

(c) If after the eligibility check, more than one bidder meets the eligibility

requirements, but only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements. In all instances, the Procuring Entity shall ensure that the ABC reflects the most advantageous prevailing price for the Government.

ARTICLE XI: AWARD, IMPLEMENTATION AND TERMINATION OF THE CONTRACT

SEC. 37. Notice and Execution of Award

Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

Within ten (10) calendar days from receipt of the Notice of Award, the winning bidder shall formally enter into contract with the Procuring Entity. When

further approval of higher authority is required, the **approving authority for the contract shall be given a maximum of twenty (20) calendar days to approve or disapprove it.**

In the case of government-owned and/or -controlled corporations, the concerned board **shall take action on the said recommendation within thirty (30) calendar days from receipt thereof.**

The Procuring Entity **shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days from the date of approval of the contract** by the appropriate authority. All notices called for by the term of the contract shall be effective only at the time of receipt thereof by the contractor.

SEC. 38. Period of Action on Procurement Activities

The procurement process from the opening of bids up to the award of contract **shall not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned.** Without prejudice to the provisions of the preceding section, the different procurement activities shall be

completed within reasonable periods to be specified in the IRR.

If **no action on the contract is taken by the head of the procuring entity, or by his duly authorized representative, or by the concerned board,** in the case of government owned and/or -controlled corporations, within the periods specified in the preceding paragraph, **the contract concerned shall be deemed approved.**

SEC. 39. Performance Security

Prior to the signing of the contract, the **winning bidder shall, as a measure of guarantee for the faithful performance of and compliance with his obligations** under the contract prepared in accordance with the Bidding Documents, be required to post a performance security in such form and amount as specified in the Bidding Documents.

SEC. 40. Failure to Enter into Contract and Post Performance Security

If, for justifiable causes, the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid fails, refuses or is otherwise unable to enter into contract with the Procuring Entity, or if the bidder fails to post the required performance

security within the period stipulated in the Bidding Documents, the BAC shall disqualify the said bidder and shall undertake post-qualification for the next-ranked Lowest Calculated Bid or Highest Rated Bid.

SEC. 41. Reservation Clause

The Head of the Agency reserves the right to reject any and all Bids, declare a failure of bidding, or not award the contract in the following situations:

- (a) If there is prima facie evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- (b) If the BAC is found to have failed in following the prescribed bidding procedures; or
- (c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the government as defined in the IRR.

SEC. 42. Contract Implementation and Termination

The rules and guidelines for the implementation and termination of contracts awarded pursuant to the provisions of this Act **shall be prescribed in the IRR. The rules and guidelines shall include standard general and special conditions for contracts.**

ARTICLE XII: DOMESTIC AND FOREIGN PROCUREMENT

SEC. 43. Procurement of Domestic and Foreign Goods

Goods may be obtained from domestic or foreign sources and the procurement thereof **shall be open to all eligible suppliers, manufacturers and distributors.**

However, in the interest of availability, efficiency and timely delivery of Goods, the Procuring Entity may give preference to the purchase of domestically-produced and manufactured goods supplies and materials that meet the specified or desired quality.

ARTICLE XIII: BIDDING OF PROVINCIAL PROJECTS

SEC. 44. Bidding of Provincial Projects

Priority programs and infrastructure projects funded out of the annual General Appropriations Act which are intended for implementation within the province **shall be subject to the same public bidding and to the procurement processes prescribed under this Act.** For purposes of this Article, Engineering District civil works projects, subject to consultation with the concerned Members of Congress, are included and subsumed in the term “provincial projects” and shall be governed by this Section and Section 45 hereof.

SEC. 45. Provincial Bidders

Within five (5) years from the effectivity of this Act, a contractor who participates in the bidding of provincial priority programs and infrastructure projects, whose principal office is within the same province, and who submits the lowest bid among the provincial bidders which is higher than the lowest bid made by a contractor with principal office outside the said province **shall be granted the privilege to match the bid made by the latter:** Provided, however, That the release of funds for said projects shall be published in a local newspaper with the widest circulation and the website of the

DBM, the mechanisms of which shall be spelled-out in the IRR.

ARTICLE XIV: LEASE OF COMPUTERS, COMMUNICATIONS, INFORMATION AND OTHER EQUIPMENT

SEC. 46. Lease Contracts

Lease of construction and office equipment, including computers, communication and information technology equipment are subject to the same public bidding and to the processes prescribed under this Act.

ARTICLE XV: DISCLOSURE OF RELATIONS

SEC. 47. Disclosure of Relations

In addition to the proposed contents of the Invitation to Bid as mentioned under Section 21 of this Act, all bidding documents shall be accompanied by a sworn affidavit of the bidder that he or she or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this Act.

