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Philippines

COUNTRY PROCUREMENT ASSESSMENT REPORT



THE WORLD BANK
Country Operations and Services Unit
East Asia and Pacific Region

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March 2003

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Contents

Foreword	9
Overview	11
The Need for Procurement Reform	11
Key Findings of the CPAR	13
<i>Strengthening the Legal and Policy Framework</i>	15
<i>Strengthening Organization and Staffing</i>	15
<i>Improving Practices and Processes</i>	15
<i>Enhancing Transparency</i>	16
Sectoral Case Studies	16
Need for Overall Governance Reforms	16
Ingredients for Successful Reform Implementation	17
<i>CPAR Working Group</i>	17
<i>Donor Community Assistance</i>	18
<i>Success Monitoring Indicators</i>	18
Strengthening Procurement and Project Management in Bank-Financed Projects	18
<i>Risk Assessment</i>	19
The Public Procurement Regime	21
Legal Framework	21
<i>Main Concerns</i>	21
<i>Main Recommendations</i>	22
Organizational Framework	22
<i>Organizational Set-Up</i>	22
<i>Function and Ad Hoc Staffing</i>	23
<i>Professionalize the Procurement Function</i>	23
<i>Main Recommendations</i>	24
Oversight and Regulatory Framework	24
<i>Main Recommendations</i>	25
Government Procurement Processes and Practices	25
<i>Main Concerns</i>	26
<i>Main Recommendations</i>	27
Decentralized Procurement Practices at the LGU Level	29
Overview	29
Key Findings	29
<i>Main Concerns</i>	29
<i>Main Recommendations</i>	30
Procurement in Externally Financed Projects	31
Weak Procurement Management	31
<i>NGAs</i>	31
<i>LGUs</i>	32
<i>NGOs</i>	32
<i>Main Recommendations</i>	32

Measures for Enhancing Transparency -----	33
Government Anti-Corruption Institutions -----	33
Notable Anti-Corruption Programs of Government -----	33
World Bank -----	35
Civil Society -----	35

Tables

Table 1: <i>Status of Recommendations - CPAR 1997</i> -----	12
Table 2: <i>Philippines: Magnitude of National Government Procurement Outlays</i> -----	13
Table 3: <i>Sectoral Reform Measures</i> -----	17
Table 4: <i>Partial Inventory Count of Procurement Issuances</i> -----	21
Table 5: <i>Disbursement Ratio</i> -----	31
Table 6: <i>The Philippines Government Electronic Procurement System</i> -----	34

Attachment

Attachment 1 - <i>Key Recommendations for Implementation</i> -----	36
Attachment 2 - <i>Draft Procurement Side Letter</i> -----	39
Attachment 3 - <i>Project Risk Assessment</i> -----	43
Attachment 4 - <i>Republic Act 9184 Government Procurement Reform Act</i> -----	44
Attachment 5 - <i>World Bank Comments to Government Procurement Reform Act</i> -----	70

Acronyms and Abbreviations

ADB	- Asian Development Bank	GOP	- Government of the Philippines
AGILE	- Acceleration Growth Investment Liberalization with Equity	GPIS	- Government Procurement Information System
AIM	- Asian Institute of Management	GPPB	- Government Procurement Policy Board
AO	- Administrative Order	ICB	- International Competitive Bidding
BAC	- Bids and Awards Committee	INT	- Department of Institutional Integrity
BSP	- Bangko Sentral ng Pilipinas	IRRs	- Implementing Rules and Regulations
BOT	- Build-Operate-and-Transfer	JBIC	- Japan Bank for International Cooperation
CIAP	- Construction Industry Authority of the Philippines	LC	- Letter of Credit
CDF	- Countryside Development Fund	LCE	- Local Chief Executive
CIDA	- Canadian International Development Agency	LGU	- Local Government Unit
COA	- Commission on Audit	LOI	- Letter of Instructions
CPAR	- Country Procurement Assessment Report	NBI	- National Bureau of Investigation
CPPR	- Country Portfolio Performance Review	NCB	- National Competitive Bidding
CSC	- Civil Service Commission	NGA	- National Government Agencies
DBM	- Department of Budget and Management	NGO	- Non-Government Organization
DepEd	- Department of Education	NEDA	- National Economic and Development Authority
DILG	- Department of the Interior and Local Government	OSG	- Office of the Solicitor General
DOJ	- Department of Justice	PCAB	- Philippine Constructors Accreditation Board
DOH	- Department of Health	PEAC	- Pre-qualification, Evaluation and Awards Committee
DPWH	- Department of Public Works and Highways	PD	- Presidential Decree
DTI	- Department of Trade and Industry	PPB	- Procurement Policy Board
EO	- Executive Order	PSB	- Philippines Shippers' Bureau
EPS	- Electronic Procurement System	PS	- Procurement Service
GAAM	- Government Accounting and Audit Manual	PWI	- Procurement Watch, Inc.
GEPS	- Government Electronic Procurement System	TIP	- Transparency International Philippines
GEF	- Global Environment Facility	TTL	- Task Team Leader
GFI	- Government-Financing Institution	TWG	- Technical Working Group
GOCC	- Government-Owned and/or Controlled Corporation	WB	- World Bank
		WBOM	- World Bank Office Manila
		WG	- Working Group

Foreword

The Country Procurement Assessment Report (CPAR) is an analytical tool intended to assess the public procurement system in the Philippines and, in the process, generate a dialogue with the Government on needed reforms. The CPAR is primarily designed for use by procurement professionals in government to improve procurement practices, and civil society and the private sector to understand better the current processes and procedures in place. The assessment was done from October 2001 to June 2002 when there were many laws, parallel regulations, Executive Orders, Administrative Orders and Implementing Rules and Regulations, and as yet no omnibus procurement law.

The CPAR was a joint effort of the World Bank Office Manila and the Government of the Philippines (GOP), and with the participation of the Asian Development Bank. The specific purpose of the CPAR was to establish the need for procurement reform and guide the development of an action plan to improve the country's system for procuring goods, works, and consulting services. The following activities were carried out:

- (a) a comprehensive analysis of the country's public sector procurement system, including the existing legal framework, organizational responsibilities and control and oversight capabilities, present procedures and practices, and how well these work in practice;
- (b) an assessment of the institutional, organizational and other risks associated with the procurement process, including identification of procurement practices unacceptable for use in Bank-financed projects;
- (c) development of a prioritized action plan to bring about institutional improvements, and
- (d) an assessment of the competitiveness and performance of local private industry with regard to participation in public procurement, and the adequacy of commercial practices that relate to public procurement.

The Report was submitted on June 30, 2002 to the Government of the Philippines. It is part of an integrated comprehensive Public Expenditures, Procurement and Financial Management Review (PEPFMR) conducted in accordance with the Bank's Country Assistance Strategy (2002-2005). The key procurement reform recommendations, which represent the findings as of June 2002, are published in the PEPFMR. There are three (3) volumes in the CPAR, which cover the Findings and Recommendations in Volume 1, the details of the review in Volume 2, and a collection of consultant reports in Volume 3. Only the Findings and Recommendations, Volume 1, are published in this document.

The CPAR provided several comprehensive recommendations, one of which was the passage of an omnibus procurement law. Due to the strong involvement of the GOP in preparing the CPAR and its commitment to procurement reform, the main recommendation was fulfilled when Congress passed, in December 2002, the Government Procurement Reform Act (RA 9184), which was signed by President Gloria Macapagal-Arroyo on January 19, 2003. The Implementing Rules and Regulations (IRRs) are currently under preparation. RA 9184 is included in Attachment 4, but is not analyzed explicitly in this CPAR since the main diagnostic work was carried out prior to the promulgation of this Act. It is important to note that many key recommendations of the CPAR were incorporated into the final version of RA 9184. This constitutes a major reform during the Arroyo administration that should yield significant public benefits, including budgetary savings and reduction in losses due to corruption that should ensue from a more transparent, accountable and efficient procurement process.

Robert Vance Pulley
Country Director, Philippines
World Bank Office Manila
March 2003

Overview

1.1 Recognizing that sound public procurement is an essential part of good governance, the Government of the Philippines (GOP) and the World Bank (WB) have agreed to conduct and produce a country procurement assessment report (CPAR). This will summarize the findings and agreed action plans to address issues during the Bank's fiscal year 2002. The CPAR has been recognized by the GOP as an important tool to pursue its objective of reforming the public procurement system. Key findings and recommendations (Attachment 1) of the CPAR have been included in the Bank's proposed Country Assistance Strategy 2003 to 2005 for the Philippines.

1.2 A first joint assessment was conducted in 1994, followed by another in 1997. Because many differences between procurement policies of the Bank and of the Government were noted, the 1997 CPAR included the "side letter" (Attachment 2) which is cur-

The Bank relies on the Representations and assurances in the "side letter" for entering into a Loan Agreement with the Philippines, and these representations and assurances form an integral part of the Loan Agreement.¹

The need for serious procurement reform is urgent. From fiscal year 1997 to 2001, annual outlays for procurement of goods, works and services by national agencies averaged more than Php113 Billion (Table 2). This excludes procurement by LGUs and Government Owned and/or Controlled Corporations (GOCCs) placed at around Php50 Billion a year and for Build Operate Transfer Transfer (BOT) projects with private sector participation, estimated at about Php372 Billion in 2001.

rently being used for all Bank loans to the Philippines. Even if the findings of the 1997 review (Table 1) were discussed in detail with GOP officials, the exercise was essentially conducted by the Bank with no GOP ownership.

1.3 The current CPAR started in October 2001 and was conducted by the World Bank Office Manila (WBOM) working closely with the GOP designated team. The joint working group has assumed both co-responsibility and co-leadership of the project with the participation of the Asian Development

Bank (ADB). Since October, the working group or CPAR team has met weekly to analyze, discuss and endorse the consultants' main findings. Mainly, the work has focused on: (i) Public Procurement Regime; (ii) Public Procurement in Practice; (iii) Procurement in Externally Financed Projects; and (iv) Initiatives in Enhancing Transparency. It was agreed that the health, education and public works sectors would be the focus of the CPAR. The performance of the Local Government Units (LGUs) was also assessed. Finally, the team assessed risks arising from the Bank's involvement.

