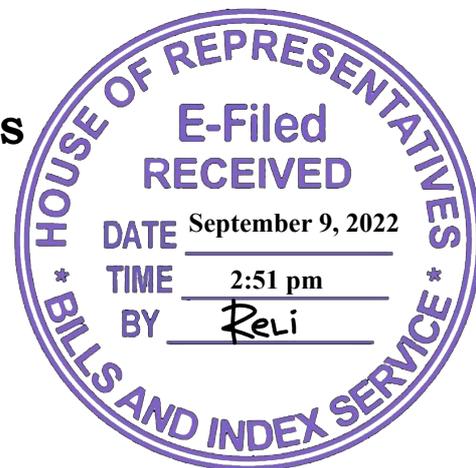


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4617



Introduced by Representative Michael L. Romero

EXPLANATORY NOTE

It is a 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. **Republic Act No. 9184**, otherwise known as "**Government Procurement Reform Act**", was passed into law to modernize, standardize and streamline the procurement process across government agencies with the intention to reduce graft and corruption in government.

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.

This House Bill advocates the principles of transparency, competitiveness and accountability. It also mandates the use of streamlined procurement processes and monitoring of government procurement activities by the public, upgrading Philippine Government Electronic Procurement System (**PhilGEPS**) and establishment of the electronic bidding process.

These innovations will help make the procurement process more transparent, faster, and more efficient. Ultimately, the improved procurement process will be advantageous to the government in the long run.

This House Bill seeks to provide for the reform, modernization, standardization and regulation of all the government procurement activities.

Thus, the early passage of this bill is earnestly requested.

A handwritten signature in black ink, appearing to read 'Michael L. Romero', with a long horizontal line extending to the right.

MICHAEL L. ROMERO

Republic of the Philippines
House of Representatives
Quezon City

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL No. 4617

Introduced by Representative Michael L. Romero

AN ACT

AMENDING **REPUBLIC ACT NO. 9184**, OTHERWISE KNOWN AS THE
"**GOVERNMENT PROCUREMENT REFORM ACT**", PROVIDING
FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION
OF THE GOVERNMENT PROCUREMENT PROCESS AND FOR
OTHER PURPOSES

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

ARTICLE I
GENERAL PROVISIONS

SECTION 1. SHORT TITLE. - This Act shall be known as the "**Revised Government Procurement Reform Act of 2022**"

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 consistent with global open contracting data standards.

(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.

(f) Sustainable public procurement as driver for innovation and sustainable development.

(g) Inclusive public procurement and entrepreneurship through the encouragement and incentivization of priority enterprises involvement.

SEC. 4. Scope and Application. — This Act shall apply to the procurement of infrastructure projects, goods, and consulting services, vehicles, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, bureaus, offices and agencies, including government-owned and/or -controlled corporations, government financial institutions, state universities and colleges, military and police units, and local government units, subject to the provisions of Commonwealth Act No. 138. entered into by the Philippine government before the passage of this Act shall likewise be governed by the provisions of this Act: Provided, That the Government Procurement Policy Board (**GPPB**) shall promulgate special rules consistent with the governing principles of this Act for the following classes of procurement:

- a. Those for the use of Philippine Government offices overseas;
- b. Those involving official development assistance or international development assistance through multilateral or bilateral agreements, and those covered by international agreements, international funding, international organization agreements between countries for joint implementation of projects, or any procurement funded by international grant, loan, or other assistance;
- c. Those covered by the national security interests including defense articles, services, and infrastructure projects determined by the Secretary of National Defense as vital to national security and other strategic considerations; and

d. Those involving scientific research and development initiatives.

However, for the procurement of science, engineering, technology and research equipment, and specialized supplies and materials, this Act shall not apply in case the amount of the goods and equipment to be procured are not more than One hundred thousand pesos (P 100,000.00).

SEC. 5. Definition of Terms. — For purposes of this Act:

(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 Executive Order 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. For multi-year contracts, for which a Multi-year Contractual [Obligational] Authority (MYCA) [(MYOA)] or an equivalent document is required, the ABC shall be incorporated in the project cost reflected in the MYCA [MYOA] or equivalent document.

(b) BAC refers to the Bids and Awards Committee established in accordance with Article IV of this Act.

(c) Best value procurement refers to the procurement process where all key factors such as, but not limited to, price, life cycle cost, benefits and predicted risks are considered in the selection process to maximize the performance and value for money of every government procurement project or program.

(d) Bidding Document refers 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, or to the electronic document published by the procuring entity to a portal or PhilGEPS for purposes of inviting potential bidders.

(e) Bid refers to a signed offer or proposal submitted physically or through PhilGEPS by a supplier, manufacturer, distributor, contractor or consultant in response to the Bidding Documents.

(f) Blacklisting refers to an administrative penalty disqualifying a person or an entity from participating in any government procurement for a given period.

(g) 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.

(h) Consulting service refers 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.

(i) Cooperative refers to any association duly registered with the Cooperative Development Authority and defined as such by Republic Act No.

6938, otherwise known as the Philippine Cooperative Code of 2008, as amended.

(j) Disabled persons refers to any person described as such by Republic Act No. 7277, otherwise known as the Magna Carta For Disabled Persons, as amended.

(k) 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.

(l) GPPB refers to the Government Procurement Policy Board established in accordance with Article XXI of this Act.

(m) Head of the procuring entity refers to: (i) the head of the agency or the 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.

(n) Key performance indicators (KPI) refers to measurable value that demonstrates how effective a procurement is being implemented.

(o) Infrastructure project includes 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.

(p) IRR refers to the implementing rules and regulations to be promulgated in accordance with Section 124 of this Act.

(q) Life-cycle cost refers to the total cost of ownership of a good from its acquisition, operation, maintenance, and disposal.

(r) Micro, Small and Medium Enterprise (MSME) refers to any business or enterprise defined and found eligible as such by **Republic Act No. 6977**, otherwise known as the Magna Carta for Small Enterprises, as amended.

(s) Multi-year Project refers to the program or project that takes more than one (1) year to complete;

(t) Multi-year Contractual Authority (MYCA) refers to the authorization awarded to multi-year projects or programs that will take more than one year for completion and will require multi-year appropriations.

(u) 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.

(v) Performance-based specification refers to a requirement describing the desired outcomes or results in terms of functional or performance requirements rather than in terms of technical details used in cases when the procuring entity is uncertain of the best process or method to deliver the requirements, when high-level technology is required, when suppliers are known to have the capability to design fit for purpose solutions, or when past performance or other non-financial considerations may be beneficial in the government.