ARTICLE XVI: ALTERNATIVE METHODS OF PROCUREMENT

SEC. 48. Alternative Methods

Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

(a) Limited Source Bidding, otherwise known as Selective Bidding – a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

b) Direct Contracting, otherwise known as Single Source Procurement – a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

(c) Repeat Order – a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;

(d) Shopping – a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or

(e) Negotiated Procurement – a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

SEC. 49. Limited Source Bidding

Limited Source Bidding may be resorted to only in any of the following conditions:

(a) Procurement of highly specialized types of Goods and Consulting Services which

are known to be obtainable only from a limited number of sources; or

(b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole.

SEC. 50. Direct Contracting

Direct Contracting may be resorted to only in any of the following conditions:

(a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item;

(b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,

(c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained

at more advantageous terms to the Government.

SEC. 51. Repeat Order

When provided for in the Annual Procurement Plan, Repeat Order may be allowed wherein the Procuring Entity directly procures Goods from the previous winning bidder whenever there arises a need to replenish goods procured under a contract previously awarded through Competitive Bidding, subject to post-qualification process prescribed in the Bidding Documents and provided all the following conditions are present:

(a) The unit price must be equal to or lower than that provided in the original contract;

(b) The repeat order does not result in splitting of requisitions or purchase orders;

(c) Except in special circumstances defined in the IRR, the repeat order shall be availed of only within six (6) months from the date of the Notice to Proceed arising from the original contract; and,

(d) The repeat order shall not exceed twenty-five percent (25%) of the quantity of each item of the original contract.

SEC. 52. Shopping

Shopping may be resorted to under any of the following instances:

(a) When there is an unforeseen contingency requiring immediate purchase: Provided, however, That the amount shall not exceed Fifty Thousand Pesos (P50,000); or

(b) Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding Two Hundred Fifty Thousand Pesos (P250,000): Provided, however, That the Procurement does not result in Splitting of Contracts: Provided, further, That at least three (3) price quotations from bona fide suppliers shall be obtained. The above amounts shall be subject to a periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons.

SEC. 53. Negotiated Procurement

Negotiated Procurement shall be allowed only in the following instances:

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

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

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

(d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does

not exceed the amount of the ongoing project; and, the contractor has no negative slippage: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

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

SEC. 54. Terms and Conditions for the use of Alternative Methods

The specific terms and conditions, including the limitations and restrictions, for the application of each of the alternative methods mentioned in this Article shall be specified in the IRR.

ARTICLE XVII: PROTEST MECHANISM

SEC. 55. Protests on Decisions of the BAC

Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

SEC. 56. Resolution of Protests

The protests shall be resolved strictly on the basis of records of the BAC. Up to a certain amount to be specified in the IRR, the decisions of the Head of the Procuring Entity shall be final.

SEC. 57. Non-interruption of the Bidding Process

In no case shall any protest taken from any decision treated in this Article stay or delay the bidding process. Protests must first be resolved before any award is made.

SEC. 58. Report to Regular Courts; Certiorari

Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure. This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

ARTICLE XVIII: SETTLEMENT OF DISPUTES

SEC. 59. Arbitration

Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the

contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

SEC. 60. Appeals

The arbitral award and any decision rendered in accordance with the foregoing Section shall be appealable by way of a petition for review to the Court of Appeals. The petition shall raise pure questions of law and shall be governed by the Rules of Court.

ARTICLE XIX: CONTRACT PRICES AND WARRANTIES

SEC. 61. Contract Prices

For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB. For purposes of this Section, "extraordinary circumstances" shall refer to events that may be determined by the National Economic and Development Authority in accordance with the Civil Code of the Philippines, and upon the

recommendation of the procuring entity concerned.

SEC. 62. Warranty

(a) For the procurement of Goods, in order to assure that manufacturing defects shall be corrected by the supplier, manufacturer, or distributor, as the case may be, for a specific time after performance of the contract, a warranty shall be required from the contract awardee for such period of time as may be provided in the IRR, the obligation for which shall be covered by either retention money in the amount equivalent to a percentage of every progress payment, or a special bank guarantee equivalent to a percentage of the total contract price, to be provided in the IRR. The said amounts shall only be released after the lapse of the warranty period, provided that the Goods supplied are free from defects and all the conditions imposed under the contract have been fully met.

(b) For the procurement of infrastructure projects, the contractor shall assume full responsibility for the contract work from the time project construction commenced up to a reasonable period as defined in the IRR taking into consideration the scale and

coverage of the project from its final acceptance by the government and shall be held responsible for any damage or construction of works except those occasioned by force majeure. The contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work and shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, Government Service Insurance System bond, or callable surety bond. The contractor shall undertake the repair works, at his own expense, of any defect or damage to the infrastructure projects on account of the use of materials of inferior quality within ninety (90) days from the time the Head of the Procuring Entity has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the government shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand. Any contractor who fails to comply with the preceding paragraph shall suffer perpetual disqualification from participating in any public bidding and his property or properties shall be subject to

attachment or garnishment proceedings to recover the costs. All payables of government in his favor shall be offset to recover the costs.

