



## HOUSE OF REPRESENTATIVES

H. No. 4809

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BY REPRESENTATIVES DE VENECIA, GONZALES II, COJUANGCO (C.), ANDAYA, MARCOS, DUMARPA, ZIALCITA, DEFENSOR (A.), ACOSTA, ABAD, MAMBA, CLARETE, DE GUZMAN, REYES (V.), ESPINA, ESPINOSA (E.R.), ESCUDERO, ANGARA-CASTILLO, FUENTEBELLA, BERSAMIN, ABAYA (A.), ALBANO, AMIN, ANTONINO-CUSTODIO, BONDOC, CALALAY, CARI, CELESTE, CHIONGBIAN, CHIPECO, CHUNGALAO, CRUZ-DUCUT, DOMOGAN, ERMITA-BUHAIN, FAILON, GORDON, JALA, JARULA, LEVISTE, NICOLAS, OCAMPO, PABLO, PADILLA, RAMIREZ-SATO, RODRIGUEZ (I.), ROMAN, ROSALES, SILVERIO, SOLIS, SOON-RUIZ, SUAREZ, SUPILICO, TALINO-SANTOS, TEODORO, TEVES, UMALI (A.V.), UY (R.), VILLANUEVA, VILLAR, YAPHA, ZAMORA (M.) AND ZUBIRI, PER COMMITTEE REPORT NO. 479

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

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

1 ARTICLE I

2 GENERAL PROVISIONS

3 SECTION 1. *Short Title.* – This Act shall be known as the  
4 “Government Procurement Reform Act.”

5 SEC. 2. *Declaration of Policy.* – It is the declared policy of the  
6 State that all resources of the government shall be managed, expended or

1 utilized in accordance with law and regulations, and safeguarded against  
2 loss or wastage through illegal or improper disposition, with a view to  
3 ensuring transparency, accountability, impartiality, efficiency, economy  
4 and effectiveness in agency procurement and government operations.

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

10       (a) Transparency in the procurement process and in the  
11 implementation of procurement contracts.

12       (b) Competitiveness by extending equal opportunity to enable  
13 private contracting parties who are eligible and qualified to participate in  
14 public bidding.

15       (c) Streamlined procurement process that will uniformly apply to  
16 all government procurement. The procurement process shall be simple and  
17 made adaptable to advances in modern technology in order to ensure an  
18 effective and efficient method.

19       (d) System of accountability where both the public officials directly  
20 or indirectly involved in the procurement process as well as in the  
21 implementation of procurement contracts and the private parties that deal  
22 with government are, when warranted by circumstances, investigated and  
23 held liable for their actions relative thereto.

24       (e) Public monitoring of the procurement process and the  
25 implementation of awarded contracts with the end in view of guaranteeing  
26 that these contracts are awarded pursuant to the provisions of this Act and  
27 its implementing rules and regulations, and that all these contracts are  
28 performed strictly according to specifications.

29       SEC. 4. *Scope and Application.* – This Act shall apply to the  
30 procurement of goods, supplies, materials, infrastructure projects and  
31 consulting services by government, its departments, offices, agencies and  
32 instrumentalities, including government-owned or -controlled corporations

1 and local government units, subject to the provisions of Commonwealth  
2 Act No. 138 and any agreement of which the Philippines is a signatory,  
3 directly affecting the subject matter of this Act.

4         SEC. 5. *Standardization of Procurement Process and Forms.* -- To  
5 systematize the procurement process, avoid confusion and ensure  
6 transparency, the procurement process, including the forms to be used,  
7 shall be standardized insofar as practicable.

8         SEC. 6. *Definition of Terms.* -- For purposes of this Act, the terms  
9 or words and phrases used shall mean or be understood as follows:

10         (a) *Approved Budget* -- The Approved Budget shall be the budget  
11 for the contract as approved by the head of the procuring entity in  
12 accordance with the General Appropriations Act and/or continuing  
13 appropriations in the case of national government agencies, the corporate  
14 budget approved by the governing board, pursuant to Executive Order No.  
15 518, series of 1979, in the case of government-owned or -controlled  
16 corporations, and the budget approved by the Sanggunian in the case of  
17 local government units.

18         (b) *BAC* -- A BAC shall refer to the Bids and Awards Committee  
19 established in accordance with Article V of this Act.

20         (c) *Bid* -- A Bid is a signed offer submitted by a manufacturer,  
21 supplier, distributor, contractor or consultant in response to bidding  
22 documents.

23         (d) *Bidding Documents* -- Bidding Documents are the documents  
24 issued by the procuring entity as the basis for bids, furnishing all  
25 information necessary for a prospective bidder to prepare a bid for the  
26 goods/supplies/materials/infrastructure projects/consulting services to be  
27 provided.

28         (e) *Consulting Services* -- Consulting Services are services for  
29 infrastructure projects and other types of projects of the government  
30 requiring adequate technical expertise and financial capability in  
31 undertaking the following types of services: (i) advisory and review  
32 services; (ii) pre-investment or feasibility studies; (iii) design; (iv)

1 construction supervision; (v) management and related services; and (vi)  
2 other technical services or special studies. These services may be in the  
3 fields of Engineering, Architecture, Law, Finance, Management,  
4 Agriculture, and the like.

5 (f) *EPS* – The EPS shall refer to the Electronic Procurement  
6 System as provided in Section 8 of this Act.

7 (g) *Goods/Supplies/Materials* – Goods/Supplies/Materials include  
8 everything except consulting services, real estate and infrastructure  
9 projects, which may be needed in the transaction of public businesses or in  
10 the pursuit of any government undertaking, project or activity, whether in  
11 the nature of equipment, furniture, stationery, materials for construction, or  
12 personal property of any kind, including non-personal or contractual  
13 services such as the repair and maintenance of equipment and furniture, as  
14 well as trucking, hauling, janitorial, security, and related or analogous  
15 services, as well as procurement of materials and supplies provided by the  
16 procuring entity for such services.

17 (h) *GPPB* – The GPPB shall refer to the Government Procurement  
18 Policy Board established in accordance with Article XV of this Act.

19 (i) *Head of the Procuring Entity* – The Head of the Procuring  
20 Entity shall refer to: (i) the head of the agency or his duly authorized  
21 official for national government agencies; (ii) the governing boards or its  
22 duly authorized official for government-owned or -controlled corporations;  
23 or (iii) the local chief executive for local government units.

24 (j) *Infrastructure Projects* – Infrastructure Projects include the  
25 construction, improvement, rehabilitation, modification, demolition, repair,  
26 restoration or maintenance of roads and bridges, railways, airports,  
27 seaports, information and communication technology facilities, irrigation,  
28 flood control and drainage, water supply, sanitation, sewerage and solid  
29 waste management systems, shore protection, energy/power and  
30 electrification facilities, national buildings, school buildings, hospital  
31 buildings, and other related construction projects of the government.

1 (k) *IRR* – IRR shall refer to the implementing rules and regulations  
2 to be formulated and approved in accordance with Section 59 of this Act.

3 (l) *Procurement* – Procurement refers to the acquisition of goods,  
4 supplies, materials and consulting services, and the contracting for  
5 infrastructure projects by the procuring entity. Procurement also covers the  
6 lease of goods, supplies and materials.

7 (m) *Procuring Entity* – Procuring Entity refers to the national  
8 government agency, department or office, including state university and  
9 college; the government-owned or -controlled corporation, including  
10 government financial institution; and the local government unit procuring  
11 the goods/supplies/materials/consulting services and infrastructure projects.

12 (n) *Public Bidding* – Public Bidding is a method of procurement  
13 which consists of: advertisement; eligibility screening of prospective  
14 bidders; pre-bid conferences; receipts of bids; evaluation of bids; post-  
15 qualification; and award of contract; the requirements and mechanics of  
16 which shall be specified in the IRR.

## 17 ARTICLE II

### 18 PROCUREMENT PLANNING

19 SEC. 7. *Procurement Planning and Budgeting Linkage.* – All  
20 procurement should be within their approved budget and should be  
21 meticulously and judiciously planned by the procuring entity concerned.  
22 Consistent with government fiscal discipline measures, only those  
23 considered crucial to the efficient discharge of governmental functions  
24 shall be included in the Agency Procurement Program to be specified in the  
25 IRR.

## 26 ARTICLE III

### 27 PROCUREMENT BY ELECTRONIC MEANS

28 SEC. 8. *The Electronic Procurement System.* – Pursuant to  
29 Republic Act No. 8792, the “Electronic Commerce Act”, there shall be a  
30 single electronic portal for government procurement herein referred to as  
31 the EPS, to be used by procuring entities, end-users and concerned citizens,

1 to enhance transparency, accountability, impartiality, equity, efficiency and  
2 economy in government procurement.

3 ARTICLE IV

4 PUBLIC BIDDING

5 SEC. 9. *Public Bidding.* – All procurement shall be through public  
6 bidding, except as provided for in Article XII of this Act.

7 ARTICLE V

8 BIDS AND AWARDS COMMITTEE

9 SEC. 10. *The BAC and its Composition.* – Each procuring entity  
10 shall establish a single BAC for its procurement. The BAC shall be chaired  
11 by at least a third ranking permanent official of the procuring entity other  
12 than its head, and its composition shall be specified in the IRR.  
13 Alternatively, as may be deemed fit by the head of the procuring entity,  
14 there may be separate BACs where the number and complexity of the items  
15 to be procured shall so warrant. Similar BACs for decentralized and lower  
16 level offices may be formed when deemed necessary by the head of the  
17 procuring entity. To enhance the transparency of the procurement process,  
18 the BAC shall invite, in addition to the representative of the Commission  
19 on Audit, at least one (1) representative from a duly recognized private  
20 sector association, chamber or organization in a discipline which is relevant  
21 to the contract under procurement, and one (1) representative from the end-  
22 user group including, among others, a nongovernment organization.

23 SEC. 11. *Functions of the BAC.* – The BAC shall determine the  
24 eligibility of prospective bidders, receive and open bids, conduct the  
25 evaluation of bids, conduct pre-bid conference, undertake post-  
26 qualification proceedings, recommend the award of contracts, and impose  
27 sanctions where appropriate in accordance with Article XVIII of this Act.  
28 The BAC shall also have the responsibility for monitoring the performance  
29 against standards set forth by this Act and the IRR, and it shall prepare a  
30 procurement monitoring report that shall be approved and submitted by the  
31 head of the procuring entity to the GPPB on a semestral basis. The  
32 contents and coverage of this report shall be provided in the IRR.



1           SEC. 16. *Eligibility Requirements and Short Listing of Prospective*  
2 *Bidders for the Procurement of Consulting Services.* – The BAC or, under  
3 special circumstances specified in the IRR, its duly designated organic  
4 office shall determine the eligibility of prospective bidders for the  
5 procurement of consulting services using numerical ratings on the basis of  
6 the eligibility requirements provided in the bidding documents, to  
7 determine the short list of bidders whose bids shall be considered for  
8 evaluation. The short list shall consist of the highest ranked eligible  
9 bidders from three (3) to seven (7) in number, as predetermined by the  
10 BAC and as indicated in the invitation to bid. The documents submitted in  
11 satisfaction of the eligibility requirements shall be made under oath by the  
12 prospective bidder or by his duly authorized representative certifying to the  
13 correctness of the statements and authenticity of the said documents.

14           SEC. 17. *Submission and Receipt of Bids.* – A bid shall have two  
15 (2) components, namely the technical and financial components which  
16 should be in separate sealed envelopes, and which shall be submitted  
17 simultaneously. The bids shall be received by the BAC on such date, time  
18 and place specified in the invitation to bid. The deadline for the receipt of  
19 bids shall be fixed by the BAC, giving it sufficient time to complete the  
20 bidding process and giving the prospective bidders sufficient time to study  
21 and prepare their bids. The deadline shall also consider the urgency of the  
22 procurement involved.

23           Bids submitted after the deadline shall be returned by the BAC  
24 unopened.

25           Notwithstanding the provisions of this Section and Section 18 of this  
26 Act, the GPPB may prescribe innovative procedures for the submission,  
27 receipt and opening of bids through the EPS.

28           SEC. 18. *Modification and Withdrawal of Bids.* – A bidder may  
29 modify his bid, provided that this is done before the deadline for the receipt  
30 of bids. The modification shall be submitted before the deadline for receipt  
31 of bids in a sealed envelope duly identified as a modification of the original  
32 bid and stamped received by the BAC. A bidder may, through a letter,



1 withdraw his bid or express his intention not to participate in the bidding  
2 before the deadline for the receipt of bids.

3 SEC. 19. *Bid Security*. – Except for the procurement of consulting  
4 services, each bid shall be accompanied by a bid security which shall serve  
5 as a guarantee that, after receipt of the notice of award, the winning bidder  
6 shall enter into contract with the procuring entity within the stipulated time  
7 and shall furnish the required performance security. The amount and  
8 allowable forms of the bid security shall be provided in the IRR.

9 SEC. 20. *Bid Validity*. – Bids and bid securities, where applicable,  
10 shall be valid for such reasonable period as determined in the IRR and  
11 indicated in the bidding documents. This validity shall be set taking into  
12 account the time that will be involved in the process of bid evaluation and  
13 award of contract.

14 SEC. 21. *Bid Opening*. – The BAC shall publicly open all bids at  
15 the time, date, and place specified in the bidding documents. The minutes  
16 of the bid opening shall be made available to the public upon written  
17 request and payment of a specified fee.

18 SEC. 22. *Preliminary Examination of Bids*. – For all procurement,  
19 the BAC shall examine first the technical components of the bids using  
20 “pass/fail” criteria to determine whether all required documents are present.  
21 Only bids that are determined to contain all the bid requirements of the  
22 technical component shall be considered for opening and evaluation of  
23 their financial component.

24 SEC. 23. *Bid Evaluation for the Procurement of Goods/  
25 Supplies/Materials and Infrastructure Projects*. – For the procurement of  
26 goods/supplies/materials and infrastructure projects, the BAC shall  
27 evaluate the financial component of the bids. The bids shall be ranked  
28 from lowest to highest in terms of their corresponding calculated prices.  
29 The bid with the lowest calculated price shall be referred to as the “Lowest  
30 Calculated Bid”.

31 SEC. 24. *Bid Evaluation of Short Listed Bidders for Consulting  
32 Services*. – For the procurement of consulting services, the BAC shall

1 procuring entity within fifteen (15) calendar days from receipt of the notice  
2 of award, and the head of the procuring entity, or his duly authorized  
3 representative shall act on the approval of contract within fifteen (15)  
4 calendar days from receipt thereof. In the case of government-owned  
5 or -controlled corporations, the concerned board shall take action on the  
6 said recommendation within thirty (30) calendar days from receipt thereof.

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

12 SEC. 31. *Performance Security.* – Except for the procurement of  
13 consulting services, prior to contract signing, the winning bidder shall post  
14 a performance security in the form and amount specified in the bidding  
15 documents in accordance with the IRR, to guarantee the faithful  
16 performance of and compliance with his obligations under the contract in  
17 accordance with the bidding documents.

18 SEC. 32. *Failure to Enter into Contract and Post Performance*  
19 *Security.* – If the bidder with the Lowest Calculated Responsive Bid or  
20 Highest Rated Responsive Bid, as the case may be, fails, refuses or is  
21 otherwise unable to make good his bid by entering into contract with the  
22 procuring entity or, in the case of goods/supplies/materials and  
23 infrastructure projects, post the required performance security within the  
24 period stipulated in the bidding documents, the bid security shall be  
25 forfeited where so applicable, and the appropriate administrative sanctions  
26 shall be imposed, except where such failure, refusal or inability is through  
27 no fault of his. Thereupon, the BAC shall disqualify the said bidder and  
28 shall post-qualify the next ranked Lowest Calculated Bid or Highest Rated  
29 Bid, as the case may be. This procedure shall be repeated until an award is  
30 made. However, if no award is made, the contract shall be re-bid.

31 SEC. 33. *Reservation Clause.* – The government reserves the right  
32 to reject any and all bids or declare a failure of bidding or not award the

1 evaluate bids of the short listed bidders and rank them using numerical  
2 ratings in accordance with the evaluation criteria stated in the bid  
3 documents. The bids shall be ranked from highest to lowest in terms of  
4 their corresponding calculated ratings. The bid with the highest calculated  
5 ratings shall be referred to as the "Highest Rated Bid."

6 SEC. 25. *Ceiling for Bid Prices.* – The approved budget shall be the  
7 upper limit or ceiling for the bid prices. Bid prices which exceed this  
8 ceiling shall be rejected outright. There shall be no lower limit to the  
9 amount of the award.

10 SEC. 26. *Objective and Process of Post-Qualification.* – Through  
11 post-qualification, the BAC shall verify and validate whether the bidder  
12 with the Lowest Calculated Bid or the Highest Rated Bid, as the case may  
13 be, passes all the requirements and conditions as specified in the bidding  
14 documents.

15 If the bidder with the Lowest Calculated Bid/Highest Rated Bid  
16 passes all the criteria for post-qualification, his bid shall be considered the  
17 "Lowest Calculated Responsive Bid," in the case of procurement of  
18 goods/supplies/materials and infrastructure projects, or the "Highest Rated  
19 Responsive Bid," in the case of procurement of consulting services.  
20 However, if a bidder fails to meet any of the requirements or conditions, he  
21 shall be "post-disqualified" and the BAC shall conduct the post-  
22 qualification on the bidder with the second Lowest Calculated Bid or the  
23 Highest Rated Bid, as the case may be. If the bidder with the second  
24 Lowest Calculated Bid or Highest Rated Bid is post-disqualified, the same  
25 procedure shall be repeated until the Lowest Calculated Responsive Bid or  
26 the Highest Rated Responsive Bid, as the case may be, is finally  
27 determined.

28 The contract shall be awarded to the bidder with the Lowest  
29 Calculated Responsive Bid or Highest Rated Responsive Bid, as the case  
30 may be.

31 SEC. 27. *Failure of Bidding.* – There shall be a failure of bidding if  
32 no bids are received or if no bid qualifies as the Lowest Calculated

1 Responsive Bid or Highest Rated Responsive Bid, as the case may be. In  
 2 this event, the contract shall be re-advertised and re-bid. The BAC shall  
 3 observe the same process and set the new periods according to the same  
 4 rules followed during the first bidding: *Provided, however,* That after the  
 5 second failed bidding, the BAC may resort to the alternative methods of  
 6 procurement as provided in Article XII of this Act.

7 **SEC. 28. *Single Calculated/Rated and Responsive Bid Submission.***

8 – A single calculated/rated and responsive bid shall be considered under  
 9 any of the following exceptional circumstances:

10 (a) If after advertisement, only one prospective bidder applies for  
 11 eligibility check and he meets the eligibility check requirements, after  
 12 which his bid is found to be responsive;

13 (b) If after the advertisement, more than one prospective bidder  
 14 applies for eligibility check but only one meets the eligibility check  
 15 requirements, after which his bid is found to be responsive; or

16 (c) If after the eligibility check of more than one bidder, only one  
 17 bid is submitted and found to be responsive.

18 *Provided, however,* That the BAC of the procuring entity concerned may  
 19 require a greater number of bidders.

20 **ARTICLE VII**

21 **AWARD, IMPLEMENTATION AND TERMINATION OF CONTRACT**

22 **SEC. 29. *Award of Contract and Notice to Proceed.*** – The head of  
 23 the procuring entity or his duly authorized official shall award and issue the  
 24 corresponding notice to proceed, when applicable, to the bidder with the  
 25 Lowest Calculated Responsive Bid or the Highest Rated Responsive Bid,  
 26 as the case may be, in accordance with the deadlines specified in the IRR.

27 **SEC. 30. *Period of Action on Procurement Activities.*** – The  
 28 procurement process from the opening of bids up to the award of contract  
 29 shall not exceed three (3) months, or a shorter period to be determined by  
 30 the procuring entity concerned. The different procurement activities shall  
 31 be completed within reasonable periods to be specified in the IRR. In  
 32 addition, the winning bidder shall formally enter into contract with the

1 contract: *Provided, however,* That the reasons for rejection, declaration of  
2 failure of bidding or refusal to award the contract are clearly specified.

3 SEC. 34. *Rules and Guidelines for Contract Implementation and*  
4 *Termination.* – The rules and guidelines for the implementation and  
5 termination of contracts awarded pursuant to this Article shall be provided  
6 in the IRR.

## 7 ARTICLE VIII

### 8 DOMESTIC AND FOREIGN PROCUREMENT

9 SEC. 35. *Procurement of Domestic and Foreign Goods/*  
10 *Supplies/Materials.* – In all government procurement of goods, supplies  
11 and materials, the procuring entity is encouraged to give priority to the  
12 purchase of domestically-produced and manufactured goods, supplies and  
13 materials that meet the specified or desired quality.

## 14 ARTICLE IX

### 15 BIDDING OF PROVINCIAL PROJECTS

16 SEC. 36. *Bidding of Provincial Projects.* – Priority programs and  
17 infrastructure projects funded out of the annual General Appropriations Act  
18 which are intended for implementation within the province shall be subject  
19 to the same public bidding and to the procurement processes prescribed  
20 under this Act. For purposes of this Article, Engineering District civil  
21 works projects, subject to consultation with the concerned Members of  
22 Congress, are included and subsumed in the term “provincial projects” and  
23 shall be governed by this Section and Section 37 hereof.

24 SEC. 37. *Provincial Bidders.* – Within five (5) years from the  
25 effectivity of this Act, a contractor who participates in the bidding of  
26 provincial priority programs and infrastructure projects, whose principal  
27 office is within the same province, and who submits the lowest bid among  
28 the provincial bidders which is higher than the lowest bid made by a  
29 contractor with principal office outside the said province, shall be granted  
30 the privilege to match the bid made by the latter: *Provided, however,* That  
31 the release of funds for said projects shall be published in a local

1 newspaper with the widest circulation and in the website of the DBM, the  
2 mechanisms of which shall be spelled-out in the IRR.

3 ARTICLE X

4 LEASE OF COMPUTERS, COMMUNICATIONS, INFORMATION  
5 AND OTHER EQUIPMENT

6 SEC. 38. *Lease Contracts.* – Lease of construction and office  
7 equipment, including computers, communication and information  
8 technology equipment are subject to the same public bidding and to the  
9 processes prescribed under this Act.

10 ARTICLE XI

11 CONTRACT PRICE ADJUSTMENTS AND WARRANTIES

12 SEC. 39. *Contract Price Adjustments.* – For the given scope of  
13 work in the contract as awarded, all bid prices shall be considered as fixed  
14 prices, and therefore not subject to price adjustments during contract  
15 implementation, except under extraordinary circumstances and upon prior  
16 approval of the GPPB.

17 For purposes of this Section, “extraordinary circumstances” shall  
18 refer to events that may be determined by the National Economic and  
19 Development Authority in accordance with the Civil Code of the  
20 Philippines, and upon the recommendation of the procuring entity  
21 concerned.

22 SEC. 40. *Warranty.* – (a) For the procurement of goods/  
23 supplies/materials, to assure that manufacturing defects shall be corrected  
24 by the supplier, manufacturer or distributor, as the case may be, for a fixed  
25 time after performance of the contract, a warranty shall be required from  
26 the contract awardee for such period of time as may be provided in the  
27 IRR, the obligation for which shall be covered by either retention moneys  
28 in the amount equal to a percentage of every progress payment, or a special  
29 bank guarantee equivalent to a percentage of the total contract price, to be  
30 provided in the IRR. Such amounts shall only be released after the  
31 warranty period, provided that the goods supplied and/or the works

1 performed are free from defects and all the conditions imposed under the  
2 contract are fully met.

3 (b) For the procurement of infrastructure projects, the contractor  
4 shall assume full responsibility for the contract work from the time project  
5 construction commenced until five (5) years from its final acceptance by  
6 the government and shall be held responsible for any damage or destruction  
7 of works except those occasioned by *force majeure*. Except likewise for  
8 *force majeure*, the contractor shall be fully responsible for the safety,  
9 protection, security, and convenience of his personnel, third parties, and the  
10 public at large, as well as the works, equipment, installation and the like to  
11 be affected by his construction work.

12 The contractor shall undertake the repair works, at his own expense,  
13 of any defect or damage to the infrastructure projects on account of the use  
14 of materials of inferior quality within ninety (90) days upon demand by the  
15 Secretary of the Department of Public Works and Highways. In case of  
16 failure or refusal to comply with this mandate, the government shall  
17 undertake such repair works and shall be entitled to full reimbursement of  
18 expenses therein upon demand.

19 Any contractor who fails to comply with the preceding paragraph  
20 shall suffer perpetual disqualification from participating in any public  
21 bidding and his property or properties shall be subject to attachment or  
22 garnishment proceedings to recover the costs.

## 23 ARTICLE XII

### 24 ALTERNATIVE METHODS OF PROCUREMENT

25 SEC. 41. *Alternative Methods*. – When justified by extraordinary  
26 conditions as provided in this Act and its IRR, and subject to the prior  
27 approval of the head of the procuring entity, in the interest of economy,  
28 efficiency and national security, the head of the procuring entity may adopt  
29 any of the following alternative methods of procurement to be defined  
30 further in the IRR:

31 (a) Limited source bidding, otherwise known as selective bidding –  
32 a method of procurement that involves direct invitation to bid by the

1 concerned procuring entity from a set of pre-selected suppliers with known  
2 experience and proven capability on the requirements of the particular  
3 contract;

4 (b) Direct contracting, otherwise known as single source  
5 procurement – a method of procurement that does not require elaborate  
6 bidding documents, because the supplier is simply asked to submit a price  
7 quotation or a pro-forma invoice together with the conditions of sale, which  
8 offer may be accepted immediately or after some negotiations;

9 (c) Repeat Order – a method of procurement that involves a direct  
10 procurement of goods from the previous winning bidder, whenever there is  
11 a need to replenish goods procured under a contract previously awarded  
12 through public bidding;

13 (d) Shopping – a method of procurement whereby the procuring  
14 entity simply requests for the submission of price quotations for the goods  
15 to be procured directly from suppliers of known qualification; or

16 (e) Negotiated Procurement – a method of procurement that may be  
17 resorted under the extraordinary circumstances provided for in Section 27  
18 of this Act and other instances that shall be specified in the IRR.

### 19 ARTICLE XIII

#### 20 PROTESTS MECHANISM

21 SEC. 42. *Protests on Decisions of the BAC.* – Decisions of the BAC  
22 in all stages of procurement may be protested to the head of the procuring  
23 entity and shall be in writing. Decisions of the BAC may be protested by  
24 filing a verified position paper and paying a non-refundable protest fee.  
25 The amount of the protest fee and the periods during which the protests  
26 may be filed and resolved shall be specified in the IRR.

27 SEC. 43. *Resolution of Protests.* – The protests shall be resolved  
28 strictly on the basis of records of the BAC. Up to a certain amount to be  
29 specified in the IRR, the decisions of the head of the procuring entity shall  
30 be final.

31 SEC. 44. *Non-interruption of the Bidding Process.* – In no case  
32 shall any protest taken from any decision treated in this Article stay or



1 delay the bidding process. Protests must first be resolved before any  
2 award is made.

3 SEC. 45. *Report to Regular Courts; Certiorari.* – Court action may  
4 be resorted to only after the protests contemplated in this Article shall have  
5 been completed. Cases that are filed in violation of the process specified in  
6 this Article shall be dismissed for lack of jurisdiction. The regional trial  
7 court shall have jurisdiction over final decisions of the head of the  
8 procuring entity. Court actions shall be governed by Rule 65 of the 1997  
9 Rules of Civil Procedure.

#### 10 ARTICLE XIV

##### 11 SETTLEMENT OF DISPUTES

12 SEC. 46. *Arbitration.* – Any and all disputes arising from the  
13 implementation of a contract covered by this Act shall be submitted to  
14 arbitration in the Philippines according to the provisions of Republic Act  
15 No. 876, otherwise known as the “Arbitration Law”: *Provided, however,*  
16 That disputes that are within the competence of the Construction Industry  
17 Arbitration Commission to resolve shall be referred thereto. This shall be  
18 incorporated as a provision in the contract that will be executed pursuant to  
19 the provisions of this Act: *Provided, further,* That by mutual agreement,  
20 the parties may agree in writing to resort to alternative modes of dispute  
21 resolution.

22 SEC. 47. *Appeals.* – The arbitral award and any decision entered in  
23 accordance with the foregoing section shall be appealable by way of a  
24 petition for review to the Court of Appeals. The petition shall raise purely  
25 questions of law and shall be governed by the Rules of Court.

#### 26 ARTICLE XV

##### 27 THE GOVERNMENT PROCUREMENT POLICY BOARD

28 SEC. 48. *Organization and Functions.* – A Government  
29 Procurement Policy Board (GPPB) is hereby established to: (a) protect  
30 national interest in public procurement matters, having due regard to the  
31 country’s regional and international obligations; (b) formulate and amend  
32 as necessary the IRR and the corresponding standard forms for



1           When any of the foregoing acts is done in collusion with private  
2 individuals, the private individuals shall likewise be liable for the offense.

3           The persons involved, both public and private shall, in addition,  
4 suffer the penalty of temporary disqualification from public office or be  
5 permanently disqualified from transacting business with the government, as  
6 the case may be.

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

11           (1) When two (2) or more bidders agree and submit different bids  
12 as if they were bona fide, when they knew that one (1) or more of them was  
13 so much higher than the other that it could not be honestly accepted and  
14 that the contract will surely be awarded to the pre-arranged lowest bid.

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

19           (3) When two (2) or more bidders enter into an agreement which  
20 call upon one to refrain from bidding for procurement contracts, or which  
21 call for withdrawal of bids already submitted, or which are otherwise  
22 intended to secure an undue advantage to anyone of them.

23           (4) When a bidder, by himself or in connivance with others, employ  
24 schemes which tend to restrain the natural rivalry of the parties or operates  
25 to stifle or suppress competition and thus produce a result disadvantageous  
26 to the public.

27           The persons involved, both public and private shall, in addition,  
28 suffer the penalty of temporary or perpetual disqualification from public  
29 office or be permanently disqualified from transacting business with the  
30 government.

31           (c) Private individuals who commit any of the following acts, and  
32 any public officer conspiring with them, shall suffer the penalty of

1 imprisonment of not less than six (6) years and one (1) month but not more  
2 than fifteen (15) years:

3 (1) Submitting eligibility requirements of whatever kind and nature  
4 that contain false information or falsified documents calculated to influence  
5 the outcome of the eligibility screening process or concealing such  
6 information in the eligibility requirements when the information will lead to  
7 a declaration of ineligibility from participating in public bidding.

8 (2) Submission of bidding documents of whatever kind and nature  
9 that contain false information or falsified documents or concealing such  
10 information in the bidding documents, in order to influence the outcome of  
11 the public bidding.

12 (3) Participating in a public bidding using the name of another or  
13 allowing another to use one's name for the purpose of participating in a  
14 public bidding.

15 (4) Withdrawing a bid, after it shall have qualified as the lowest  
16 calculated bid/highest rated bid, or refusing to accept an award, without  
17 just cause or for the purpose of forcing the procuring entity to award the  
18 contract to another bidder. This shall include the non-submission, without  
19 justifiable cause within the prescribed time, or delaying the submission of  
20 requirements such as, but not limited to, performance security, preparatory  
21 to the final award of the contract.

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

25 SEC. 51. *Jurisdiction.* – Jurisdiction over the offenses under this  
26 Article shall belong to the proper courts, according to laws existing at the  
27 time of the commission of the offenses.

28 ARTICLE XVII

29 CIVIL LIABILITY

30 SEC. 52. *Civil Liability in Case of Conviction.* – Without prejudice  
31 to administrative sanctions that may be imposed in the proper cases, a  
32 conviction under this law or Republic Act No. 3019 shall carry with it civil

1 liability which may, at the discretion of the courts, consist of restitution for  
2 the damage done or the forfeiture in favor of the government of any  
3 unwarranted benefit derived from the acts in question or both.

4 SEC. 53. *Liquidated Damages.* – All contracts which will be  
5 executed in accordance with this Act shall contain a provision on liquidated  
6 damages which shall be payable in case of breach thereof. The amount  
7 thereof shall be specified in the IRR.

8 ARTICLE XVIII

9 ADMINISTRATIVE SANCTIONS

10 SEC. 54. *Imposition of Administrative Penalties.* – (a) In addition to  
11 the provisions of Articles XVI and XVII of this Act, the BAC shall impose  
12 on bidders or prospective bidders the administrative penalties of suspension  
13 for one (1) year for the first offense and two (2) years for the second  
14 offense, as well as disqualification from further participating in the public  
15 bidding currently being undertaken by the procuring entity concerned,  
16 where applicable, for the following violations:

17 (1) Submitting eligibility requirements containing false information  
18 or falsified documents.

19 (2) Submitting bids that contain false information or falsified  
20 documents or the concealment of such information in the bids, in order to  
21 influence the outcome of eligibility screening or any other stage of the  
22 public bidding.

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

25 (4) Withdrawing a bid or refusal to accept an award or enter into  
26 contract with the Government without just cause, after it shall have been  
27 determined to have submitted the Lowest Calculated Responsive  
28 Bid/Highest Rated Responsive Bid.

29 (5) Refusing or failing to post the required performance security  
30 within the prescribed time.

31 (6) Terminating the contract due to the default of the bidder.

1 (7) Any documented unsolicited attempt by a bidder to unduly  
2 influence the outcome of the bidding in his favor.

3 (8) All other acts that tend to defeat the purpose of the public  
4 bidding.

5 (b) In addition to the above administrative penalties, the bid  
6 security or the performance security posted by the concerned bidder or  
7 prospective bidder shall also be forfeited, where applicable.

8 SEC. 55. *Preventive Suspension.* – The head of the procuring entity  
9 may preventively suspend any member of the Technical Working Group or  
10 the Secretariat, or the BAC if there are strong reasons or *prima facie*  
11 evidence showing that the officials or employees concerned are guilty of  
12 the charges filed against them under Articles XVI and XVII of this Act or  
13 for dishonesty as defined by the Civil Service Laws. In all cases,  
14 procedural and substantive due process as mandated by the Constitution  
15 and Civil Service Laws, rules and regulations, shall be strictly observed.

16 SEC. 56. *Lifting of Suspension and Removal of Administrative*  
17 *Disabilities.* – Lifting of preventive suspension pending administrative  
18 investigation as well as removal of administrative penalties and disabilities  
19 shall be in accordance with the provisions of Sections 52 and 53, Chapter 6  
20 (Civil Service Commission), Book V of Executive Order No. 292, the  
21 Administrative Code of 1987.

22 ARTICLE XIX

23 LEGAL ASSISTANCE AND INDEMNIFICATION OF BAC MEMBERS

24 SEC. 57. *Private Legal Assistance.* – All members of the BAC are  
25 hereby authorized to engage the services of private lawyers or extend  
26 counsel immediately upon receipt of Court Notice that a civil or criminal  
27 action, suit or proceeding is filed against them. The lawyer’s fee shall be  
28 part of the indemnification package for the BAC members, subject to the  
29 provisions of Section 58 hereof.

30 SEC. 58. *Indemnification of BAC Members.* – The GPPB shall  
31 establish an equitable indemnification package for public officials  
32 providing services in the BAC, which may be in the form of free legal

1 assistance, liability insurance, and other forms of protection and  
2 indemnification for all costs and expenses reasonably incurred by such  
3 persons in connection with any civil or criminal action, suit or proceeding  
4 to which they may be, or have been made, a party by reason of the  
5 performance of their functions or duties, unless they are finally adjudged in  
6 such action or proceeding to be liable for gross negligence or misconduct  
7 or grave abuse of discretion.

8 ARTICLE XX

9 FINAL PROVISIONS

10 SEC. 59. *Implementing Rules and Regulations and Standard*  
11 *Forms.* – Within sixty (60) days from the effectivity of this Act, the  
12 necessary rules, regulations and guidelines for the implementation of the  
13 provisions thereof shall be formulated by the GPPB. Within thirty (30)  
14 days from the effectivity of the implementing rules and regulations, the  
15 standard forms for procurement shall be formulated and approved.

16 SEC. 60. *Separability Clause.* – If any provision of this Act is  
17 declared invalid or unconstitutional, the other provisions not affected  
18 thereby shall remain valid and subsisting.

19 SEC. 61. *Repealing Clause.* – This law repeals Executive Order No.  
20 40, Series of 2001, entitled “Consolidating Procurement Rules and  
21 Procedures for All National Government Agencies, Government-Owned or  
22 -Controlled Corporations and Government Financial Institutions, and  
23 Requiring the Use of the Government Electronic Procurement System”;  
24 Executive Order No. 262, Series of 2000, entitled “Amending Executive  
25 Order No. 302, series of 1996, entitled “Providing Policies, Guidelines,  
26 Rules and Regulations for the Procurement of Goods/Supplies by the  
27 National Government” and Section Three (3) of Executive Order No. 201,  
28 series of 2000, entitled “Providing Additional Policies and Guidelines in  
29 the Procurement of Goods/Supplies by the National Government”;  
30 Executive Order No. 302, series of 1996, entitled “Providing Policies,  
31 Guidelines, Rules and Regulations for the Procurement of Goods/Supplies  
32 by the National Government”; and Presidential Decree No. 1594 dated

1 June 11, 1978, entitled "Prescribing Policies, Guidelines, Rules and  
 2 Regulations for Government Infrastructure Contracts." This law amends  
 3 Title Six, Book Two (2) of Republic Act No. 7160, otherwise known as the  
 4 "Local Government Code of 1991"; the relevant provisions of Executive  
 5 Order No. 164, Series of 1987, entitled "Providing Additional Guidelines  
 6 in the Processing and Approval of Contracts of the National Government";  
 7 and the relevant provisions of Republic Act No. 7898 dated February 23,  
 8 1995, entitled "An Act Providing for the Modernization of the Armed  
 9 Forces of the Philippines and for Other Purposes." Any other law,  
 10 presidential decree or issuance, executive order, letter of instruction,  
 11 administrative order, proclamation, charter, rule or regulation and/or parts  
 12 thereof contrary to or inconsistent with the provisions of this Act is hereby  
 13 repealed, modified or amended accordingly.

14 SEC. 62. *Effectivity Clause.* – This Act shall take effect fifteen (15)  
 15 days following its publication in the *Official Gazette* or in two (2)  
 16 newspapers of general circulation.

Approved,

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