(w) PhilGEPS refers to the Philippine Government Electronic Procurement System as provided in Section 10 of this Act.

(x) Priority enterprise refers to sheltered workshop, cooperative, and micro, small and medium enterprise.

(y) Sheltered workshop refers to any business, enterprise, or workplace the main purpose of which is the social and professional integration of disabled persons: Provided, That at least thirty percent (30%) of workers, employees, or personnel in the sheltered workshop, at the time of bid evaluation and throughout the execution of the contract, are disabled persons.

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.

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.

The annual procurement plan of the national government agencies shall conform with the National Development Plan and, in the case of the local government unit, with the local development plan.

The procuring entities shall make a list of their purchase priority which shall be included in their annual procurement plan and budget.

ARTICLE II

COMPETITIVE BIDDING

SEC. 8. Lowest Bid Procurement. — Lowest bid method of Competitive Bidding shall be the default mode of procurement, except as provided for in Section 10 and Article XV of this Act.

SEC. 9. Best Value Procurement. — Procurement of non-common use Goods, Infrastructure Projects, Consultancy Services, and other classes as determined by the GPPB, may be done through the Best Value Procurement (BVP) method.

In the use of BVP method, the following factors or a combination thereof may be considered as relevant technical and financial components of each submission, including:

- a) Quality of the goods, materials, and services;
- b) Alignment with desired outcomes;
- c) Key performance indicators;
- d) Risks involved;
- e) Timeliness;
- f) Life cycle costs;
- g) Potential bidder's relevant experience and performance history; and
- h) Environmental sustainability of the proposed goods and infrastructures.

ARTICLE III

PROCUREMENT BY ELECTRONIC MEANS

SEC. 10. Transparency and Efficiency in Electronic Procurement.

— To promote transparency and efficiency, information and communications technology shall be fully 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 from the planning stage up to its implementation to be known as the Philippine Government Electronic Procurement System (PhilGEPS). The PhilGEPS shall serve as the primary and definitive source of information on government procurement and shall provide equal access to all potential bidders. Further, the Government Procurement Policy Board (GPPB), the governing body created under Article XXI of this Act, is authorized to approve changes in the procurement process to adapt to

improvements in 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 PhilGEPS and the volume discounts inherent in bulk purchasing, all Procuring Entities shall utilize the PhilGEPS 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. 11. Security, Integrity and Confidentiality. — The PhilGEPS shall ensure the security, integrity, and confidentiality of documents submitted through the system. It shall include features that provide for an audit trail for electronic transactions and allow the Commission on Audit to verify the security and integrity of the systems at any time.

SEC. 12. Adoption of State-of-the-Art Technologies. — PhilGEPS shall continuously adopt state-of-the-art technologies which shall have the minimum features of real-time updates, traceability of all transactions, and accessibility to a large pool of users at any given time.

SEC. 13. Prompt Payment. — PhilGEPS shall incorporate an electronic payment system that shall ensure prompt payments to suppliers. In all cases, obligations of the government must be settled within thirty (30) calendar days after the delivery and favorable inspection of the goods or services.

ARTICLE IV

BIDS AND AWARDS COMMITTEE (BAC)

SEC. 14. 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, reassignment, 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. 15. Functions of the BAC. — The BAC shall have the following actions: 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 the 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 XIV, 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 XV hereof. The BAC shall be responsible for ensuring that the procuring entity abides by the standards set for 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. 16. 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, members in good standing of the sector, discipline or non-government organization they represent as duly certified by the head of the sector, discipline or organization to which they belong, and should meet the criteria for observers as set forth in the IRR.

Each observer shall make a separate report on the conduct of the public bidding, its procedures, conditions and problems, if any, which shall be submitted to the procuring entity, the GPPB and the Commission on Audit.

In case of unavailability of the observers from the non-government organization or private sector, the GPPB shall provide qualified observers to the BAC. For this purpose, the GPPB shall maintain a registry of procurement professionals qualified to be the observers to the BAC.

The absence of any of the observers and corresponding reports shall nullify the bidding process.

SEC. 17. BAC Secretariat. — To assist the BAC in the conduct of its functions, procurement units shall be established in all government agencies and instrumentalities that will serve as the main support unit of the BAC. The GPPB shall promulgate guidelines as to the duties of its personnel, number of plantilla items, compensation, and other matters necessary for the success of these units.

SEC. 18. 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. For this purpose, the Department of Budget and Management shall promulgate the necessary guidelines.

SEC. 19. Procurement Academy. 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.

For this purpose, the GPPB shall establish a procurement academy under its technical service office that shall be responsive to the needs and apt for the responsibilities of government procurement personnel and other interested individuals.

The procurement academy may establish partnerships with state universities and colleges (SUCs) or other educational institutions in providing these trainings. The GPPB shall establish standards for accreditation of these institutions. Certifications shall be awarded to individuals who will finish the courses.

The members of the BAC secretariat shall undergo an annual training based on their responsibilities as conducted. The head of the procuring entities, members of the BAC, and the technical working groups shall undergo an executive course on procurement.

The GPPB shall also establish a system professional licensure examinations of procurement practitioners.

SEC. 20. Maintenance, Update, and Back Up. — PhilGEPS must undergo a periodic maintenance to ensure that its systems are running smoothly. It shall have a disaster backup feature to maintain the system's integrity and ensure uninterrupted operations.

SEC. 21. Data Collection and Analysis. — the GPPB technical service office and the Department of Budget and Management procurement service shall collect data and create usable and presentable statistics on procurement activities to understand the status of public procurement and formulate and implement effective procurement policies.

ARTICLE V

INTEGRATED PROCUREMENT PROCESS

SEC. 22. Integrated Procurement Process. - The life cycle of procurement activities has three integrated stages:

- a) Planning Stage that includes:
 - (1) Procurement Planning;

- (2) Requirement Specification and Market Feasibility Analysis;
 - (3) Preparation of bidding documents.
- b) Sourcing Stage
- (1) Invitation to Bid;
 - (2) Receipt and Opening of Bids;
 - (3) Bid Evaluation;
 - (4) Post-Qualification; and
- (c) Management Stage
- (1) Implementation of Contract
 - (2) Monitoring and Evaluation
 - (3) Disposal.

ARTICLE VI

PREPARATION OF BIDDING DOCUMENTS

SEC. 23. 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.

ARTICLE VII

PLANNING STAGE

A. PROCUREMENT PLANNING

SEC. 24. Procurement Capability Index. — The procuring entity shall submit a self-assessed procurement capability index (PCI) to the Department of Budget Management every year. The PCI shall gauge the capacity of the procuring entity to undertake procurement activities.