ARTICLE XX THE GOVERNMENT PROCUREMENT POLICY BOARD

SEC. 63. Organization and Functions.

– A Government Procurement Policy Board (GPPB) is hereby established to:

(a) protect national interest in all matters affecting public Procurement, having due regard to the country's regional and international obligations;

(b) formulate and amend, whenever necessary, the IRR and the corresponding standard forms for Procurement;

(c) ensure that Procuring Entities regularly conduct Procurement training programs and prepare a Procurement operations manual for all offices and agencies of government; and

(d) conduct an annual review of the effectiveness of this Act and recommend any amendments thereto, as may be necessary.

The GPPB shall convene within fifteen (15) days from the effectivity of this Act to formulate the IRR and for other related purposes. The GPPB shall be supported by a technical support office. In addition to the powers granted under this Act, the GPPB shall absorb all the powers, functions and responsibilities of the Procurement Policy Board created under Executive Order No. 359, series of 1989. All affected functions of the Infrastructure Committee of the National Economic and Development Authority Board are hereby transferred to the GPPB.

In addition to the powers granted under this Act, the GPPB shall absorb all the powers, functions and responsibilities of the Procurement Policy Board created under Executive Order No. 359, series of 1989. All affected functions of the Infrastructure Committee of the National Economic and Development Authority Board are hereby transferred to the GPPB.

SEC. 64. Membership.

– The GPPB shall be composed of the Secretary of the Department of Budget and Management, as Chairman, the Director-General of the National Economic

and Development Authority, as Alternate Chairman, with the following as Members; the Secretaries of the Departments of Public Works and Highways, Finance, Trade and Industry, Health, National Defense, Education, Interior and Local Government, Science and Technology, Transportation and Communications, and Energy, or their duly authorized representatives and a representative from the private sector to be appointed by the President upon the recommendation of the GPPB. The GPPB may invite a representative from the Commission on Audit to serve as a resource person.

ARTICLE XXI PENAL CLAUSE

SEC. 65. Offenses and Penalties.

– (a) Without prejudice to the provisions of Republic Act No. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act” and other penal laws, public officers who commit any of the following acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years:

(1) Open any sealed Bid including but not limited to Bids that may have been

submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.

(2) Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in the IRR.

(3) Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take a particular action which favors, or tends to favor a particular bidder.

(4) Splitting of contracts which exceed procedural purchase limits and competitive bidding.

(5) When the head of the agency abuses the exercise of his power to reject any and all bids as mentioned under Section 41 of this Act with manifest preference to any bidder who is closely related to him in accordance with Section 47 of this Act. When any of the foregoing acts is done in collusion with private individuals, the private individuals shall likewise be liable for

the offense. In addition, the public officer involved shall also suffer the penalty of temporary disqualification from public office, while the private individual shall be permanently disqualified from transacting business with the Government.

(b) Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

(1) When two or more bidders agree and submit different Bids as if they were bona fide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest Bid.

(2) When a bidder maliciously submits different Bids through two or more persons, corporations, partnerships or any other business entity in which he has interest to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.

(3) When two or more bidders enter into an agreement which call upon one to refrain

from bidding for Procurement contracts, or which call for withdrawal of Bids already submitted, or which are otherwise intended to secure an undue advantage to any one of them.

(4) When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public. In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the Government.

(c) Private individuals who commit any of the following acts, and any public officer conspiring with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

(1) Submit eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a

declaration of ineligibility from participating in public bidding.

(2) Submit Bidding Documents of whatever kind and nature that contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.

(3) Participate in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.

(4) Withdraw a Bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or refuse to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

(d) When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts.

SEC. 66. Jurisdiction.

– Jurisdiction over the offenses defined under this Article shall belong to the appropriate courts, according to laws existing at the time of the commission of the offenses.

ARTICLE XXII CIVIL LIABILITY

SEC. 67. Civil Liability in Case of Conviction.

– Without prejudice to administrative sanctions that may be imposed in proper cases, a conviction under this Act or Republic Act No. 3019 shall carry with it civil liability, which may either consist of restitution for the damage done or the forfeiture in favor of the government of any unwarranted benefit derived from the act or acts in question or both, at the discretion of the courts.

SEC. 68. Liquidated Damages.

– All contracts executed in accordance with this Act shall contain a provision on liquidated damages which shall be payable in case of breach thereof. The amount thereof shall be specified in the IRR.

**ARTICLE XXIII ADMINISTRATIVE
SANCTIONS**

SEC. 69. Imposition of Administrative Penalties.