The Need for Procurement Reform

1.4 From the overall CPAR perspective, the need for serious procurement reform is urgent. From fiscal year 1997 to 2001, annual outlays for procurement of goods, works and services by national agencies averaged more than Php113 billion. Public Sector Infrastructure Outlays for 2000 and 2001 indicate that an average of Php 15 billion of the total bud-

¹The "side letter" was first used in 1997 to specify the loan procurement conditions between the GOP and the Bank.

Table 1: Status of Recommendations - CPAR 1997

The 1997 CPAR raised important issues and recommendations recognized by the Bank and the GOP as warranting attention. A situation assessment for each of these issues revealed that, with the exception of the price negotiation practice of the Procurement Service, all concerns were being addressed. Here is the status summary.

Areas of Concern	Status as of February 15, 2002
0.3 (a) Cumbersome internal procurement processes.	The situation persists and continues to be recognized at high government levels. Executive Order (EO) 40 attempts to clarify some issues to simplify the processes.
0.3 (b) Vacillation of project implementers faced with conflicting Bank and local rules and possible legal consequences.	This should no longer be an issue for the central government but is still a problem at the LGU level.
0.3 (c) Lack of familiarity of LGUs with Bank procurement guidelines and rationale.	Somewhat improved with training but much remains to be done.
0.5 (a) Through seminars, workshops and appraisal missions, the Bank should emphasize the waivers . mandating the use of Bank procedures for National Competitive Bidding (NCB) procurement.	This is continuously being done.
Recommendations	
0.5 (b) Maritime shipping restrictions. Task Team Leaders (TTLs) should discuss at appraisal.	This is continuously being done.
0.5 (c) Discourage pre-qualification, encourage post-qualification.	This is now the new norm in the GOP.
0.5 (d) Update the 'side letter.'	Done.
0.6 (a) Use procurement agents in LGU projects.	This is being done.
0.6 (b) Use of Department of Budget and Management's (DBM) Procurement Service (PS) as the procurement agent in Bank-financed projects—only when the PS agrees that advertisements and invitations will state that there will be no price negotiation.	This was tried in several projects. Unable to verify if advertisements and invitations indeed stipulated no-negotiation.
0.6 (b) Use of DBM's PS Bank should try to convince DBM to stop the practice of negotiating prices with the winning bidder.	Unsuccessful. There is a 30% increase in the number of agencies using the PS, from 1,200 to 2,186. The practice is true of modes other than public bidding.
0.6 (c) Procurement Code.	Ongoing.
0.6 (c) Update the procurement rules of Commission on Audit's (COA) Government Accounting and Audit Manual (GAAM).	In progress.

Table 2: *Philippines - Magnitude of National Government Procurement Outlays*

Expense Class	1997	1998	1999	2000	2001
Supplies and Materials	15.750	15.587	17.012	20.295	16.879
Library Books and Materials	0.034	0.158	0.094	0.225	0.071
Other Services	15.096	17.232	15.430	18.676	19.322
Gasoline, Oil and Lubricants	1.883	1.766	2.099	2.593	2.622
Land and Land Improvements Outlay	43.621	68.337	50.406	63.497	59.985
Buildings and Structures Outlay	17.533	12.579	10.175	11.431	6.570
Furniture, Fixtures, Equipment & Books Outlay	11.275	6.307	9.23	5.723	3.642
Information Technology (IT) Equipment Outlay	0.010	0.226	0.799	0.716	0.932
TOTAL	105.202	122.192	105.245	123.156	110.023

Source: Tables B.1 and B.14, Budget of Expenditures and Source of Financing, Fys 1999, 2000, 2001, 2002 and 2003

get involved procurement by national agencies, LGUs and government owned and controlled corporations (Table 2). This excludes procurement by LGUs and Government Owned and/or Controlled Corporations (GOCCs) placed at around Php 50 Billion a year and for Build-Operate-Transfer (BOT) projects with private sector participation, estimated at about Php372 Billion in 2001².

1.5 The potential for procurement reform, and the budgetary savings realizable from more transparent and accountable procurement, is high. The experience of textbook and drugs procurement under World Bank-financed projects demonstrated that adoption of more transparent procurement processes and International Competitive Bidding (ICB) practices reduced unit prices of textbooks by about 40 percent—this translated into a savings of about Php1.2 billion for the Department of Education. In the case of DOH, unit prices of TB Drugs

were cut by 33 to 94 percent, similarly translating into a substantial savings. However, the possibility of reforms being blocked by vested interests is a major concern.

Key Findings of the CPAR

1.6 From the overall findings of the CPAR, the public procurement system in the Philippines is dysfunctional. It is characterized by multiple laws, rules and regulations which while adhering to the principles of competition and transparency, are inefficient and prone to abuse. It also contributes to lowering public funds' value for money. The following are the key reasons why the system, despite considerable efforts in the past, does not function well.

From the overall findings of the CPAR, the public procurement system in the Philippines is dysfunctional. It is characterized by multiple laws, rules and regulations, which do however adhere to the principles of competition and transparency, but it is inefficient, and prone to abuse³. It also contributes to lowering public funds' value for money.

¹ Proliferation of outdated and fragmented laws and the multiplicity of uncoordinated executive issu-

²Presentation by Dr. Edgardo Jose L. Campos Jr., in the PWI Press Briefing, October 5, 2001.

³Addressed by the omnibus procurement law signed by President Arroyo on January 10, 2003.

ances. At times they are inconsistent with one another. They constitute a source of confusion, vacillation in decision making, slow procurement action, difficulty in enforcement and vulnerability to corruption.

- 1 Absence of a single agency with a mandate for: (a) formulating procurement policy, rules and procedures, (b) ensuring that these issuances are disseminated to and understood by implementing agencies, (c) monitoring and evaluating compliance, (d) providing tools to attain efficiency, accountability and economy, and (e) increasing capacity building opportunities, increasing capacity building opportunities and a higher level of professionalism in the procurement function.
- 1 Inadequate dissemination and updating of procurement rules and regulations. The lack of parallel training programs for consistent and efficient implementation.
- 1 Serious weakness in the capacity of members of Bids and Awards Committees (BACs) as well as those of Technical Working Groups (TWGs).
- 1 Treatment of Annual Procurement Plans as mere compliance with budgetary requirements. They are not viewed as tools for efficient implementation, monitoring and evaluation.
- 1 Allowing the practice of negotiation with the lowest calculated or evaluated bidder to meet budgetary ceiling requirements.
- 1 Serious delays in registration and licensing of contractors and suppliers.
- 1 Political interference in the bidding process when funding comes from congressional insertions and countryside development funds (CDF) of politicians.
- 1 Procrastination by bidding committee members due to risk averseness when evaluating complicated or controversial procurements. This often results in re-bidding as an exit strategy.
- 1 Serious weaknesses in monitoring and enforcing procurement rules and regulations.
- 1 Insufficient advertisement for small and

medium-sized contracts at the LGU level.

- 1 Surety law does not provide security for contracts callable on demand. Bank guarantees and irrevocable letters of credit are prohibitive in cost and difficult to obtain from commercial banks.
- 1 Allowing unsolicited proposals does not promote transparency in the privatization process.
- 1 Inadequate mechanism for encouraging legitimate complaints and lack of efficient administrative procedures for handling them.

1.7 The above key issues mean that despite the GOP's efforts to streamline the process (as mentioned below), waste continues in the use of public resources. More so, the ongoing decentralization of government functions to LGUs poses an even greater risk.

1.8 The opportunities for procurement reform are enhanced under the new Administration of President Gloria Macapagal-Arroyo. Her State of the Nation Address last July 2001 underscored the urgent need for good governance. Last October, when Congress failed to pass an omnibus procurement law, she showed resolution by streamlining procurement via an EO 40.

President Gloria Macapagal-Arroyo underscored the urgent need for good governance, and streamlined procurement through an Executive Order, which consolidated rules and regulations. The President has set as a top priority the passage of the omnibus law on procurement, and the CPAR has helped to identify specific reform measures for strengthening the legal and policy framework, strengthening organization and staffing, improving practices and processes, and enhancing transparency.

It consolidated various rules and regulations on procurement. And now that the new Congress is in session, she has submitted as top priority the need to pass the omnibus law on procurement.

1.9 The 2002 CPAR exercise is therefore timely. Backed by the GOP's strong ownership of the exercise, the CPAR working group identified the following specific reform measures.

Strengthening the Legal and Policy Framework

- 1 By the end of the year, Congress would have passed the new procurement law covering all entities of government, including LGUs, with provisions for sanctions against violators⁴.
- 1 Sixty days after the approval of the new Procurement Law, DBM would have prepared the omnibus law's implementing rules and regulations.
- 1 By end of 2003, the COA would have updated the Government Accounting and Audit Manual (GAAM) in particular the portion related to procurement rules and procedures.
- 1 By June 2003, the Construction Industry Authority of the Philippines (CIAP) would have issued a directive allowing foreign contractor to bid without a Philippine License. (They will be required to secure one prior to award.)
- 1 By middle of next year, DBM would issue a directive replacing surety bonds as a form of security with Bank guarantees, letters of credit or other forms.
- 1 By middle of 2003, under of the leadership of the National Economic Development Authority (NEDA), the Build-Operate-and-Transfer (BOT) law and its "unsolicited proposal" rule would have been reviewed. A course of action would have been recommended to ensure fairness and transparency in the privatization process.
- 1 By June 2003, the Construction Industry Authority of the Philippines (CIAP) and the Department of Public Works and Highways (DPWH) would

have reviewed the law on arbitration aiming to align it with international practice.

Strengthening Organization and Staffing

- 1 By June 2003, DBM and NEDA would have established the Government Procurement Policy Board (GPPB) as the procurement oversight entity. It would be empowered to: (a) regulate procurement processes, (b) formulate policy, rules and regulations, (c) monitor and evaluate compliance by implementing agencies, (d) promote the use of state-of-the-art tools to attain efficiency, economy and accountability in the procurement process, and (e) maintain capacity building by improving the professionalism of the procurement function within the civil service⁵.
- 1 By June 2003, DBM will have finished the study for spinning off its Procurement Service (PS) into a separate corporate entity. It will provide efficient service to agencies for the delivery of commonly used supplies. It will not compete with the private sector in the process.
- 1 By the end of 2003, the Civil Service Commission (CSC) in collaboration with DBM and all concerned agencies, would have finished the study on how to professionalize the procurement function in the civil service, to make the function independent of political influences.
- 1 By June 2004, the DBM and the CSC would have developed a sustainable procurement training program with the cooperation of reputable institutes of learning. Attendance will be a requirement for current and future members of bidding committees, TWGs and other staff involved in procurement.

Improving Practices and Processes

- 1 By the end of 2004, to enforce the regulation on transparency, compliance to mandated processing lead times and the procurement plan, COA would have included review of procurement as an audit

⁴Passed by Congress in December 2002.

⁵The GPPB was established in January 2003.

step. An appropriate training program for auditors on procurement audit would have been developed.

- 1 By middle of 2003, CIAP, in coordination with NEDA and DPWH, would have finished the study on registration and licensing of contractors, together with an action plan for implementation.
- 1 By June 2003, as ensured by DBM, the Implementing Rules and Regulations (IRR) of the new Procurement Law would prohibit negotiation of price and contract amounts for goods and projects after bid opening.
- 1 By the end of 2002, the Department of the Interior and Local Government (DILG) and DBM would have developed a framework and guidelines for Congressional insertions and the Countryside Development Fund (CDF) to prevent the improper use of these funds⁶.
- 1 By June 2003, price monitoring will be included as an important function of the Government Procurement Policy Board (GPPB) as assured by DBM.
- 1 By June 2003, the CSC would have finished the study on how to provide support to members of bidding committees and TWGs to prevent harassment.
- 1 By December 2003, the Bangko Sentral ng Pilipinas (BSP) together with the WB would have reviewed the operations of domestic letters of credit. This aims to reduce transaction costs and thus promote the use of the instrument to expedite the payment process.
- 1 By June 2003, the Department of Trade and Industry (DTI), together with the Philippine Shippers' Bureau (PSB) would have completed the study on the financial impact of the Flag Vessel Law. By December 2003, they would have revised the policy of waivers for non-Philippine flag vessels for the shipment of goods from Korea and Japan.

Enhancing Transparency

- 1 By June 2003, DBM and the PS would have pushed for 60% implementation by all agencies of the government electronic procurement system.
- 1 By December 2004, the computerized registry would have been used by all projects, as assured by the DPWH.
- 1 By June 2003, Procurement Watch International (PWI) would have developed guidelines and training manuals for civil society organizations for monitoring public procurement.
- 1 PWI and Transparency International Philippines (TIP) have on-going programs to encourage and monitor civil society's participation in procurement at all levels.
- 1 The IRR of the new Procurement Law will incorporate a complaint mechanism aimed at encouraging legitimate complaints and an efficient procedures for handling them.

Sectoral Case Studies

1.10 The case studies conducted on four sectors, namely, Health, Education, Public Works and LGUs have likewise produced a number of reform measures specific to each sector (Table 3). Members of the working group representing each sector will monitor the implementation progress. Regular reports to the working group will be made.

Need for Overall Governance Reforms

1.11 The above-mentioned measures will help make the Philippines' public procurement system economic, efficient, transparent and more predictable. Yet, they will not be enough to completely deter corrupt and collusive practices. The most efficiently designed system will be prey to abuse if it is not managed by a Government with firm political will. Reforms will therefore be needed in other areas such as

⁶The framework and guidelines for Congressional insertions developed in December 2002.

Table 3: **Sectoral Reform Measures**

Streamline the policy on textbook content evaluation	DepEd	Done
Training, empowerment, and professionalism of the bid committee members	DOH	June 30, 2002
Streamline the procedure for contract review by the Legal Services Division	DOH	June 30, 2002
Review the staffing of the Procurement and Logistics Service	DOH	June 30, 2002
Conduct a study on the price of pharmaceuticals	DOH	Sept. 30, 2002
Revise Section 1-A, Rule IV of the IRR of Republic Act 8047 and General Policy No. 5 of the National Book Policy to relax its requirements on the importation of raw materials for textbooks	DepEd	Dec. 31, 2002
Standard estimated cost per classroom, for budgetary purposes, should not be a limitation to the resulting bid price	DepEd	Dec. 31, 2002
Develop an effective procurement planning and inventory monitoring system at the Regional, Division, District and School Levels	DepEd	Dec. 31, 2002
Strengthen the Department of Education's (DepEd) procurement capacity	DepEd	Dec. 31, 2002
Establish a National Drug Price Monitoring System	DOH	Dec. 31, 2002
Strengthen the Bureau of Food and Drugs' capacity to shorten the registration process	DOH	June 30, 2003
Develop a mechanism to monitor and evaluate the performance of the suppliers, constructors, and consultants	DOH/ DepEd	June 30, 2003
Review and implement Department of Health (DOH) reforms in terms of decentralizing procurement	DOH	Dec. 21, 2003
Develop a mechanism to ensure wider participation and competition	DPWH	Dec. 31, 2003
Streamline the cash allocation and approval process to avoid delay	DOH/ DepEd	Dec. 31, 2003
Provide/strengthen quality assurance mechanisms for design and supervision	DPWH	June 30, 2004
Amend the law to allow textbooks of foreign authors to compete for use as Science, Math and English textbooks in the Philippines	DepEd	Dec. 31, 2004

public financial management, accounting and internal control, auditing, judicial systems and the civil service. All these are currently the focus of the Government's efforts to fight corruption.

Ingredients for Successful Reform Implementation

CPAR Working Group

1.12 The Government's firm commitment must be

sustained. It is thus essential to continue the CPAR Working Group (WG), possibly transforming it to a "Procurement Technical Support Group (TSG)" until the GPPB oversight organization becomes fully operational. This is necessary to ensure that the dialogue for reform implementation continues, and that the monitoring of agreed actions is carried out. The Bank must be able to provide funding and staff support for the continuous operation of the Group. In addition, the members of the Group must be exposed to the experiences of other countries that underwent procurement

reform. They can adopt the lessons learned from those experiences. Participation in procurement reform workshops and related training exercises are essential.

Donor Community Assistance

1.13 The CPAR identified the technical assistance for the agreed reform measures taking into consideration the stated deadlines. In this instance, the donor community must be tapped to provide the needed resources to carry out the reform measures. A meeting with the donor community should be organized by the CPAR WB (or the GPPB Technical Support Group, if already in existence) for this purpose.

1.14 It is worth noting the recent donor interventions on procurement such as: (a) Study on Modernization of Procurement; and (b) the Report on Streamlining Procurement for Project Implementation Efficiency conducted by NEDA through the funding of ADB.

1.15 Technical assistance through the Institutional Development Fund grant of the World Bank has been accepted internally in the Bank. It will support the following reform measures:

- Passage of the Omnibus Procurement Law
- Preparation of the IRRs
- Establishment and operation of the procurement oversight board
- Development of the national training program
- Professionalization of the procurement function in the civil service
- Corporatization of the PS

Success Monitoring Indicators

1.16 Finally, the CPAR Working Group shall establish appropriate monitoring indicators to measure the progress, success or failure of the Action Plan, as well

Firm political will is needed to make the Philippines' public procurement system economic, efficient, transparent and more predictable. Complementary reforms will also be needed in public financial management, accounting and internal control, auditing, judicial systems and the civil service.

as to identify solutions in case of difficulties. These indicators shall cover the following topics: (a) interest of international competitors measured by the number of international bidders in a particular competition group or thresholds; (b) proficiency of procurement staff to be trained annually; (c) number of rebidding being called; and (d) processing times for the

procurement processes.

Strengthening Procurement and Project Management in Bank-Financed Projects

1.17 The current portfolio of Bank-financed projects in the Philippines has 25 operations with a net commitment of US\$1.4 billion and an undisbursed balance of US\$0.9 billion. The size of the portfolio, in terms of number of operations, will likely remain stable in the next three years. Total disbursement in Fiscal Year 2001 was US\$125 million under investment projects, for a ratio of 11.9 percent. This is below the regional standard of 18 percent. The generic implementation issues facing the Philippine portfolio are weak project and procurement management, slow replenishment of funds, limited monitoring capability and uneven capacity of Local Government Units (LGUs) to undertake procurement..

1.18 Since the 1997 Country Portfolio Performance Review (CPPR), the Government and the Bank recognized that procurement was the major portfolio issue. Measures were instituted to improve procurement, such as (a) strict enforcement of lead times; (b) close monitoring of procurement activities by implementing agencies with supervision from oversight agencies; and (c) focused training of procurement staff. These measures were seriously implemented, so improvements followed in the ensuing year. However,

since 1999, the portfolio based on disbursement performance was weakening again.

1.19 The identified measures to address the weakening portfolio performance are:

- Joint portfolio reviews with the ADB and the Japan Bank for International Cooperation (JBIC)
- Regular project review and visits by the World Bank Office Manila (WBOM) portfolio team
- Close monitoring of the status of implementation and procurement plans in every supervision mission
- Conduct of ex-post reviews on a regular basis, preferably jointly with the statement of expenditures reviews
- As agreed in the October 2001 meeting with the Association of Project Directors (Club of 29), the monitoring of performance through the Procurement Benchmark and Disbursement Target system (PBDT)⁷

Since the 1997 Country Portfolio Performance Review (CPPR), the Government and the Bank recognized that weaknesses in procurement were a major portfolio issue. Measures were instituted to improve procurement, such as (a) strict enforcement of lead times; (b) close monitoring of procurement activities by implementing agencies with supervision from oversight agencies; and (c) focused training of procurement staff. These measures were seriously implemented, so improvements followed in the ensuing year. However, since 1999, the portfolio based on disbursement performance was weakening again.

1.20 As regards investigating allegations of fraud and corruption, the Bank will rely on its Integrity and Investigation Unit (INTIU) and apply sanctions where called for. INTIU visited the Philippines twice last year.

Risk Assessment

1.21 The CPAR assessed the procurement risk as *average* (Attachment 3). The Philippines' Public Procurement System, through its various

laws, rules and regulations, adheres to the principles of competition, fairness and transparency. However, there are serious weakness in the implementation of the system which led to: (a) cumbersome procurement processes and unnecessary delays; (b) inadequate capacity of implementing agencies; (c) ineffective oversight; (d) high incidence of re-bidding; and (e) lack of accountability.

1.22 In terms of translating the risk on Bank-financed projects to actual implementation, the CPAR proposes the following thresholds:

Amount of Threshold per Contract for Procurement Methods and Prior Reviews			
Item	Category	Infrastructure Sector (per contract)	Other Sectors (per contract)
ICB	Works	Over \$2,000,000	Over \$500,000
	Goods	Over \$500,000	Over \$200,000
NCB	Works	Over \$200,000 to \$2,000,000	Over \$50,000 to \$500,000
	Goods	Over \$100,000 to \$500,000	\$20,000 to \$200,000
Prior Review	Works	More than \$2,000,000	More than \$500,000
	Goods	More than \$500,000	More than \$200,000
	Consultant Services-Firm	More than \$100,000	More than \$100,000
	Consultant Services - Individual	More than \$50,000	More than \$50,000
National Consultant shortlisting		Not more than \$200,000	Not more than \$200,000

⁷The PBDT System was replaced by the Procurement/Selection Planning and Monitoring System (PSPMS) in December 2002.

The Public Procurement Regime

Legal Framework

2.1 The Philippines is a democratic and republican state which, under the 1986 Constitution, adopts the centralized presidential form. The powers of government are exercised by three independent and co-equal branches, namely: the *Executive Branch* which enforces the laws headed by an elected President for a term of six years; the *Legislative Branch* which promulgates the laws and is vested in a bicameral Congress consisting of the Senate and a House of Representatives; and the *Judicial Branch* which settles disputes involving rights of contending parties under the law, and is vested in the Supreme Court, an appellate court, and various other special and lower courts.

2.2 The Philippine legal system is basically civil law, with a written Constitution and a body of legislated statutes as the principal sources of law. Common law influence, however, is traceable in some commercial and procedural laws derived from American legal institutions. Also, the Shari'ah legal system is actually recognized and enforced in the Philippine Autonomous Region in Muslim Mindanao.

2.3 Public Procurement is governed by a separate body of laws and regulations, consisting of more than 40 legislature enactments, Executive Orders (EOs) and administrative orders (AOs), presidential decrees (PDs) and issuances from government agencies. The primary responsibility for the implementation and execution of procurement laws and regulations rests with the heads of agencies or offices and the evaluation and award processes are handled by ad hoc Bids and Awards Committees (BACs) in each agency or office. Generally, pro-

urement is viewed from the identification of the item to be procured up to completion of the works or delivery of goods.

Main Concerns

2.4 Public sector procurement is characterized by outdated and fragmented laws and a proliferation of uncoordinated executive issuances. They prescribe a variety of procurement procedures and requirements which at times are not consistent with one another.

Hence, there is an urgent need to review and revise the procurement laws and EOs. New legislative measures will embody the best procurement reform ideas suitable to Philippine conditions.

2.5 The multiplicity of EOs, Implementing Rules and Regulations (IRRs) and other

agency issuances result in overlapping and uncoordinated directives. They create ambiguity and uncertainty in some procurement procedures (Table 4). It is therefore important to review the propriety and acceptability of the proposed rules against standard international practice. As of May 2002, there are three versions of the proposed law pending in the Senate and one consolidated version in the House of Representatives.

2.6 Furthermore, most EOs and IRRs are promulgated to fill gaps left by the absence of a comprehen-

Public Procurement is governed by a separate body of laws and regulations, consisting of more than 40 legislative enactments, Executive Orders (EOs) and administrative orders (AOs) presidential decrees (PDs) and issuances from government agencies.¹

Table 4: **Partial Inventory Count of Procurement Issuances**

Implementing Rules and Regulations	7
Executive Orders	14
Memorandum Circulars	3
Other Administrative Issuances	17
Partial Total	41

¹Republic Act No. 9184, Government Procurement Reform Act (Attachment 4), consolidated all laws into one by January 2003. The World Bank's comments on the Act are in Attachment 5.

sive procurement law. They are normally limited to providing implementing details of an existing law, not to substitute it. They do not cite the laws authorizing their promulgation, although administrative issuances normally require a legal or statutory basis for their validity. And they do not indicate in their repealing clauses the specific provisions of previous EOs and IRRs, which are amended, modified, or repealed. This makes the enforceability of some previously imposed provisions uncertain.

2.7 The Commission on Audit (COA) at times disseminates procurement laws and executive issuances for compliance by field auditors. However, as the executive issuances are changed, they are not always accompanied by corresponding changes in the COA rules. Controversies arise about which rule to follow.

2.8 Some martial law era policies and practices need to be re-examined. The role of DBM as procurer of commonly-used supplies for the entire bureaucracy under Letter Of Instructions (LOI) 755 (1978) and regularized in EO 359 (1989) needs to be subjected to the scrutiny of the regular legislative process. The practice of allowing downward price negotiation after public bidding and/or after contract award should be probed.

Main Recommendations

2.9 The main issue is the proliferation of EOs, AOs, and IRRs, which do not supersede each other or do not repeal the existing/previous rules. The preparation of Executive Order (EO) 40 was a tremendous ef-

fort to consolidate all the documents, but it does not have the power of law. Therefore, the CPAR team recommends that an omnibus law on public procurement be passed by Congress and promulgated and executed. It will consolidate, organize and/or cancel the existing documents, and give a real legal basis to public procurement. The IRRs have to be prepared accordingly.

2.10 Aside from the recommendation for the passage of the new procurement law, it is important to emphasize the propriety and acceptability of the rules,

taking into consideration international practice, that are included in the different versions of the draft Procurement Bill pending in both houses of Congress. As major weaknesses had been identified in the draft legislation, it is therefore incumbent upon the Bank, through this CPAR, to communicate to the Government the

recommended improvements prior to the approval of the bill by Congress.

*Republic Act No. 9184
or the Government Procurement Reform Act
was signed into law by President Gloria
Macapagal-Arroyo on January 10, 2003.
The Act is designed to “fight graft and corruption,
improve operational efficiency, bolster
transparency in bidding procedures and
encourage competition,” said the President
in signing the new law².*

Organizational Framework

Organizational Set-Up

2.11 The overall procurement function is vested to: (a) the head of each national agency or instrumentality; (b) the governing board for government owned or controlled corporations (GOCC); and (c) the elected head of each LGU. Normally, the size and capacity of the procurement organization would depend on the volume of procurement work that each agency must accom-

²The CPAR was completed in June 2002 and contained many joint recommendations by the GOP and the Bank which were included in the new law.

plish. Regulations, such as PD 1594, EO 262, and the recently issued EO 40, mandate the creation in each agency of bid and selection committees. Some of their members work on an ad hoc basis. These are: (a) the Bid and Award Committee (BAC) for procurement of works and goods and (b) the Pre-qualification Evaluation and Awards Committee (PEAC) for the selection of consultant services. These committees are assisted by secretariats to handle the administrative function in the bidding process. EO 40 mandates the creation of a permanent Procurement Secretariat with fixed responsibility. This is in the interest of efficiency. The Technical Working Group (TWG) assists the committees in the technical evaluation of bids. Further, EO 40 provides that the contract approving authority must not be involved in the bid evaluation process.

Function and Ad Hoc Staffing

2.12 The BAC and PEAC determine the eligibility of prospective bidders or consultants, receive and open bids or proposals, conduct the evaluation of bids or offers, undertake pre-qualification and post-qualification proceedings, and recommend the award of contracts. The scope of the BAC and PEAC activities spans the pre-procurement conference up to the recommendation of the award. It is chaired by at least a third-ranking official of the agency with at least four voting members, namely: the agency's Legal Officer as Secretary, a technical member, and representatives from Finance and from the end-user. Representatives from non-governmental organizations (NGOs) and the COA are required as observers.

2.13 Large agencies like the DepEd have a pool of officers from which the Secretary can designate members of the Committee for each specific procurement package. Others, like the DPWH and DOH, designate membership for one year from among its senior and middle managers. Although EO 40 instructed a permanent set-up, the BAC and PEAC Secretariat, in most agencies, are still ad-hoc and their members are designated together with the Committees. The same is true for the TWG. The ad hoc staffing provides a built-in check to the system, due to the rotation of member-

ships. However, for organizational control to be effective, the set-up requires a cadre of officials and managers that are qualified to perform procurement functions. In most agencies, proficient procurement staff are lacking. Consequently, non-procurement proficient staff are often designated, and this sometimes derails the process of decision making. Worse, the proficient staff hesitate and sometimes refuse to be designated as members of the committees. After all, the function is an added burden to their original jobs, and they are given no incentives. In the Department of Health (DOH), some members of the Committee have experienced harassment from losing bidders. It is often perceived that those who want to become members of these procurement units have personal hidden agenda.

Professionalize the Procurement Function

2.14 The 1997 CPAR had strongly recommended capacity building for implementing agencies to carry out their procurement work. In support of this recommendation, the Bank utilized resources from the Strategic Compact to conduct a series of training workshops for procurement staff in all sectors. In 1998, the Bank established a self-sustaining training program with the Asian Institute of Management (AIM), which was selected competitively among institutes of higher learning. The curriculum covers procurement management within the larger context of project management. Five courses have been delivered and the training is being offered in two regional courses per year. AIM is now considering the possibility of establishing a graduate degree program with a specialization in procurement management at the masters level. Other lending institutions, such as ADB, JBIC and other bilateral donors, conduct their own training for staff implementing their projects.

2.15 As mentioned, honest and proficient staff would not want to remain in procurement for a long time. Sometimes procurement can be a hazardous job. Training alone is insufficient for a civil servant to pursue a career in procurement. It is therefore necessary that the position and title on procurement be institutionalized within the civil service, not only at the na-

The CPAR team's recommendation is to professionalize the procurement function and establish a national training program to strengthen the capacity of civil servants involved in procurement at the national and LGU levels.

tional agency level but also at the LGU level. Moreover, the qualification requirement for such career positions should be integrated into the educational stream, whether at the college or graduate level. The CPAR recommends that a study be conducted along the objectives mentioned. Discussions with the Civil Service Commission (CSC) revealed support for such a study.

2.16 The need to build capacity in procurement was recognized a long time ago but the determination to build sustainable capacity is wanting. Due to fiscal constraints, the budget for training amounts to Nine Hundred Pesos (Php900.00) per training course per employee. This is unrealistic as the regular procurement management training course offered by AIM costs US\$2,000.00. Except for the classes of AIM, there is no regular procurement training course that caters to the needs of agencies. The technical assistance component in foreign-assisted projects is tapped by agencies to provide the funding for institutional strengthening, including procurement training. In the absence of such funding, however it will be important to formulate a strategy for sustainable capacity building in procurement, along the lines of professionalizing the function and establishing a national training program.

Main Recommendations

2.17 The main issue is the absence of a real profession of procurement specialists in the civil service and the ad hoc nomination of the BAC members. Hence, there is a strong need to ensure that these persons are procurement certified and independent of political

influences. *The CPAR team's recommendation is to professionalize the procurement function and establish a national training program to strengthen the capacity of civil servants involved in procurement at the national and LGU levels.*

Oversight and Regulatory Framework

2.18 There is no single central public agency exclusively tasked with regulating and overseeing procurement. However, certain agencies and ad hoc bodies exist with varying oversight responsibilities.

- **Procurement Policy Board (PPB)**⁴. This comprises the Secretaries of DBM (as chair), Department of Finance (DOF), Department of Trade and Industry (DTI), DOH, the Department of National Defense, Department of Public Works and Highways (DPWH) and Department of Education (DepEd), and a representative from the Institute of Certified Public Accountants. The body promulgates rules for the operations of the Procurement Service (PS) and other agencies, and conducts evaluations of the centralized system for the procurement of goods.
- **Committee on Infrastructure of National Economic Development Authority (NEDA)**.⁴ This body monitors, among others, the processing time used in the bidding process by government agencies in works and services contracts. It also promulgates rules and regulations to amend the existing ones for procurement of works and consulting services.
- **Disciplinary Committee**. This is an inter-agency committee created pursuant to AO 129. This is under the Office of the President, and it imposes sanctions for government officials' non-observance of established deadlines for bidding and awarding of works and consulting services contracts. This committee last convened in 1998.
- **Philippine Licensing Board for Contractors**. This Government agency issues, suspends and revokes contractors' licenses.

⁴PPB and NEDA Infracom handling procurement were dissolved by the creation of GPPB under RA 9184.

- **Construction Industry Arbitration Commission.** This body rules on disputes arising from, or connected with, contracts entered into by parties involved in construction, including those involving the government.
- **Department of Budget and Management-Procurement Service (DBM-PS).** This operates a government-wide procurement system from which all National Government Agencies (NGAs), state colleges, and government corporations are required to procure their commonly-used supplies, materials, and equipment needs. The PS also monitors their prices.
- **Systems and Procedures Bureau of the DBM.** This body develops standards and specifications for commonly-used supplies, materials and equipment, in coordination with DTI and DOST. It designs an integrated supply management system for government and conducts studies to improve the purchasing system.

Main Recommendations

2.19 Given the number of entities involved in the oversight of procurement, the CPAR team recommends that an Oversight Entity be established by law to: (i) oversee the procurement function; (ii) ensure quality and regulate the status and training of the procurement staff; (iii) maintain a public procurement website to disseminate agency procurement requirements and activities; and (iv) monitor prices via an electronic billboard which publishes up-to-date market prices of commonly-used commodities. It was agreed that a study on the scope of work of the oversight committee will be con-

⁵Single oversight entity established under RA9184.

ducted to define the detailed functions to be covered. In addition, to expedite the operation of the single oversight entity, the CPAR recommends that the CPAR Working Group, under the DBM, acts in the interim as facilitator and support group to the current Procurement Policy Board (PPB). In the meantime, the CPAR WG should define the role, organization and staffing of the oversight entity so that it could be involved in the preparation of the IRRs.

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2.20 The CPAR team recognizes the importance and professionalism of the Procurement Service. To ensure independence and accountability, the CPAR recommends a study to propose the needed steps towards the conversion of the PS into an independent and corporatized entity.

Government Procurement Processes and

Practices

2.21 In general, laws and administrative issuances mandate the transparency of procurement proceedings. Competitive public bidding requires the public advertisement of requests for bid quotations through general newspapers, through the posting of notices in conspicuous public places, and lately through government websites. Thus, invitations to bid are required to be advertised publicly at least twice within two weeks with at least seven days between publications in two newspapers of general circulation. The Official Gazette is published weekly and is available to anyone. Public bid opening is undertaken by the BAC, which includes membership from the private sector and the COA. It is required to follow the prescribed procedure for evaluating bids. Biddings are conducted via the two-enve-

lope system, where one contains the eligibility/technical requirements, and the other has the bidding documents. The bid opening is public, and may be attended by bidders or their representatives.

Main Concerns

- 1 **Transparency.** Even with all the legal documents in place, it is recognized that the transparency of public procurement is not sufficient. There are still too many influences jeopardizing the procurement process. A high rate of re-bidding and price negotiations before award often result in this situation. Re-bidding is becoming a natural tool when the result of the bidding is not in line with expectations, or the lowest bidder is not qualified. The strategy for the first case is evident. For the second, political pressures from the disqualified bidder intimidate BAC members. Re-bidding sometimes becomes an exit strategy.
- 1 **Complaint Mechanism.** The IRRs of EO 40 prescribed an appeal procedure that mandates that “bidders who are not in favor of the BAC’s decision may appeal to the Head of Agency within seven days from the issuance of such decision.” The complainant has to file a non-refundable fee of Php50,000 for contracts amounting to Php10 million and Php100,000 for larger contracts. The rationale for the fee is to discourage irresponsible protests from going beyond the agency head. The procedure could have the effect of discouraging legitimate protests.
- 1 **Lead Time.** Lengthy processes characterize public procurement, and bids get to be extended on a regular basis. AO 129 stipulates a maximum time per activity and this should be enforced by the heads of agencies and the BACs. It should be monitored through procurement audits.
- 1 **Procurement Plans.** Procurement plans are developed for budget purposes but their implementation is not monitored due to insufficient procurement staff. Further, there is no specific link between budget formulation, planning of activities and procurement execution. Persons in charge of

procurement in the different departments should monitor the procurement process in accordance with the stated leadtime.

- 1 **Registration and Licensing of Contractors.** It is a practice to require foreign contractors to be registered and licensed in the Philippines prior to the bidding. The contractor has to embark on a long process and establish offices in the country before getting the license.
- 1 **Negotiation of Contract Price.** The review highlighted price negotiation as one of the key entry points for possible corruption. The bidding documents do not allow the reduction of quantities along pre-agreed percentages. Hence, some parties negotiate with the lowest bidder to stay within the approved budget. The CPAR group recommends the introduction in the new law (or in the IRRs) a proviso to allow departments to reduce quantities of the lowest calculated responsive bidder. That will let the departments reduce the contract amount when needed.
- 1 **Congressional Initiative and Countryside Development Fund (CDF).** This provision may allow more funds to be channeled at the district level for investments to support the population. However, the actual procurement practice is not transparent as some sponsoring congressman are purported to pre-determine the winning contractors. This jeopardizes the credibility of the process and compromises the integrity of BAC members.
- 1 **Price Monitoring.** Some entities such as the PS, COA, DOH and DTI are maintaining a price list of commonly used supplies. Price monitoring should be part of a normal and efficient procurement function in each department and office. However, there is a need for an oversight entity to supervise, monitor and process the prices from all departments. In essence, this will result in the monitoring of public procurement expenses of the Government.
- 1 **Support to BACs.** Members of these committees, who are nominated on an ad hoc basis, do not have

the necessary training required of professional staff. They do not receive the needed support in case of external harassment.

- 1 **Bonds, Bank Guarantees, Letter of Credits (LCs).** It is common to use surety bonds as bid and performance security. Unfortunately, these surety bonds are not really callable on demand and are very difficult to garnish. The practice demonstrates that a surety bond is not an irrevocable guarantee. Most foreign-assisted projects require bank guarantees or an irrevocable letter of credit as the form of bid and performance securities. However, on the other hand, bank guarantees and irrevocable LCs are not easily accessible to bidders, suppliers and contractors since Banks in the country are asking for the full amount of guaranty to protect themselves. In this instance, it would be practical to study and develop alternative means to make the system flexible but ensure that the objectives in imposing bid and performance securities are attained.

- 1 **Goods from Korea and Japan.** PD 1466 requires that imported goods should be transported by Philippine vessels. Since Philippine vessels go only to Japan and Korea, suppliers from these two countries are at a disadvantage compared to the other countries of the region, which can choose any vessel available. One can transport goods on another vessel only if the fare on Philippine vessels is more than 10% higher than the rest. A waiver must be secured from the Philippine Shippers' Bureau (PSB) before a non-Philippine vessel can be used. The CPAR WG finds this rule monopolistic, expensive and contrary to the rules of open competition.

- 1 **Monopolistic Practices.** In general, one of the common procurement trends in the Philippines is the tendency to protect the local market from outside competition. That is, competitors are dissuaded by cumbersome administrative processes: licensing of foreign contractors, mandatory transport on Philippine vessels, restricted access to foreign textbooks, difficult access to the cheapest drugs from foreign countries, etc.

- 1 **Pre-Shipment Inspection.** The Government no longer engages in automatic pre-shipment inspection. Public and private sector inspectors are left to their own arrangements. The result is that, in many cases, the pre-shipment inspection is neglected or inspection is done only upon arrival in Philippine ports. This increases the burden or risk of the importer. When inspection is done at the destination port, it increases the cost of remedy because goods have to be shipped back to the manufacturer for repair or replacement.

- 1 **International Arbitration.** According to the Construction Industry Association of the Philippines (CIAP) and the Philippine Constructors Accreditation Board (PCAB), the Settlement of Disputes provision, which culminates in an international court, is not binding. The local party to the contract, if he/she so desires, may insist on having the final step of the process heard in a Philippine Court.

Main Recommendations

- 1 Enforce the regulation on transparency through procurement audits.
- 1 Develop a complaint mechanism, which will encourage legitimate complaints from bidders and promote transparency in the process.
- 1 Conduct a study on the registration and licensing of contractors. Design and implement an Action Plan to streamline these processes.
- 1 Enforce processing lead-time through the application of sanctions and monitor the process through procurement audits.
- 1 Strictly implement the procurement plan and develop and implement a training program for COA auditors on procurement audit.
- 1 Prohibit the negotiation of price and contract amounts after bids are opened and favor reduction in quantities or introduce alternate solutions in the bidding documents.
- 1 Develop a framework and guidelines for Congressional insertions and the CDF. Prepare terms of reference for a study.

- 1 Include price monitoring as an important function of the Oversight Board.
- 1 The CSC or the Office of Solicitor General should provide support to members of BACs/PEACs subjected to harassment.
- 1 Discourage all forms of securities that cannot be garnished immediately. On bid security, the Bank could help in designing “on demand” satisfactory securities, which could be issued by non-banking institutions. An alternative is, in lieu of bid security for small value contracts, establishing penalties in the new law and its IRRs, such as suspensions for bidders who do not sign the contract. For performance securities, the Bank could help in designing one which could be issued by non-banking institutions.
- 1 Provide the same waiver for goods from Korea and Japan as other countries in the region following the Philippine Flag Vessel Law.

Decentralized Procurement Practices at the LGU Level

Overview

3.1 The need for procurement reform at the sub-national or Local Government Unit (LGU) level cannot be overemphasized. At the core of development is the realization of the objectives of the Local Government Code, decentralizing, inter alia, the powers for the LGUs to handle various social, environmental, and infrastructure development formerly vested to the national agencies. Thus, LGUs' projected procurement outlays at Php51Billion in 2002 increased by 89% from the previous level in 2001. Moreover, the WB's portfolio is shifting its focus towards the LGUs, with the number of projects directly or indirectly involving the LGUs comprising more than 50 percent. As a consequence, a substantial part of public procurement will be managed at the sub-national level. The CPAR therefore has given the appropriate focus on LGU procurement.

The need for procurement reform at the sub-national or LGU level cannot be overemphasized. At the core of development is the realization of the objectives of the Local Government Code, decentralizing, inter alia, the powers for the LGUs to handle various social, environmental, and infrastructure development formerly vested to the national agencies.

mittee responsible for bid evaluation. He/she approves the contract. The influence of the LCE in the bidding is so far reaching that effectively whoever he/she prefers can win the contract if the LCE decides to operate in such a way.

3.4 Limited Capacity.

Past experiences, in particular for Bank-financed projects, have shown that capacity in most LGUs for procurement management is very limited. This is due to the absence of professional staff tasked to perform procurement functions. Normally, this is done by the Treasurer or the Secretary

(or worse, clerical staff) in the municipality or province. In some cases where there are procurement staff, they are not well versed in procurement.

3.5 Non-Implementation of Approved Procurement Plans. Procurement plans are prepared by the LGUs to comply with budgetary requirements. However, once approved, most LGUs do not make use of the plan as an implementation tool. Sometimes, LGUs do not follow the plan and procure different items.

3.6 National Plans not Conforming to LGU Investment Plans. In some instances, the LGU's investment plans are not considered in the planning exercises of some national agencies. Hence, the concerned LGUs are unaware of the projects being implemented by the national agencies. Worse, some projects duplicate what the LGUs have planned for the same year. This is often true in projects funded by the CDF and the

Key Findings

Main Concerns

3.2 Fragmented Regulation. Procurement rules are fragmented and there is no specific regulation for the procurement of public works.

3.3 Lack of Check and Balance. The Local Chief Executive (LCE), such as the Mayor or Governor, is involved as Chairman of the bidding com-

Congressional insertions in the national budget.

3.7 Delays in Processing Payments to Contractors and Suppliers. As provided in the COA rules, public bidding must be conducted for contracts estimated to cost at least Php150,000.00. This amount was estimated more than 10 years ago and is no longer realistic. The consequence is that at the same time, money and effort is consumed for both large and small procurement deals. Also, there are too many steps in the payment process in most LGUs, so payment is delayed beyond the 30-day normal span.

3.8 Lack of Systematic Record Keeping. Most LGUs do not have well-ordered procurement filing systems. One cause of this is the absence of staff members who focus on procurement. No one is accountable to ensure that the files are complete and organized.

Main Recommendations

3.9 By December 2002, LGU procurement will be adequately covered in the proposed Procurement Bill and its IRRs, as assured by the DILG and the League of Cities and Municipalities.¹

3.10 By December 2002, the rule that the LCE shall not chair the BAC will be incorporated in the said law and its IRRs, as assured by the same bodies.¹

3.11 By June 2003, the DBM will issue a circular that will mandate strict implementation of the Annual Procurement Plan.

3.12 By June 2003, the DILG will issue a circular enjoining all agencies to consult LGUs during the preparation of national plans for LGUs.

3.13 By December 2003, the CSC and DILG will finish the study on professionalizing the procurement function and will start the implementation of the research. Also, the LGUs will be included in the national training program for procurement.

3.14 By December 2002, the DBM and the GPPB will insure that the rationalization of procurement methods for LGUs are incorporated in the IRR of the procurement law. Also, by June 2003, COA will have finished updating the GAAM.

3.15 DPWH or the PPB ensures that all provinces and cities will have effective procurement record keeping systems by December 2003. DILG ensures that all municipalities will also have the same system by December 2004.

¹The GPRA covered LGU procurement where Local Chief Executives are prohibited from chairing the Bids and Awards Committee.

Procurement in Externally Financed Projects

Weak Procurement Management

4.1 Since the 1997 CPPR, the Government and the Bank recognized that procurement was a major portfolio issue. Both agreed on measures to improve project procurement such as: (a) strict enforcement of milestones and lead times in procurement; (b) close monitoring of procurement activities by the implementing agencies with supervision from oversight agencies; and (c) focused training of project staff. These measures gradually resulted in an increase in disbursement for the years 1997 and 1998. However, since 1999 the portfolio based on disbursement performance weakened again. In FY02 (July 2001-June 2002), however gross disbursement of projects that the World Bank supports

It is necessary to take strong measures to improve portfolio and procurement performance. The consequences of slow procurement are: (i) delays in project implementation; (ii) increased costs in commitment fees; and (iii) delays in delivering project benefits to the poor.

showed marked improvement again and the same pace of improvement is expected for FY03 (Table 5).

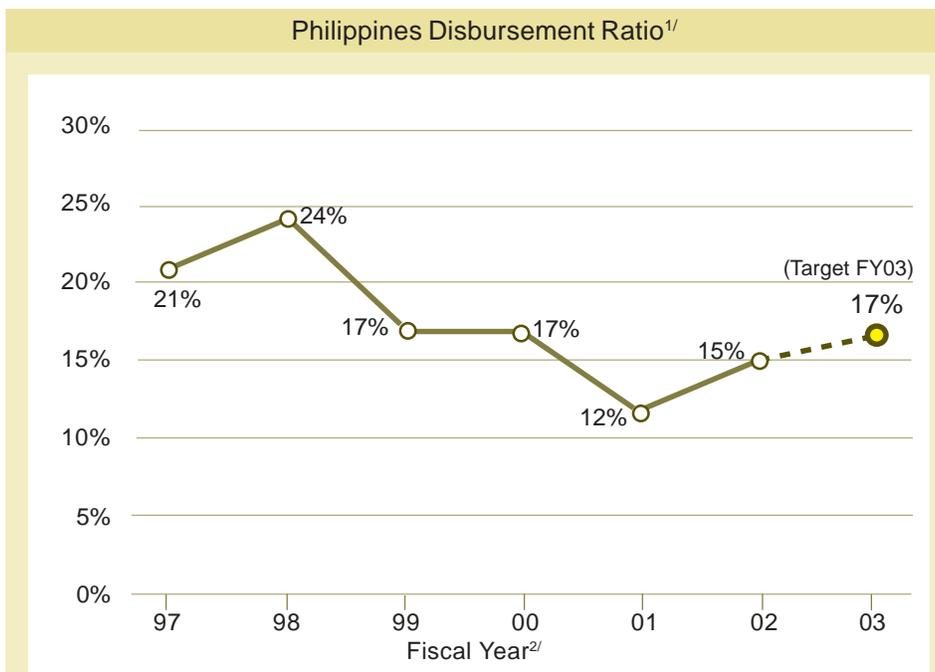
4.2 It is revealing that projects with able management, such as the Social Fund (SZOPAD) and Agrarian Reform Communities Development Project were not affected by the performance downturn. On the other

hand, projects with poor performance were mostly those implemented by LGUs with very limited capacity for project management. It is therefore necessary to take strong measures to improve portfolio and procurement performance. The consequences of slow procurement are: (i) delays in project implementation; (ii) increased costs in commitment fees; and (iii) delays in delivering project benefits to the poor.

NGAs

4.3 Procurement procedures in projects financed by international institutions follow the procedures agreed upon in the loan or grant

Table 5: *Disbursement Ratio*



^{1/} Actual disbursement over funds available at the beginning of the year.

^{2/} Bank's fiscal year—July 1 to June 30.

agreement. In the case of the WB and the ADB, the loan agreements identify the method to be used for the procurement of different components of the project. The guidelines issued by the lending institutions are followed. To control the process, the lending institutions provide no objection or clearances to bid documents or requests for proposals, evaluations and recommendations for award.

4.4 Procurement remains slow, resulting in a poor disbursement performance ratio of merely 17% in FY 2000 and 12% in FY 2001. These were attributed to factors such as: limited capacity of implementing agencies, poor procurement planning, poor technical specifications, or interference from higher officials. In general, the implementation of projects is slow due to the “de facto” absence of procurement planning. Disbursements could be expedited by grouping the purchases, which follow the same rules of procurement. Another key issue is the frequency of re-bidding. This is due to the insufficient precision of the documents distributed the first time to the bidders.

LGUs

4.5 For want of projects, LGUs tend to jump at the first opportunity to access foreign-assisted projects, notably those of the WB and the ADB. There is a need to fully explain the nature of these projects, the policies, the processes involved and all aspects of the loan, especially financial feasibility. LGUs have to be educated on the intricacies of the project. LGUs that have experienced WB’s procedures are generally comfortable with its prescribed system—clear, comprehensive and consistent. However, some LCEs feel indisposed to some WB-assisted projects as the stringent rules prevent them from making unilateral decisions.

NGOs

4.6 NGOs are involved in many WB-financed projects at different levels: the majority are involved as consultant firms in implementing one or several contracts within a project. Overall project management and particularly procurement and financial management, is considered a weak area for NGOs. Based on this expe-

rience, therefore, the CPAR WG is recommending for future projects that: (i) the capacity of NGOs be assessed carefully (particularly the past-experience in managing projects, the financial management systems and past audits and the procurement capacity and capability); and (ii) conflict of interest within NGOs networks (between national boards and members or leaders of regional NGOs who are part of the network) be looked into. The implementation manual of the project shall clarify responsibilities and impose rules avoiding conflicts of interests in consultancies and decisions of recruitment of host NGOs.

Main Recommendations

4.7 During project pre-appraisal, the Procurement member of the Project Task Team must conduct procurement capacity assessment of implementing agencies to determine actions to be taken to attain good project and procurement management, particularly those involving the LGUs and the NGOs.

4.8 The implementing agency should present doable procurement plans and provide the structure for monitoring, reporting and updating the plans.

4.9 Prior to project appraisal, there should be an agreement as to the procurement organization that will manage the project and Terms of References for the key staff in that organization, including the training program for them.

4.10 The implementing agencies must ensure that the technical specifications are complete and biddable to prevent re-bidding. The Operations or Implementation Manual should indicate clearly the responsibilities and accountabilities for preparing and finalizing the technical specifications for major procurements.

4.11 Budgetary allocations, the usage of which are controlled by politicians, can be used as counterpart funds for procurement financed by the Bank when the procurement process strictly follows the Loan Agreement.

Measures for Enhancing Transparency

Government Anti-Corruption Institutions

5.1 As early as 1930 the Revised Penal Code already punished a wide spectrum of crimes committed by public officers, including bribery, corruption, dereliction of duty, fraud against the public treasury, misappropriation of public funds, infidelity in the custody of documents and usurpation of powers. Subsequently, various other anti-corruption laws were passed, notably the Anti-Graft and Corrupt Practices Act; the Code of Conduct and Ethical Standards for Public Officials and Employees; the Ombudsman Act of 1989; the Witness Protection Program Law; the Plunder Law; and the latest, the Anti-Money Laundering Law. To enforce the foregoing laws there are a host of government anti-graft bodies:

- **Office of the Ombudsman** - a constitutional office mandated by law to act on complaints filed against government officers or employees, and enforce their administrative, civil and criminal liability.
- **Sandiganbayan** - a special anti-graft court created by the Constitution with exclusive jurisdiction over violations of the Anti-Graft and Corrupt Practices Act (RA 3019). It also has jurisdiction over offenses of public officials and employees connected with their office.
- **Civil Service Commission (CSC)** - a constitutional office that serves as the central personnel agency of the government. It is mandated to adopt measures to promote efficiency, integrity, and public accountability in the civil service.
- **Commission on Audit (COA)** - a quasi-judicial constitutional office mandated to audit the revenues and expenditures of Government, and to promulgate audit rules.
- **Department of Justice (DOJ)** - conducts preliminary investigations on criminal complaints against public officials if they rank lower than Salary Grade

27, and if the offense was committed in connection with his/her office.

- **National Bureau of Investigation (NBI)** - an office under the DOJ, conducts fact-finding investigations of graft cases and entrapment operations, including those against public officials and employees.
- **Presidential Anti-Graft Commission (PAGC)** - created through EO 12 (Series of 2001) to investigate administrative complaints against presidential appointees in the executive department charged with graft and corruption.

Notable Anti-Corruption Programs of Government

- **Government Electronic Procurement System (GEPS)** - was established under EO 40 to enhance transparency, accountability, equity, efficiency and economy in government procurement. It serves as the single and centralized portal for the procurement of goods, supplies, materials and related services, civil works and consulting services. Further, EO 40 mandates that all government agencies and entities should post their advertisement in the centralized portal or EPS website. Likewise, the winning bid should also be posted. (Table 6).
- **Inter-Agency Coordinating Council** - a voluntary alliance of government agencies mandated by the Constitution and laws to promote and maintain accountability, integrity and efficiency in public service. It is composed of the Office of the Ombudsman, CSC, COA, DOJ, NBI and the Presidential Commission Against Graft and Corruption (now known as the National Anti-Corruption Commission). The objective of the Council is to foster closer cooperation, share information, and pool re-

Table 6

The Philippines Government Electronic Procurement System

1. On November 22, 2000 the Procurement Service of the DBM, with help from CIDA, launched an internet-based pilot electronic procurement system (EPS) composed of a Public Tender Board, Electronic Catalog, and Supplier Registry. The system improved access to government opportunities, saved cost, and enhanced the efficiency and transparency of government procurement.

2. The DBM oversees government expenditures through the release of budgetary allotments for different government agencies and departments, while its Procurement Service (PS) handles the purchase of goods and services for over 1,800 client agencies and monitors prices of goods and services. Transparency in government procurement is a systemic problem in the Philippines, and added to this are inefficiency, poor service delivery and low sales volumes resulting from manual and paper-driven procurement processes. A 1999 study conducted by the PS with CIDA assistance showed that a pilot EPS could improve transparency, efficiency and value for money in government procurement.

3. The system went live on December 1, 2000, and is now being marketed by the DBM to other agencies. The EPS advertises bids electronically. Bids are received in hard copy and evaluated by hand. The evaluation and award results are then posted electronically.

4. The EPS is supported by several EOs and AOs. EO 40 of October 2001 and Republic Act No. 8792, dated June 14, 2000, recognize and encourage the use of electronic commerce in general and of electronic procurement in particular. Section 27 of the E-Commerce Law (R.A. 8792) also mandates that by mid-2002, Agencies/GOCC/GFIs shall “transact government business and/or perform governmental functions using electronic data messages or electronic documents...”, leaving room for the selective application of electronic procurement, depending upon the degree of sophistication of the existing systems, as well as their applicability to specific types of procurement and specific procurement processes. The implementing rules and regulations of EO 262 state that “bid requirements should be placed in two consecutive issues of two newspapers of general circulation and posted in the EPS and the website of the concerned agency.” The previous practice was to advertise the bids in three major newspapers—advertising on the EPS has saved the government

money in advertising costs. The total cost of the EPS pilot program has been estimated at about US\$400,000, shared equally between DBM and CIDA. Within six months after going live, the EPS had 86 agencies and 62 suppliers registered, and 71 bid notices posted on the EPS. (As of October 10, 2002, there are 1,797 agencies, 2,377 suppliers registered and 9,214 bid notices posted). Eventually all government procurement notices are envisaged to be posted on the EPS. Suppliers are able to access government bid opportunities 24 hours a day 7 days a week.

5. While the system has great potential for improving the transparency and efficiency of procurement, the GOP had noted the implementation challenges early and is taking steps to address them. For example, even with high interest and support for the EPS, its initial implementation was relatively slow. The reasons were numerous—agencies did not have the same resources or capacity for supporting the EPS, only about 25 percent of agencies trained in the EPS were ready for internet access, only about 8 percent of Filipinos were using the internet in 1999, there was resistance to change from employees who thought the EPS would lead to a loss of jobs, and this was also a time of larger political uncertainty and turbulence in the Philippines (the pilot testing ran into the presidential impeachment trial, the EDSA II people power revolution, and the assumption of office by a new government). Second, a key lesson learnt has been that the technology being used must consider the users’ level of knowledge and skill, access to the necessary infrastructure/equipment and services, and needs and expectations. Third, leadership has to come from the highest levels of the government, and be sustained. Fourth, the agencies using the EPS must have intimate knowledge of their target market and know how to segment it—each segment will require a different marketing strategy and will have different service level expectations. Customers will start using a new system continuously only if it adds and continues to add value through its content and quality of information, and if the system and its support services meet or exceed their service level expectations. Third, in order that technical and logistical support can be provided on a timely basis, implementation and maintenance of the electronic procurement service is being bid out to the private sector.

Source: DBM Case Study on the EPS

sources for the more effective prevention, investigation, and prosecution of venalities in government.

- **National Anti-Corruption Plan** - an ambitious anti-corruption program proposed by the Development Academy of the Philippines; the Government's executive training center. Its vision is a clean government and a corruption-intolerant society. To attain this, the plan seeks to streamline government transactions; enforce anti-corruption policies and laws; promote integrity in the civil service; mobilize citizens against corruption and detect and prosecute corrupt officials and employees.
- **Government Purchases Information System** - a COA-initiated electronic price monitoring in formation system to assist government agencies in identifying suppliers offering the best market price of commonly bought goods. With the use of computers, the system collects prices of goods purchased by member agencies that undertook actual public biddings. It then transmits these data to the Government Procurement Information System (GPIS) Center.

The Philippines has been prominent in involving civil society in the public procurement process to enhance accountability and transparency. This has happened at both national and local levels.

World Bank

5.2 The Bank is active in looking into procurement performance and transparency in the Philippines. As part of its fiduciary responsibility, the Bank has embarked on a systematic expost-review exercise to have all of the 25 ongoing projects reviewed at least once during the fiscal year. An external audit of procurement in Bank-financed projects is scheduled for FY03. At the central level, the Department of Institutional Integrity (INT) was created with a mandate to investigate any allegations of fraud and corruption reported to the Bank. A hotline (10511-1-800-831-043) with multi-

lingual capabilities is available to the public all over the world. Hotline users can choose to remain anonymous. Cases that require further investigation are sent to the appropriate unit for investigation.

Civil Society

5.3 The Philippines has been prominent in involving civil society in the public procurement process to enhance accountability and transparency. This has happened at both national and local levels.

5.4 Procurement Watch, Incorporated (PWI) is a non-profit, non-partisan, civil society organization (CSO) created by a group of concerned individuals from government, academe, the legal profession and the private sector, brought together by the challenge of reducing graft and

corruption in government procurement through research, partnerships, training, and advocacy. Established on February 15, 2001 with support from the ASEM Trust Fund managed by the World Bank, PWI promotes transparency and accountability and assists in streamlining procedures in government procurement of goods, supplies, materials, services and infrastructure projects.

5.5 Active procurement monitoring, public fora, roundtable discussions, workshops, technical assistance to government, research, publications and media releases comprise some of PWI's activities. By exposing inefficiencies in public procurement policies and procedures, and presenting alternatives based on well-grounded research, PWI believes it can push for reforms that enhance competitive public bidding and lessen the possibility of corruption.