In the preparing the PCI, the procuring entity shall engage with stakeholders and also review previous or existing contracts.

SEC. 25. Multi-year Contracting. — National government agencies, local government units, constitutional offices, and state universities and colleges may request the Department of Budget and Management for the issuance of a Multi-year Contracting Authority (MYCA) prior to entering into contracts to cover the total project costs of multi-year projects, whether locally-funded or foreign-assisted. In the case of government-owned and/or -controlled corporations, they shall secure prior authority from their respective governing boards before entering into multi-year projects and proceeding with their procurement.

SEC. 26. Estimate of the Total Monetary Value of a Procurement. — The end-user must consider the total value over the whole life of the contract required for the full delivery of the goods, infrastructure projects, or consulting services in estimating the total monetary value of procurement

through methodologies such as life cycle costing. The GPPB may prescribe special methods of valuation in certain types of procurement.

SEC. 27. Procurement Short of Award. — To facilitate the immediate procurement of goods, infrastructure projects, or consulting services, even pending approval of the General Appropriations Act, corporate budget, or appropriations ordinance, as the case may be, the procuring entity may undertake procurement activities short of award. National government agencies, state universities and colleges, constitutional commissions or comes may start their procurement activities immediately after the National Expenditure Program has been submitted by the President to Congress: Provided, That the head of the procuring entity has approved the corresponding indicative Annual Procurement Plan (APP). This will facilitate the awarding of procurement contracts after the enactment of the GAA, enabling the timely implementation and completion of programs and projects.

The procuring entities shall proceed with the awarding of contract only upon approval or enactment of their respective appropriations or budget authorization documents, as the case may be, and on the basis of the amount authorized therein.

Should the approved budget for a program, activity, or project be lesser than the amount indicated in the National Expenditure Program, the concerned procurement entity shall make the necessary adjustments accordingly.

B. REQUIREMENT SPECIFICATION AND INDUSTRY ANALYSIS

SEC. 28. Requirement Specification. — Upon the issuance of the National Expenditure Program, the procuring entity shall instruct its end-users to further specify the requirements of their proposed procurement activities.

SEC. 29. Industry Analysis. — After the end-users have specified their requirements, an industry analysis shall be conducted wherein the landscape of suppliers for the desired goods and services is examined. The end-users shall also determine the risks involved in the procurement and potential mitigation approaches.

SEC. 30. Price References. — The DBM procurement service, in cooperation with the Department of Trade and Industry, shall maintain verified price references for common use items and other items that shall be seasonably updated. Procuring entities may use these verified price references in lieu of market feasibility studies.

C. PREPARATION OF BIDDING DOCUMENTS

SEC. 31. Reference to Brand Names. Specifications for the procurement of goods and goods components of infrastructure projects shall be based on relevant characteristics and performance requirements. Reference to brand names shall be allowed in specific instances, as determined by the GPPB: Provided, That in cases where the reference to the brand name of a particular supplier is necessary, the phrase "or equivalent" shall be added after such reference.

SEC. 32. Access to Information. — In all stages of the preparation of the bidding documents, the procuring entity shall ensure equal access to information by posting the said documents in the PhilGEPS website and making them available in the concerned offices. Prior to their official release, no aspect of the bidding documents shall be divulged or released on any prospective bidder or having direct or indirect interest in the project to be procured.

ARTICLE VIII

SOURCING STAGE

A. INVITATION TO BID

SEC. 33. Pre-Advertising Conference. — Prior to the issuance of the invitation to bid, the BAC is mandated to hold a pre-advertising 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. The pre-advertising conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as reviewing all relevant documents in relation to their adherence to law. This shall be attended by the BAC, the unit or officials who prepared the bidding documents and the draft invitation to bid, as well as consultants hired by the agency concerned and the representative of the end-user.

SEC 34. Advertising and Contents of the Invitation to Bid. — In line with the principle of transparency and competitiveness, all invitations to bid contracts under Lowest Cost Procurement and Best Value Procurement shall be posted on the entity' s website and openly 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, the invitation to bid, including the list of requirements, conditions, contact details and required tax clearances and licenses, shall be posted in the procuring entity's premises, the PhilGEPS and the website of the procuring entity at least sixty (60) days before deadline for submission of bids. The details and mechanics of implementation shall be provided in the IRR to be promulgated under this Act.

The invitation to bid shall contain, among others:

- (a) A brief description of the subject matter of the procurement;

(b) A general statement on the criteria, certifications, and performance measures to be used by the procuring entity for the eligibility check, the shortlisting of prospective bidders, in the case of the procurement of consulting services the examination and evaluation of bids, and post-qualification;

(c) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;

(d) The approved budget for the contract to be bid;

(e) The source of funds;

(f) The period of availability of the bidding documents, and the place where these may be secured;

(g) The estimated timeframe for delivering the goods, infrastructure projects, and consulting services, or the estimated contract duration and any options relating to the length of contract;

(h) Any limitations on the number of bidders that may be shortlisted;

(i) The mode of procurement; and

(j) Such other necessary information deemed relevant by the procuring entity.

Any prospective bidder may send queries about the invitation to bid to the procuring entity electronically. The procuring entity must promptly respond to all questions and reasonable requests for information within two (2) working days: Provided, That information that might give undue advantage over other prospective bidders or disclose confidential or commercially sensitive information must not be given. Provided, further, That when a procuring entity responds to a supplier's question, it must not discuss or disclose another supplier's confidential or commercially sensitive information.

The procuring entity may make changes in its requirements or process or provide additional information to all participating bidders after an invitation to bid is published: Provided, That should a shortlisting be conducted, the information must be made available to all shortlisted bidders at the same time. Changes in the bid thereafter shall be allowed until the deadline for responses.

SEC. 35. Closed Invitation to Bid. — Invitations to bid shall be sent to either a direct source or a limited number of known suppliers, as the case may be, for the alternative methods of procurement as defined in Article XV of this Act as well as to the following transactions: (a) Purchase of a prototype for research, experiment, study, or original development;

- (b) Purchase on exceptionally advantageous conditions that only arise on the very short term;
- (c) Where the contract is awarded to the winner of a design contest; and
- (d) Where an agency receives a unique unsolicited proposal.

SEC 36. Pre-bid Conference. — At least one physical or web-based 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 shall be held within thirty (30) days after the last day of posting of the invitation to bid and 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 IX

VIDEO RECORDS OF ALL BIDDING CONFERENCES

SEC. 37. Video Recording of All Procurement-Related Conferences.
— To enhance the transparency of the procurement process, the procuring

entity shall keep a video recording of all procurement-related conferences including but not limited to pre-procurement conference, pre-bid conference, bid opening, and all meetings of the bids and BAC, for all procurement projects equal or exceeding the amount of One million pesos (PI 00).

All procurement related conferences may not commence without a video recording initiated by the chair of the BAC.

Violations of this Section shall be meted out penalties as prescribed under Articles XXII (Penal Clause), XXIII (Civil Liability), and XXIV (Administrative Sanctions) of this Act. In addition to the aforementioned sanctions, the contract in favor of the errant party shall be nullified if the bid has been awarded.

SEC. 38. Specifications of the Video Recording. — The video recording shall be clear and shall provide a close-up view of those present in the conference. During recording, the members of the BAC, the prospective or qualified bidders, the representative of the Commission on Audit and the two (2) observers invited in accordance with Article IV of this Act, shall be introduced one by one.

SEC. 39. Copies of the Video Recording. — There shall be made three (3) copies of the video recording for the perusal and/or record of the BAC, the GPPB, and the Commission on Audit (COA). The video copies shall be made available to the public upon written request and payment of a specified fee.

SEC. 40. Written and Video Records as Evidence in Court. — In case of any pertinent legal action, the video records may be subject to subpoena duces tecum, and may be used as evidence in court as it finds appropriate.

The BAC, GPPB, and COA shall store the video records for not less than twenty (20) years and may dispose of them thereafter.

The BAC and the GPBB shall ensure that the copies of the recording are regularly checked to ascertain that they are in good condition and not deteriorating, subject to the recommended conservation practices for the storage of the same.

SEC. 41. Logistics of Video Recording. — The BAC of each procuring entity shall be in charge of the logistics of video recording and other related technical matters, such as but not limited to audio, archiving, and such other matters necessary to carry out the provisions of this Act.

SEC. 42. Procurement of Video Recording Equipment. — The GPPB shall be in charge of the procurement of the video recording equipment and related supplies to be allocated to the procuring entities.

SEC. 43. Exclusion of bidders. — The procuring entity may exclude a bidder from participating due to the following reasons:

- a. Blacklisting of the supplier;
- b. Bankruptcy, receivership, or liquidation;
- c. Making a false declaration in its submissions;
- d. Serious performance issue in a previous contract;
- e. Conviction for a serious crime;
- f. Professional misconduct;
- g. Failing to pay taxes, duties, or other levies;
- h. Human rights violations by the supplier or in the supplier's supply chain; and
- i. Any analogous matter.

Evidence supporting the reason for exclusion must exist before exclusion. The excluded bidder must be notified of its exclusion together with the reasons for such and be afforded the right to refute within a reasonable time.

SEC. 44. Eligibility Requirements for the Procurement of Goods and Infrastructure Projects. — The BAC or, under special circumstances specified in the IRR, its duly designated organic office shall determine the eligibility of prospective bidders for the procurement of goods and infrastructure projects, based on the bidders' compliance with the eligibility requirements within the period set forth in the invitation to bid. 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 the 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 the eligibility requirements electronically. However, said bidder shall later on certify under oath as to correctness of the statements made and the completeness and authenticity of the documents submitted: Provided, That for the procurement of infrastructure projects, the participation of prospective bidders shall be determined based on the approved budget for the contract (ABC) as follows:

1. ABC of One hundred million pesos (P 100,000,000.00) and below. The location of the main office of the bidder must be within the province where the project shall be implemented;
2. ABC of above One hundred million pesos (P 100,000,000.00) and below Two hundred million pesos (P200,000,000.00) The location of the main office of the bidder must

be within the region where the project shall be implemented; and

3. ABC of above Two hundred million pesos (P200,000,000.00) The location of the main office of the bidder may be anywhere in the Philippines.

B. RECEIPT AND OPENING OF BIDS

SEC. 45. Eligibility Requirements and Shortlisting. — The eligibility of prospective bidders for the procurement of goods, infrastructure services, and consulting services shall be determined by their compliance with the eligibility requirements prescribed for the competitive bidding concerned, within the period stated in the invitation to bid. The eligibility requirements shall provide for fair and equal access to all prospective bidders. The prospective bidder shall certify under oath as to the correctness of the statements made, and the completeness and authenticity of the documents submitted. A prospective bidder may be allowed to submit the eligibility requirements electronically. However, said bidder shall later on certain under oath as to correctness of the statements made and the completeness and authenticity of the documents submitted. The eligible prospective bidders shall then be evaluated using numerical ratings on the basis of the shortlisting 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. 46. Submission and Receipt of Bids. — A bid shall have two (2) components, namely the technical and financial components which should be in separate electronic folders or sealed envelopes, and which shall be submitted simultaneously. The bids shall be received by the BAC on or before such date, time and place specified in the invitation to bid. The deadline for the receipt of bids shall be fixed by the BAC, giving the prospective bidders

sufficient time to study and prepare their bids. The deadline shall also consider the urgency of the procurement involved.

Bids submitted after the deadline shall not be accepted.

Notwithstanding the provisions of this Section and Section 47 of this Act, the GPPB may prescribe innovative procedure for the submission, receipt and opening of bids through the PhilGEPS. The GPPB shall upgrade the electronic bidding system in the G-EPS that facilitates the submission of bids, quotation, documents and payment to the BAC through an electronic device. The GPPB may prescribe other innovative procedures that expedite the procurement process.

SEC. 47. Modification and Withdrawal of Bids. — A bidder may modify the bid, provided that this is done before the deadline for the receipt of bids. The modification shall be submitted in an electronic folder or sealed envelope duly identified as a modification of the original bid and stamped received by the BAC.

A bidder may, through an electronic mail, withdraw the bid or express the intention not to participate in the bidding before the deadline for the receipt of bids. In such a case, bidder shall no longer be allowed to submit another bid or the same contract either directly or indirectly.

SEC. 48. 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. 49. 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. 50. Bid Opening. - The BAC shall publicly open all bids at the time, date, and place specified in the bidding documents, which in no case shall be more than five (5) working days after the deadline of the submission of bids. The minutes of the bid opening shall be made available to the public through the PhilGEPS.

C. BID EVALUATION

SEC. 51. Oral Presentations and Demonstrations. — To provide top-ranked bidders an opportunity to highlight the strengths of their proposal and provide answers regarding their bids, a procuring entity may have the option to schedule an oral presentation of their respective proposals that shall be conducted in a fair manner not later than five (5) calendar days after the opening of bids in best value procurements. Provided, That the bidders shall not be allowed to submit new information or modify their bids.

SEC. 52. Final Offer. — After the oral presentation and demonstration, the procuring entity may give bidders up to two (2) opportunities to improve their bids in order to receive a more favorable evaluation. The bidders shall be requested to submit their final offers not later than ten (10) working days after the oral presentation or demonstration. Procuring entities may evaluate the final offers as an addition to the scores already received by the bidders on their original bid or may develop a new evaluation process based entirely on the final offers.

Bidders may opt not to submit a final offer and respond in writing to the procuring entity that their response remains as originally submitted. During the final offer process, the lowest price during the original responses may be

disclosed but not the identity of the bidder as well as the current rank of the bidders.

SEC. 53. Preliminary Examination of Bids. — Prior to bid evaluation, the BAC shall examine first the technical components of the bids using "pass or 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 component.

SEC. 54. 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. 55. Bid Evaluation for the Procurement of Goods and Infrastructure Projects. — For the procurement of goods and infrastructure projects, the 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 price in lowest bid procurement or overall performance rating based on evaluation criteria shall be referred to as the "Most Advantageous Bid."

The most advantageous bid under best value procurement shall be understood as the one that offers the best public value over the whole life of the goods and infrastructure projects as proposed by the bidder that fully understands and has the capability to deliver the requirements and meet the contract conditions.

SEC. 56. Bid Evaluation of Shortlisted Bidders for Consulting Services. — For the procurement of consulting services, the bids of the shortlisted bidders shall be evaluated and ranked using numerical ratings in accordance with the evaluation criteria stated in the bidding documents, which shall include factors such as, but not limited to, experience,

performance, quality of personnel, price and methodology. The bids shall be ranked from highest to lowest in terms of their corresponding calculated ratings. The bid with the highest calculated rating shall be the "Most Advantageous Bid." After approval by the head of the procuring entity of the Most Advantageous Bid, the BAC shall invite the bidder concerned for negotiation 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, or facilities, or data to be provided by the procuring entity concerned, and provisions of the contract. When negotiations with the first-in-rank bidder fails, the financial proposal of the second rank bidder shall be opened for negotiations: Provided, That the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the ABC. Whenever necessary, the same process shall be repeated until the bid is awarded to the winning bidder.

D. POST-QUALIFICATION

SEC. 57. Objective and Process of Post-qualification. — Post-qualification is the stage where the bidder with the most advantageous bid (MAB) undergoes verification and validation whether the bidder has passed all the requirements and conditions as specified in the bidding documents.

If the bidder with the MAB passes all the criteria for post-qualification, the bid shall be considered the most advantageous and responsive bid (MARB). However, if a bidder fails to meet any of the requirements or conditions, the bidder shall be "post-disqualified" and the BAC shall conduct the post-qualification on the bidder with the second MARB. If the bidder with the second MARB is post-disqualified, the same procedure shall be repeated until

the MARB is finally determined. In all cases, the contract shall be awarded only to the bidder with the MARB.

In Best Value Procurements, the procuring entity is not required to automatically select a bidder based upon the lowest cost or the highest qualifications unless these were the primary criteria for selection.

SEC. 58. Debriefing of Unsuccessful Bidders. — Upon the request of any unsuccessful bidder, the procuring entity shall conduct a debriefing in order to give them an opportunity to improve their future proposals. Requests may be made within twenty (20) days after giving the notice of award. The procuring entity shall state the reasons their proposal was not selected, their relative strengths and weaknesses, and address other concerns. In no case shall the procuring entity disclose another bidder's confidential or commercially sensitive information.

SEC. 59. Failure of Bidding. — There shall be a failure of bidding if:

- (a) No bids are received;
- (b) No bid qualifies as the MARB;
- (c) Whenever the bidder with the MARB refuses, without justifiable cause to accept the award of contract, as the case may be;
- (d) Non-compliance with the requirements for the award of contract;
or
- (e) Failure to enter into contract and post-performance security.

Under any of the above instances, the contract shall be re-advertised and re-bid. The BAC shall observe the same process and set the new periods according to the same rules followed during the first bidding. After the second

failed bidding, however, the BAC may resort to negotiated procurement as provided for in Section 89 of this Act.

The BAC of the procuring entity shall inform in writing the GPPB of the failure of bidding and the reason thereof. The BAC of the procuring entity shall secure the approval of GPPB for re-bidding or negotiated procurement.

SEC. 60. Single Advantageous Responsive Bid Submission. — A single advantageous responsive bid shall be considered for award if it falls under of the following circumstances: (a) If after advertisement, only one prospective bidder submits a letter of intent 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 X

IMPLEMENTATION STAGE

A. AWARD, IMPLEMENTATION AND TERMINATION OF THE CONTRACT

SEC. 61. Notice and Execution of Award. — Within a period not exceeding seven (7) calendar days from the determination and declaration by

the BAC of the most advantageous and responsive bid and the recommendation of the award, the head of the procuring entity or the duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the head of the procuring entity or the duly authorized representative shall immediately issue the notice of award to the bidder with the most advantageous and responsive bid. In case of disapproval, the head of the procuring entity shall state the reasons thereof and return the documents to the BAC on the same day, which shall take action thereon within five

(5) working days.

In case the head of the procuring entity disapproves the recommendation of the BAC to award the contract to the bidder with the lowest calculated responsive bid or the highest rated responsive bid, the head of the procuring entity shall state the specific reasons for the disapproval and return the same to the BAC immediately on the day of the disapproval.

Within five (5) calendar days from receipt of the notice of award, the winning bidder shall formally enter into contract with the procuring entity. Otherwise, the contract shall be deemed approved by the head of the procuring entity or the authorized representative.

In case the head of the procuring entity disapproves the contract, the reason or reasons for the disapproval shall be stated in clear and unmistakable terms and the disapproved contract shall be returned immediately on the day the contract is disapproved to the implementing unit of the project which shall take action thereon within two (2) days from its receipt of the disapproved contract.

The head of the procuring entity or the authorized representative shall issue the notice to proceed to the winning bidder on the day immediately

following the approval of the contract and shall cause the service of the notice to proceed through the fastest means of communication recognized as valid mode of service of implementing unit of the project notice under existing law.

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 five (5) working days from the date of approval of the contract by the appropriate authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the contractor. The other bidders shall likewise be promptly notified by the decision of the BAC. The notice of award and the notice to proceed shall be published in PhilGEPS.

SEC. 62. 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 the 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, without prejudice to the appropriate administrative sanctions that may be imposed against responsible officials.

The procurement process, starting from the date of the publication of the invitation to bid, which shall be published only once in a newspaper of

national circulation for projects costing Fifteen million pesos and above up the issuance of the notice to proceed shall not exceed three (3) months or a shorter period as may be warranted for justifiable cause to be determined by the head of the procuring entity.