– (a) In addition to the provisions of Articles XXI and XXII of this Act, the Head of the Procuring Entity, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, for the following violations:

(1) Submission of eligibility requirements containing false information or falsified documents.

(2) Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.

(3) Allowing the use of one's name, or using the name of another for purposes of public bidding.

(4) Withdrawal of a Bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

(5) Refusal or failure to post the required performance security within the prescribed time.

(6) Termination of the contract due to the default of the bidder. Refusal to clarify or validate in writing its Bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor. All other acts that tend to defeat the purpose of the Competitive Bidding.

(b) In addition to the penalty of suspension, the Bid security or the performance security posted by the concerned bidder or prospective bidder shall also be forfeited.

(c) The Head of the Procuring Entity may delegate to the BAC the authority to impose the aforementioned administrative penalties.

SEC. 70. Preventive Suspension.

– The head of the procuring entity may preventively suspend any member of the Technical Working Group or the Secretariat, or the BAC if there are strong reasons or prima facie evidence showing that the officials or employees concerned are guilty of the charges filed against them under Articles XXI and XXII of this Act or for dishonesty as defined by the Civil Service Laws. In all cases, procedural and substantive due process as mandated by the Constitution and Civil Service Laws, rules and regulations, shall be strictly observed.

SEC. 71. Lifting of Suspension and Removal of Administrative Disabilities.

– Lifting of preventive suspension pending administrative investigation, as well as removal of administrative penalties and disabilities shall be in accordance with the provisions of Sections 52 and 53, Chapter 6 (Civil Service Commission), Book V of Executive Order No. 292, the Administrative Code of 1987.

ARTICLE XXIV LEGAL ASSISTANCE AND INDEMNIFICATION OF BAC MEMBERS

SEC. 72. Private Legal Assistance.

– All the members of the BAC are hereby authorized to engage the services of private lawyers or extend counsel immediately upon receipt of Court Notice that a civil or criminal action, suit or proceeding is filed against them. The lawyer's fee shall be part of the indemnification package for the BAC members, subject to the provisions of Section 73 hereof.

SEC. 73. Indemnification of BAC Members.

– The GPPB shall establish an equitable indemnification package for public officials providing services in the BAC, which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceeding to which they may be, or have been made, a party by reason of the performance of their functions or duties, unless they are finally adjudged in such action or proceeding to be liable for



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gross negligence or misconduct or grave abuse of discretion.

In the event of a settlement or compromise, indemnification shall be confined only on matters covered by the settlement, as to which the Procuring Entity had been advised by counsel that the public officials to be indemnified have not committed gross negligence or misconduct in the performance of their functions and duties.

The members of the BAC and the BAC Secretariat shall also be entitled to medical assistance for injuries incurred in the performance of their functions.

ARTICLE XXV FINAL PROVISIONS

SEC. 74. Oversight Committee.

– There is hereby created a Joint Congressional Oversight Committee to oversee the implementation of this Act for a period not exceeding five (5) years from the effectivity of this Act. The Committee shall be composed of the Chairman of the Senate Committee on Constitutional Amendments and Revision of Laws and two members thereof appointed by the Senate President, and the Chairman of the House Committee

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on Appropriations, and two members thereof to be appointed by the Speaker of the House of Representatives.

SEC. 75. Implementing Rules and Regulations and Standard Forms.

– Within sixty (60) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the GPPB, jointly with the members of the Oversight Committee created under Section 74 hereof. The said rules and regulations shall be approved by the President of the Philippines. For a period not later than thirty (30) days upon the approval of the implementing rules and regulations, the standard forms for Procurement shall be formulated and approved.

SEC. 76. Repealing Clause.

– This law repeals Executive Order No. 40, series of 2001, entitled “Consolidating Procurement Rules and Procedures for All National Government Agencies, Government-Owned-or-Controlled Corporations and/or Government Financial Institutions, and Requiring the Use of the Government Electronic Procurement



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System"; Executive Order No. 262, Series of 2000, entitled "Amending Executive Order No. 302, series of 1996, entitled "Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/Supplies by the National Government" and Section 3 of Executive Order No. 201, series of 2000, entitled "Providing Additional Policies and Guidelines in the Procurement of Goods/Supplies by the National Government"; Executive Order No. 302, series of 1996, entitled "Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/Supplies by the National Government" and Presidential Decree No. 1594 dated June 11, 1978, entitled "Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts." This law amends Title Six, Book Two of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991"; the relevant provisions of Executive Order No. 164, Series of 1987, entitled "Providing Additional Guidelines in the Processing and Approval of Contracts of the National Government"; and the relevant provisions of Republic Act No. 7898 dated February 23, 1995, entitled "An Act Providing for the Modernization of the Armed Forces of the

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Philippines and for Other Purposes." Any other law, presidential decree or issuance, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

SEC. 77. Separability Clause.

– If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SEC. 78. Effectivity Clause.

– This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation.