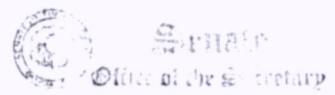


SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)



19 JAN 29 P 3:10

S E N A T E
S. B. No. 2189

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Introduced by Senator Aquilino "Koko" Pimentel III

**AN ACT AMENDING
THE PENAL AND ADMINISTRATIVE PROVISIONS OF
REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS "THE
GOVERNMENT PROCUREMENT REFORM ACT," AND FOR
OTHER PURPOSES**

EXPLANATORY NOTE

Annually, the Philippine government earmarks billions of pesos to purchase goods and services necessary to respond to the needs of the people. Procurement of goods, works, and services by the government alone amounts to fifteen to thirty percent (15-30%) of the country's gross domestic product or GDP¹.

Spending this huge amount entails a very big responsibility on the part of the government because of the public trust involved. On the other hand, citizens, as taxpayers, have the right to expect that their government will spend these funds wisely and honestly, getting the best value for their money.

When the procurement process is plagued with problems such as corruption, inefficiency, and disorganization, the government loses a huge amount of money. By government's own estimates, as much as twenty-two billion pesos (Php22,000,000,000)² is lost each year in government spending due to corruption in procurement.

¹ Good practices in ensuring compliance with Article 9 of the United Nations Convention against Corruption. United Nations Office on Drugs and Crime (UNODC), p.1, September 2013.

² Plugging the Loopholes of the Philippine Procurement System. Policy Brief, Senate Economic Planning Office, August 2008.

But corruption in public procurement is not just about losing money. It also reduces the quality of work or services rendered to the government. At times, it can even cost lives. People in many countries have paid a terrible personal price for collapsed buildings and counterfeit medicines.

The Government Procurement Reform Act was enacted in 2003 to improve competition, transparency, accountability, efficiency, and economy in the procurement activities of all procuring entities of government through the institution of streamlined and standardized procurement rules and procedures. It also provided that public officials and the private individuals found guilty of corruption, coercion, collusion and disruptive practices shall be liable for administrative, criminal, and civil sanctions.

However, to this date, sixteen (16) years after the law was enacted, the procurement process is still plagued with the same problems of corruption, inefficiency, and other irregularities committed by both the public officers and the private individuals.

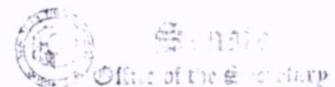
Hence, this bill seeks to amend the GPRA by expanding the list of offenses that can be committed by public officers and institutionalizing the imposition of blacklisting as an administrative penalty.

In view of the foregoing, the immediate passage of this bill is earnestly sought.



AQUILINO "KOKO" PIMENTEL III

SEVENTEENTH CONGRESS OF THE)
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AN ACT AMENDING
THE PENAL AND ADMINISTRATIVE PROVISIONS OF
REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS "THE
GOVERNMENT PROCUREMENT REFORM ACT," AND FOR
OTHER PURPOSES

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

1 **SECTION 1.** Section 65 of Republic Act No. 9184 is hereby
2 amended to read as follows:

4 **SEC. 65. Offenses and Penalties. –**

6 (a) Without prejudice to the provisions of Republic Act No.
7 3019, otherwise known as the "Anti-Graft and Corrupt
8 Practices Act" and other penal laws, public officers who
9 commit any of the following acts shall suffer the penalty of
10 imprisonment of not less than six (6) years and one (1) day,
11 but not more than fifteen (15) years:

13 (1) Open~~ING~~ any sealed Bid, including but not limited
14 to Bids that may have been submitted through the
15 electronic system and any and all documents required
16 to be sealed or divulging their contents, prior to the
17 appointed time for the public opening of Bids or other
18 documents.

1
2 (2) Delaying, without justifiable cause, the screening
3 for eligibility, opening of bids, evaluation and post
4 evaluation of bids, [and] **OR** awarding of contracts
5 beyond the prescribed periods of action provided for in
6 the IRR.

7
8 (3) Unduly influencing or exerting undue pressure on
9 any member of the BAC or any officer or employee of
10 the procuring entity to take a particular action which
11 favors, or tends to favor a particular bidder.