For contracts wherein there is only one bidder, the procurement process starting from the date of submission and opening of bids up to issuance of the notice to commence or proceed shall not exceed fifteen (15) days.

No project shall be included for funding in the General Appropriations Act unless the detailed plans and specifications therefor have been duly completed and approved by the head of the procuring entity and the right-of-way or site for the project have been acquired by the procuring entity either through negotiated sale or by expropriation.

The chairperson of the BAC, its members and the members of the secretariat or technical working group shall give first priority to the discharge of their duties and functions as BAC members and members of the secretariat or technical working group, to ensure that the timelines for procurement activities are attained.

SEC. 63. 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 the 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. 64. Failure to Enter into Contract and Post Performance Security. — If, for justifiable causes, the bidder with the most advantageous and 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 most advantageous and responsive bid. This procedure shall be repeated until an award is made. However, if no award is possible, the contract shall be subjected to a new bidding or be cancelled.

In the case of a failure to post the required performance security, the bid security shall be forfeited without prejudice to the imposition of sanctions prescribed under Article XXIV.

SEC. 65. 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. 66. 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.

B. MONITORING AND EVALUATION

SEC. 67. Managing Relationship With Winning Bidder. — The procuring entity through the end-user shall actively manage the contractual

relationship with the winning bidder to ensure that key performance indicators are met through regular communication.

SEC. 68. Periodic Updates. — The end-user shall make periodic updates on the compliance of the winning bidder not longer than three (3) months apart.

SEC. 69. Satisfaction Metric. — The procuring entity shall rate the performance of the winning bidder before a contract is terminated using a metric to be formulated by the GPPB accompanied by detailed observations that shall be reflected in the profile of the bidder in PhilGEPS.

The winning bidder shall also be given the opportunity to rate the procuring entity after the termination of the contract.

The GPPB shall collate these ratings and any recommendations for improvement of bidders and the procurement process itself.

SEC. 70. Blacklisting. — Blacklisting of non-compliant suppliers, contractors, and consultants as well as whitelisting or recognizing compliant and exemplary suppliers, contractors, and consultants shall be allowed upon release of guidelines or ratings system by the GPPB. These shall be easily viewable in the PhilGEPS website. Blacklisted persons and entities shall be automatically barred from participating in any PhilGEPS activity.

An information technology infrastructure that can accommodate the uploading of proceedings and transactions in PhilGEPS shall be provided. This shall be accessible to everyone, especially for government watchdogs.

C. DISPOSAL

SEC. 71. Disposal Procedure. The procuring entities shall follow the established government disposal procedures.

ARTICLE XI

DOMESTIC AND FOREIGN PROCUREMENT

SEC. 72. Procurement of Domestic and Foreign Goods. — Consistent with the country's obligations under international treaties or agreements, goods may be obtained from domestic or foreign sources and the procurement thereof shall be open to all eligible suppliers, manufacturers and distributors. However, the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality in accordance with the provisions of existing laws and treaties or international agreements must be prioritized or given preference. Foreign bidders may only be eligible to participate under any of the following circumstances:

- A. When the goods sought to be procured are not available from local suppliers; or
- B. When the foreign supplier, manufacturer or distributor is a citizen, corporation or association of a country the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines, irrespective of the availability of goods from local suppliers; or
- C. When provided for under any treaty or international or executive agreement.

SEC. 73. Local Added Value. — All government-sponsored or government-issued supplies to beneficiaries shall have at least seventy percent (70%) local added value.

For purposes of this Act, supplies refer to materials and equipment necessary in the transaction of the official business of the procuring entity and used in its day to day operations.

SEC. 74. Certification Requirement. — In order to be qualified to participate in the bidding process, suppliers are required to show proof of compliance to the requirement mentioned in Section 73 of this Act.

The Department of Trade and Industry shall issue the certification to qualified suppliers or vendors who want to participate in the procurement process.

SEC. 75. Availability of Local Materials. — The materials needed to produce the government-sponsored or government issued supplies shall be locally sourced. In case of nonavailability of materials locally, it is required that a certification from the Department of Trade and Industry stating that locally made and sourced materials are not available, before a supplier can participate in any government procurement bidding.

SEC. 76. Domestic and Foreign Bids. — Whenever several domestic and foreign bidders shall participate in the bidding to supply articles, materials and equipment, the award shall be given to the domestic bidder offering the lowest bid, provided the amount of the bid is not more than twenty-five percent (25%) in excess of the lowest bid offered by a foreign bidder.

SEC. 77. Procurement of Imported Goods. — The procurement of imported goods may be allowed if local products, materials and supplies are not manufactured domestically in sufficient quantity or comparable quality and at reasonable prices.

SEC. 78. Prioritization of Domestically Manufactured Vehicles in Public Procurement. — In all public procurement involving the purchase of motor vehicles, the government shall be required to procure only those manufactured domestically and, also, in public procurement involving lease or rental of vehicles the government shall be required to procure from service providers at least 50 percent (50%) of whose fleets are composed of

domestically-manufactured vehicles acquired in the five (5) years preceding the date of procurement, unless no such vehicles meeting the required specifications or possessing the required capabilities are manufactured or produced within the Philippines.

ARTICLE XII

BIDDING OF PROVINCIAL PROJECTS

SEC. 79. Bidding of Provincial Project. — 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 82 hereof.

SEC. 80. 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 Department of Budget and Management, the mechanisms of which shall be spelled-out in the IRR.

ARTICLE XIII

LEASE OF COMPUTERS, COMMUNICATIONS, INFORMATION AND OTHER EQUIPMENT

SEC. 81. 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 XIV

DISCLOSURE OF RELATIONS

SEC. 82. Disclosure of Relations. In addition to the proposed contents of the invitation to bid as mentioned under Section 23 of this Act, all bidding documents shall be accompanied by a sworn affidavit, that the bidder, or any officer of their corporation, is not related to the head of the procuring entity by consanguinity or annuity 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 55 of this Act.

ARTICLE XV

ALTERNATIVE METHODS OF PROCUREMENT

SEC. 83. Alternative Methods. — Subject to the prior approval of the head of the procuring entity or the 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 preselected 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 or 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 89 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. In all instances, the procuring entity shall ensure that the most advantageous price for the government is obtained.

(f) Express Mode - a method of procurement that involves direct procurement from a previous competitive bidding winning bidder, subject to challenges from better offers;

(g) Electronic Shopping - a method of procurement whereby the procuring entity requests the submission of price quotations for rated

products through an online platform and proceeds to select a supplier from said quotations.

SEC. 84. 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 for technical reasons there is no real competition; 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. 85. Express Mode. - Procuring entities who wish to procure the same goods or services from a previous winning bidder may do so subject to a challenge period for better offers.

The procuring entity utilizing the express mode of procurement shall post a notice to challenge, indicating the present supplier, the goods or services to be procured, the present contract price of goods or services, an invitation to challenge the existing supplier, and a period for accepting better offers, which period shall not be less than seven (7) days.

In the event that there are no better offers submitted, the procuring entity may directly procure from the previous winning bidder.

In the presence of better offers, the previous winning bidder shall be given seven (7) working days to match the better offer. If the previous winning bidder matches the better offer, the procuring entity shall be allowed to directly procure from the previous winning bidder.

Otherwise, procuring entity directly procure from the supplier that produced the better offer. Prior to the procurement, the procuring entity shall publicly post the result of the challenge.

SEC. 86. Shopping. Shopping may be resorted to under any of the following instances:

a. When there is an unforeseen contingency requiring immediate purchase: Provided,

That the amount shall not exceed Two hundred thousand pesos (P200,000); or

b. Procurement of ordinary or regular office supplies and equipment not available in the procurement service involving an amount not exceeding One million pesos (P1,000,000.00).

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. In case the required number of quotations are not received, the procuring entity may canvass on its own from at least three (3) reputable suppliers.

The above amounts shall be subject to a period 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. 87. Electronic Shopping. Procuring entities may purchase goods that have undergone an online platform rating process. The online platform may receive requests for quotations from procuring entities. In making their request for quotations, the procuring entity shall provide information on the

description, quantity, delivery location, minimum rating requirement, and such other information as it may deem necessary.

Within seven (7) days, the online platform shall furnish the procuring entity with a list of rated products, and the quotations from applicant-suppliers. For purposes of transparency, a copy of the list and quotations shall be immediately transmitted to the Department of Budget and Management and the Commission on Audit.

The end-user of the goods being procured shall select from among the quotations received and make a recommended purchase to the head of the procuring entity for approval.

The procuring entity shall be given a maximum of seven (7) calendar days from date of issuance of quotations to enter into a contract with the selected supplier: Provided, That in no instance shall the contract price exceed the approved budget for the contract or 120% of the lowest quoted price, whichever is higher.

SEC. 88. Rating System. — Within one year from the effectivity of this Act, there shall be a rating system for goods that may be procured by government.

The rating system shall be made available to the procuring entities, suppliers, and the general public through an online platform that shall be maintained by the Department of Budget and Management, or its relevant attached agency.

For purposes of rating products, there shall be a technical working group headed by the GPPB and composed of technical experts from at least one (1) government agency and end users from at least one (1) government agency. To ensure transparency, an industry representative from the private sector is allowed to observe and act as resource person during the rating

process: Provided, That in the event that there is no technical expert from the government, a technical expert from the private sector shall be invited to rate the product: Provided, further, That in the procurement of products that were never used by government, the intended end-users from the government shall be invited to rate the product.

End-users from procuring entities shall be required to provide feedbacks on products procured through electronic shopping within three (3) months from date of delivery. Said feedbacks shall be used by the system to update product ratings.

There shall be a mechanism for suppliers and industry representatives to challenge the rating given to products. Any challenge to an existing rating shall not result in the exclusion of the product from being listed in the online platform.

For purposes of rating suppliers, the online platform shall assign badges to participating suppliers that have achieved different milestones such as promptness in delivery, number of contracts fulfilled, value of contracts fulfilled, and other criteria that would determine the worthiness of a supplier.

SEC. 89. Negotiated Procurement. — Negotiated procurement shall be allowed only in the following instances:

- a. In case of two (2) failed bidding as provided in Section 61 hereof;
- b. In case of imminent danger to life or property before, during, or after 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 Department of Budget and Management, 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. 90. 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 XI
SUSTAINABLE PUBLIC PROCUREMENT

SEC. 91. Environment-Friendliness Criterion in Procurement. —

Infrastructure projects, the sustainability of materials to be procured shall be given greater weight in the evaluation of bids.

SEC. 92. Inter-Agency Task Force on Sustainable Public Procurement Task Force. - an Inter-Agency Task Force on Sustainable Public Procurement (IATF-SPP) is hereby created to be headed by the Secretary of Environment and Natural Resources, with the Secretaries of Trade and Industry, Public Works and Highways, Science and Technology, and Education, and a representative from environmental organizations, as members.

The IATF-SPP shall be recommend to the GPPB the sustainable procurement policy that shall be applicable to the all government agencies and instrumentalities including, but not limited to, the criteria to be used in the assessment of sustainability of products and services and their corresponding certification.

SEC. 93. Promotion of Certified Sustainable Products. — Certified sustainable products shall be promoted in PhilGEPS.

Green products certified by the PGPTF shall be organized by product names to promote the use of green products in the government.

ARTICLE XVII
INCLUSIVE PUBLIC PROCUREMENT

SEC. 94. Registration of Priority Enterprises. — The PhilGEPS shall maintain a registry of priority enterprises: Provided, That prior to registration,

a priority enterprise shall first have been duly certified as such by the national council for disability affairs, the cooperative development authority, or the micro, small and medium enterprises development council as the case may be. These agencies shall likewise exert efforts to have priority enterprises registered in the PhilGEPS.

Information concerning registered priority enterprises in the PhilGEPS, as defined in the IRR, shall be included in order to facilitate their patronage in accordance with the alternative methods of procurement in Article XV of this Act.

SEC. 95. Prioritization of Enterprises. — The BAC, upon review of the technical and financial components of participating bidders during bid evaluation, shall favor a priority enterprise over a non-priority enterprise and shall accordingly award to the former the contract in the event both such entities display comparably equal competence when analyzed using parameters defined by the GPPB in the IRRR, which shall include a permissible margin which shall still be in favor of priority enterprises.

This prioritization does not apply when there is an enterprise, priority or not, clearly more capable than the rest of those involved.

SEC. 96. Hierarchy of Priority Enterprises. — The parameters and the permissible margin mentioned in the next preceding Section for the IRR shall reflect the following hierarchy from the most prioritized enterprise to the least: (i) sheltered workshops, (ii) cooperatives, (iii) micro enterprises, (iv) small enterprises, and (v) medium enterprises. In case two priority enterprises are found to be of comparably equal competence, the one more prioritized shall be awarded the contract.

SEC. 97. Ceilings, Reductions, or Exemptions on Bid and Performance Securities, Warranties, and Other Guarantees. — The GPPB, after due consultation with the National Council For Disability Affairs,

the Cooperative Development Authority, and the Micro, Small And Medium Enterprises Development Council, shall prescribe instances wherein a reduction of or outright exemption from bid and performance securities, warranties, and other guarantees shall be extended to a priority enterprise, especially when the BAC determines that the priority enterprise has difficulty accessing credit or capital for such securities but is otherwise technically competent and financially capable to fulfill the contract. The GPPB shall likewise prescribe in the IRR ceilings for such securities for priority agencies.

SEC. 98. Reserved Transactions and Earmarking for Priority Enterprises. — Twenty five percent (25%) of a procuring entity's procurements every fiscal year shall be allotted to priority enterprises: Provided, That such limit shall only apply to transactions ordinarily within the capacity of priority enterprises as shall be defined in the IRR. Procuring entities shall exert earnest efforts to meet the above percentage but shall not be faulted if no priority enterprise is available, competent, and capable to meet a procuring entity's contacts.

Procurements of relatively small value, the amounts of which shall be prescribed in the IRR, and which may be coursed through the alternative methods of procurement as provided in Article XI, shall be earmarked to priority enterprises.

SEC. 99. Prohibition on Exclusion. — It shall be unlawful for procuring entities to outright exclude or otherwise limit the participation of priority enterprises during the determination of qualified bidders, eligibility screening, or in any other phase of the procurement process.

ARTICLE XVIII

GRIEVANCE MECHANISM

SEC. 100. Decisions of the BAC; Deviations in Bidding Process. — Decisions of the BAC in all stages of procurement as well as any observed deviations from proper bidding procedure or practice may be questioned via a

motion for reconsideration or submitted, as the case may be, to the BAC within five (5) working days from notice of the decision or the occurrence of the deviation in Tainting. The BAC shall have five (5) working days to decide on the motion or act on the observation and shall furnish copies thereof to all parties involved in the motion or submission.

SEC. 101. Appeal to the Head of the Procuring Entity; Motion for Reconsideration. Decisions or actions and inactions of the BAC in accordance with the next preceding Section may be protested to the head of the procuring entity by filing a verified position paper and paying a non-refundable protest fee, which shall in no case exceed one-fourth percent (0.1%) of the approved budget for contract. The head of procuring entity shall render a decision within five (5) working days from receipt of the position paper. Decisions of the head of the procuring entity may be questioned via a motion for reconsideration which shall be filed within five (5) working days from notice of the decision. Decisions of the head of the procuring entity, which shall be rendered within five (5) working days from the receipt of the motion for reconsideration, shall be final and executory. no second motion for reconsideration shall be allowed. Decisions of the head of the procuring entity shall be final and executory.

SEC. 102. Publication of Decisions. - Decisions of the BAC and the head of the procuring entity shall be kept and be made publicly available and accessible through the PhilGEPS.

SEC. 103. 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. 104. Resort to Regular Courts; Certiorari - Court action may be resorted to only after the protests contemplated in this Article shall have been completed and shall be based only upon grave abuse of discretion amounting

to lack or excess of jurisdiction on the part of the head of the procuring entity. 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 XIX

SETTLEMENT OF DISPUTES

SEC. 105. 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, 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 to resort to alternative modes of dispute resolution, in accordance with Republic Act No. 9285.

SEC. 106. 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 only pure questions of law and shall be governed by the Rules of Court.

ARTICLE XX

CONTRACT PRICES AND WARRANTIES

SEC. 107. 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, or when a treaty or international agreement otherwise provides.

For purposes of this Section, "extraordinary circumstances" 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. 108. 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 the contractor's personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by the 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 contractor's 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 contractor's property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of government in contractor's favor shall be offset to recover the costs.

ARTICLE XXI

GOVERNMENT PROCUREMENT POLICY BOARD

SEC. 109. 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 once. 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. 110. Membership. The GPPB shall be composed of the Secretary of Budget and Management, as chairperson, the Director-General of the National Economic and Development Authority, as alternate Chairperson, with the following as members; the

Secretaries of the 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 XXII

PENAL CLAUSE

SEC. 111. 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) Unauthorized access to the content of any bid submitted to the procuring entity, including, but not limited to bids that have been submitted through an electronic procurement system and any and all documents required under a confidentiality clause 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 procuring entity agency abuses the exercise of power to reject any and all bids as mentioned under Section 67 of this Act with manifest preference to any bidder who is closely related to the head of the procuring entity agency or who has an agent or shareholder related to the head of the procuring entity in accordance with Section 82 of this Act.

(6) Outright excluding or otherwise limiting the participation of priority enterprises in the procurement process.

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 Bonafide, 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 a bidder 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 or 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. 112 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 XXIII

CIVIL LIABILITY

SEC. 113. 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. 114. 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 XIV

ADMINISTRATIVE SANCTIONS

SEC. 115. Imposition of Administrative Penalties. — (a) In addition to the provisions of Articles XXII and XXIII 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 said bidder's 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. 116. 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 and XXIII 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. 117. 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 XXV

MISCELLANEOUS PROVISIONS

SEC. 118. 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.

SEC. 119. Additional Eligibility Requirements for Bidders and Contractors. - In order for bidders and contractors to participate in the public bidding or to deal with the government in the implementation of infrastructure projects, they must be operating within the area or region where the project is to be implemented and must secure an authority to participate from the regional director and the Undersecretary for Operations of the Department of Public Works and Highways.

ARTICLE XXVI

LEGAL ASSISTANCE AND INDENNIFICATION OF BAC MEMBERS

SEC. 120. 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 121 hereof.

SEC. 121. 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 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 XXVII

FINAL PROVISIONS

SEC. 122. Oversight Committee. — A Joint Congressional Oversight Committee is hereby created 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 Chairperson of the Senate Committee on Finance and two members thereof appointed by the Senate President, and the Chairperson of the House Committee on Appropriations, and two members thereof to be appointed by the Speaker of the House of Representatives.

SEC. 123. Appropriations. — The amount necessary to carry out the provisions of this Act shall be included in the annual General Appropriations Act.

SEC. 124. Implementing Rules and Regulations. - The GPPB shall formulate the IRR of this Act within ninety (90) days from its promulgation.

SEC. 125. Transitory Provision. - Procurement transactions commenced before the effectivity of this Act shall continue to be governed by Republic Act No. 9184. Government agencies and instrumentalities affected by this Act shall be given one (1) year transitory period from the effectivity of the IRR to comply with the requirements of this Act.

SEC. 126. 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. 127. Repealing Clause. - Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act" is hereby repealed. Except as otherwise expressly provided in this Act, all other laws, decrees, executive orders, proclamations and administrative regulations or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

SEC. 128. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,