12
13 (4) Splitting of contracts which exceed procedural
14 purchase limits [and] **TO AVOID** competitive bidding
15 **OR TO CIRCUMVENT THE LIMITS OF THE**
16 **APPROVING AUTHORITY.**

17
18 (5) [When the head of the agency abuses]**ABUSING**
19 the exercise of [his]**THE** power **OF THE HOPE OR**
20 **HIS OR HER DULY AUTHORIZED**
21 **REPRESENTATIVE** to reject any and all bids [as
22 mentioned under Section 41 of this Act] with manifest
23 preference to any bidder [who is closely related to him
24 in accordance with Section 47 of this Act].

25
26 (6) **RECOMMENDING, APPROVING, OR**
27 **AWARDING A CONTRACT TO A BIDDER**
28 **WHO IS NOT LEGALLY, TECHNICALLY, OR**
29 **FINANCIALLY CAPABLE TO FAVOR A**
30 **PARTICULAR SUPPLIER, CONTRACTOR OR**
31 **CONSULTANT.**

32
33 (7) **APPROVING OR ACCEPTING GOODS OR**
34 **WORKS DIFFERENT FROM THE TECHNICAL**
35 **SPECIFICATIONS, SCOPE OF WORK, OR**
36 **TERMS OF REFERENCE AS PROVIDED FOR**
37 **IN THE CONTRACT, EXCEPT FOR**
38 **JUSTIFIABLE REASONS THAT ARE BEYOND**
39 **THE CONTROL OF THE BIDDER.**

40
41 (8) **CHANGING OR CAUSING THE CHANGE**
42 **OF SPECIFICATION OR OTHER TECHNICAL**

1 **REQUIREMENTS TO FAVOR A PARTICULAR**
2 **SUPPLIER, CONTRACTOR OR CONSULTANT.**

3
4 When any of the foregoing acts is done in collusion with
5 private individuals, the private individuals shall likewise be
6 liable for the offense.

7
8 In addition, the public officer involved shall also suffer the
9 penalty of temporary **OR PERPETUAL** disqualification
10 from public office, while the private individual shall be
11 permanently disqualified from transacting business with the
12 Government.

13 XXX XXX XXX XXX

14 **SEC 2.** Section 69 is hereby amended to read as follows:

15
16 SEC. 69. Imposition of Administrative Penalties. – In
17 addition to the provisions of Articles XXI and XXII of this
18 Act, the [Head of the Procuring Entity] **HOPE**:

19
20 (a) [subject to the authority delegated to the BAC, if
21 any,]shall impose on bidders or prospective bidders, the
22 administrative penalty of [suspension] **BLACKLISTING** for
23 one (1) year for the first offense, and [suspension]
24 **BLACKLISTING** of two (2) years for the second offense
25 from participating in the public bidding process for the
26 following violations:

- 27
28 1. Submission of eligibility requirements containing
29 false information or falsified documents.

30 XXX XXX XXX XXX

31
32 **6. Termination of the contract due to the default **OR****
33 **UNLAWFUL ACTS** of the [bidder]**SUPPLIER,**
34 **CONTRACTOR OR CONSULTANT.**

35
36 Refusal to clarify or validate in writing its Bid during post-
37 qualification within a period of seven (7)

1 [calendar] **WORKING** days from receipt of the request for
2 clarification.

3
4 [(b)] In addition to the penalty of [suspension]
5 **BLACKLISTING**, the Bid security or the performance
6 security posted by the concerned bidder shall also be
7 forfeited.

8 [(c) The Head of the Procuring Entity may delegate to the
9 BAC the authority to impose the aforementioned
10 administrative penalties.]**A PERSON OR ENTITY THAT
11 IS BLACKLISTED BY A PROCURING ENTITY
12 AND/OR INCLUDED IN THE GPPB CONSOLIDATED
13 BLACKLISTING REPORT SHALL NOT BE
14 ALLOWED TO PARTICIPATE IN THE BIDDING OF
15 ALL GOVERNMENT PROJECTS DURING THE
16 PERIOD OF DISQUALIFICATION. BLACKLISTING
17 SHALL APPLY TO THE FOLLOWING PERSONS:**

18 **A) IN CASE OF INDIVIDUALS OR SOLE
19 PROPRIETORSHIPS, TO THE OWNER OR
20 PROPRIETOR;**

21 **B) IN CASE OF PARTNERSHIPS, TO THE
22 PARTNERSHIP ITSELF AND ITS PARTNERS;**

23 **C) IN CASE OF COOPERATIVES, TO THE
24 COOPERATIVE ITSELF AND MEMBERS OF THE
25 BOARD OF DIRECTORS, ITS GENERAL MANAGER
26 AND/OR CHIEF EXECUTIVE OFFICER;**

27 **D) IN CASE OF JOINT VENTURES OR
28 CONSORTIUMS, TO THE JOINT VENTURE OR
29 CONSORTIUM ITSELF AND ITS MEMBER/S
30 AND/OR PARTNERS, AS WELL AS JOINT
31 VENTURES OR CONSORTIUMS WHICH HAS
32 BLACKLISTED MEMBER/S AND/OR PARTNER/S;**

33 **E) IN THE CASE OF CORPORATIONS, TO THE
34 CORPORATION ITSELF AND ITS CHAIRMAN,
35 PRESIDENT, AND DIRECTORS, TOGETHER WITH
36 THEIR RELATIVES UP TO THE THIRD CIVIL
37 DEGREE OF CONSANGUINITY OR AFFINITY, AND
38 THEIR ASSIGNEES, HOLDING MORE THAN**

1 **TWENTY PERCENT (20%) OF THE SHARES IN A**
2 **BLACKLISTED CORPORATION.**

3
4 **BIDDERS BLACKLISTED OR BARRED FROM**
5 **BIDDING BY OTHER FOREIGN**
6 **GOVERNMENT/FOREIGN OR INTERNATIONAL**
7 **FINANCING INSTITUTIONS ARE ALSO NOT**
8 **ALLOWED TO PARTICIPATE IN THE BIDDING OF**
9 **ALL GOP AGENCIES.**

10
11 **THE GPPB SHALL ISSUE THE NECESSARY**
12 **GUIDELINES FOR THIS PURPOSE.**

13
14 **(B) SHALL IMPOSE THE PENALTY FOR A GRAVE**
15 **OFFENSE UNDER CIVIL SERVICE LAWS ON ANY**
16 **MEMBER OF THE BAC, SECRETARIAT, TWG, AND**
17 **OTHER GOVERNMENT OFFICIALS OR**
18 **EMPLOYEES INVOLVED IN THE PROCUREMENT**
19 **OF THE PROCURING ENTITY FOUND GUILTY OF**
20 **WILLFUL DISREGARD OF ANY OF THE**
21 **MANDATED PROCUREMENT PROCESS,**
22 **REQUIREMENTS, AND TIMELINES OF THIS ACT.**

23
24 **SEC. 3.** Section 70 is hereby amended to read as follows:

25
26 SEC. 70. Preventive Suspension. – The [head of the
27 procuring entity] **HOPE** may preventively suspend any
28 member of the[Technical Working Group or the Secretariat,
29 or the BAC,] **BAC, SECRETARIAT, TWG, AND OTHER**
30 **GOVERNMENT OFFICIALS OR EMPLOYEES**
31 **INVOLVED IN THE PROCUREMENT OF THE**
32 **PROCURING ENTITY** if there are strong reasons or *prima*
33 facie evidence showing that the officials or employees
34 concerned are guilty of the charges filed against them under
35 Articles XXI and XXII of this Act or for dishonesty as
36 defined by the Civil Service Laws. In all cases, procedural
37 and substantive due process as mandated by the Constitution
38 and Civil Service Laws, rules and regulations, shall be strictly
39 observed.

1 **SEC. 4. Separability Clause.**— If any provision of this Act is
2 declared unconstitutional or invalid, other parts or provisions
3 hereof shall continue to be in full force and effect.

4

5 **SEC. 5. Repealing Clause.**— All laws, decrees, executive
6 orders, rules and regulations, or parts thereof, inconsistent with the
7 provisions of this Act are hereby repealed or modified accordingly.

8

9 **SEC. 6. Effectivity Clause.**- This Act shall take effect fifteen days
10 after its publication in the Official Gazette or in at least two (2)
11 newspapers of general circulation.

Approved,