Attachment 1 - Key Recommendations for Implementation

Area of Concern	Recommended Action(s)	Responsible Agency	Timeline
Public Procurement in LGUs			
Public Procurement	<ol style="list-style-type: none"> 1 Ensure that LGU procurement is adequately covered in proposed Procurement Bill 1 LGUs' concerns/views to be represented in the formulation of IRR once the Bill is enacted 	DILG League of Cities	December 2002
	<ol style="list-style-type: none"> 1 LCEs should not chair the BACs 	DBM	December 2002
	<ol style="list-style-type: none"> 1 Make the implementation of Annual Procurement Plan by LGUs mandatory 	DBM-Circular	June 2003
	<ol style="list-style-type: none"> 1 Preparation of national plans should benefit from prior consultations with LGUs <ul style="list-style-type: none"> • part of CDF and CIF 	DILG	June 2003
	<ol style="list-style-type: none"> 1 Professionalize the procurement function and build LGU-level procurement capacity <ul style="list-style-type: none"> • Develop a Study • Implementation 	CSC DILG	December 2003
	<ol style="list-style-type: none"> 1 Rationalize method of procurement and expedite payment to contractors and suppliers (to be dealt with in the IRR) <ul style="list-style-type: none"> • Update the GAAM • Develop and implement training program on procurement audit. 	DBM/GPPB COA COA	60 days from approval of New Proc. Law December 2003 June 2003
	<ol style="list-style-type: none"> 1 Develop a good record keeping system for: <ul style="list-style-type: none"> • Provincial/cities (pilot phase) • Municipalities (full implementation) 	DPWH DILG	December 2003 December 2004
Public Procurement in NGAs			
Strengthening Legal and Policy Framework	<ol style="list-style-type: none"> 1 Passage and promulgation of an omnibus Law on Public Procurement <ul style="list-style-type: none"> • Expected date of passage of the Law • Prepare implementing rules and regulations (IRRs) after enactment of the Law 	DBM	December 2002 60 days from passage of law
	<ol style="list-style-type: none"> 1 Update GAAM <ul style="list-style-type: none"> • Develop a training program for auditors 	COA	December 2003
	<ol style="list-style-type: none"> 1 Foreign contractors should be allowed to bid without PCAB license but will need to present the license prior to award 	DPWH/CIAP	June 2003
	<ol style="list-style-type: none"> 1 Replace surety bond with Bank guarantee/Letters of Credit/other forms (IRRs) 	DBM	June 2003
	<ol style="list-style-type: none"> 1 Review the BOT Law and "unsolicited proposals" rule 	NEDA	June 2003
	<ol style="list-style-type: none"> 1 Review the law on arbitration to align it with international practice 	CIAP/DPWH	June 2003

Area of Concern	Recommended Action(s)	Responsible Agency	Timeline
Public Procurement in NGAs			
Strengthen Organization and Staffing	1 Establish the GPPB Conduct a study on the scope of work of the GPPB	DBM/NEDA	June 2003
	1 Establish a national training program	DBM/CSC	June 2004
	1 Professionalize the procurement function <ul style="list-style-type: none"> • Develop a Study • Implementation (NGA) 	CSC DBM/All Agencies	December 2003
	1 Study to corporatize PS as independent entity	DBM-PS	June 2003
Improve Procurement Practices and Processes	1 Enforce the regulation on transparency through procurement audit <ul style="list-style-type: none"> • Develop and implement a training program for COA auditors on procurement audit 	COA	December 2004
	1 Study on registration and licensing of contractors; design and implement an action plan to streamline processes for registration and licensing of contractors <ul style="list-style-type: none"> • NEDA to communicate the on-going issue and the study 	NEDA/DPWH/ CIAP-PDCB	June 2003
	1 Enforce processing lead -time through application of sanctions and monitoring through procurement audit (AO 129) <ul style="list-style-type: none"> • Develop and implement a training program for COA auditors on procurement audit 	COA	June 2004
	1 Strictly implement procurement plan; Develop and implement a training program for COA auditors on procurement audit	IAs/COA	June 2004
	1 IRRS of the law should prohibit negotiation of price and contract amount (goods and works) after bid opening (IRR)	DBM	June 2003
	1 Develop a framework and guidelines for Congressional insertions and Countryside Development Fund <ul style="list-style-type: none"> • TOR prepared and submitted by DILG 	DILG/DBM/ Leagues	December 2002
	1 Price monitoring to be included as an important function of Oversight Board (IRR)	DBM	June 2003
	1 Civil Service Commission (CSC) or OSG to provide support to members of BAC/PEAC subjected to harassment <ul style="list-style-type: none"> • CSC agrees to make a study 	CSC	June 2003
	1 Develop on demand satisfactory securities to be issued by non-banking institutions; Impose penalties in lieu of bid security for small contracts	WB	December 2003
	1 Provide the waiver for goods from Korea and Japan as other countries per Philippine Flag Vessel Law	DTI/PSB	December 2003
1 Study on the financial impact of the Flag Vessel Law	DTI	June 2003	
Planning/Bidding/ Advertisement	1 Revise Section 1-A, Rule IV of IRRs of RA 8047 and General Policy No. 5 of the National Book Policy to relax its requirements on importation of raw materials for textbooks	DepEd	December 2003
	1 Amendment of the law to allow textbooks of foreign authors to compete locally for Science, Math and English textbooks	DepEd	December 2004

Area of Concern	Recommended Action(s)	Responsible Agency	Timeline
Public Procurement			
	1 Review and implement DOH reforms in terms of decentralization of procurement	DOH	December 2003
	1 Develop a mechanism to ensure wider participation and competition	DOH/SEMP2	December 2003
Evaluation of Bid Awards	1 Adopt the standard pass or fail criteria for all procurement except prequalification of ADB-funded projects which will also be scheduled to adopt pass or fail criteria in 2002	DPWH/ADB	June 2003
	1 Standard estimated cost per classroom, for budgetary purposes, should not be a limitation to the resulting bid price	DPWH	June 2003
	1 Streamline the policy on textbook content evaluation	DepEd	Done
	1 Strengthen BFAD's capacity to shorten the registration process	DOH	June 2003
	1 Training and empowerment of the bid committee members (professionalization)	DOH/SEMP2/ All agencies	December 2003
	1 Streamline the procedure for contract review by Legal Services Division	DOH/SEMP2	December 2003
Delivery, Inspection, Payment	1 Provide/strengthen quality assurance mechanism for design and supervision	DPWH	June 2004
	1 Streamline the cash allocation process and approval process to avoid delay	DOH/SEMP2	December 2003
Monitoring	1 Develop an effective procurement planning and inventory monitoring system at the Regional, Division, District and School Levels	DepEd	June 2003
	1 Develop a mechanism to monitor and evaluate the performance of the suppliers, constructors/consultants	DOH/SEMP2	June 2003
Sectoral Issues	1 Strengthen DepEd's procurement capacity	DepEd	June 2003
	1 Review the staffing of the Procurement and Logistics Service	DOH/SEMP2	December 2002
	1 Establish a National Drug Price Monitoring System	DOH/SEMP2	June 2003
	1 Conduct a study on price pharmaceuticals	DOH/SEMP2	December 2003
Enhance Transparency	1 Push for 60% implementation by all agencies of Gov't. Electronic Procurement System (GEPS) rule	DBM/PS	December 2003
	1 Use of computerized registry by all projects following progress of computerization	DPWH	December 2004
	1 Encourage and monitor civil society's participation in procurement at all levels	PWI/TIP	On-going
	1 Develop guidelines and training for NGOs and civil society		December 2002

Attachment 2 - Procurement Side Letter*

Date

International Bank for Reconstruction and Development
1818 H. Street, N.W.
Washington, D.C. 20433
United States of America

Re: Loan No. _____
(_____)
Representations and Assurances on Procurement__

Dear Sirs and Madams:

I am writing on behalf of Republic of the Philippines (the Philippines) in respect of the Loan Agreement, of even date herewith, entered into between the International Bank for Reconstruction and Development (the Bank) and the Philippines in respect of the above-captioned Project (the Project), and am pleased to provide the Bank the following representations and assurances:

1. The Philippines represents that the conflict existing between: (a) the Philippines procurement procedures; and (b) the Bank's "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January and August 1996, September 1997, and January 1999 together with the Bank's "Guidelines for the Selection and Employment of Consultants by World Bank Borrowers" published by the Bank in January 1997 and revised in September 1997, January 1999 and May 2002 (together the "Bank's Guidelines") is eliminated through the promulgation of Executive Order No. 40 (EO 40) by the Philippines President on October 8, 2001. EO 40 covers the procurement process from the pre-procurement conference up to award of contract and, therefore, amends: (a) the Implementing Rules and Regulations of Presidential Decree No. 1594 relating to procurement of works; (b) Executive Order No. 262, series of 2002, and its Implementing Rules and Regulations relating to procurement of goods; and (c) the Guidelines for the Procurement of Consulting Services for Government Projects implementing Executive Order No. 164, series of 1987, among others. The second paragraph of EO 40 regarding applicability, in relevant part, provides: "...Nothing in this Order and its implementing rules and regulations shall negate any existing and future commitments with respect to the bidding and award of contracts financed partly or wholly with funds from international financing institutions, as well as from bilateral and other similar foreign sources." In any event, the Philippines understands and agrees that, with respect to the Project, the Bank's Guidelines are and will continue to be recognized and given full force and effect.

2. The Philippines further confirms that Section 11 of Republic Act No. 8182 of June 1996, which: (a) provides for preferential treatment for Filipino consultants, suppliers and manufacturers; and (b) prohibits feasibility and design consultants from participating in any subsequent phase of project implementation, does not modify the applicability of Section 4 of Republic Act No. 4860 (the Foreign Borrowing Act). This is expressly provided in Section 6.2, second paragraph of the Implementing Rules and Regulations of Republic Act No. 8182 stating, in respect to the first paragraph thereof pertaining to Filipino preference/association by foreign firms with local firms/practitioners, that "The foregoing paragraph shall be without prejudice to existing laws including but not limited to RA 4860 (Foreign Borrowings Act),..." Moreover, Section 4 of Republic Act No. 4860, as amended, states in relevant part:

*To be updated after passage of the law and publication of IRRs.

“In the contracting of any loan, credit or indebtedness under this Act, the President of the Philippines may, when necessary, agree to modify the application of any law granting preferences, or imposing restrictions on, international competitive bidding ...” Said Section 4 remains in full force and effect. Thus the Bank’s Guidelines relating to the employment of consultants will be fully applicable in the above noted Project.

3. The Philippines specifically assures you that the National Competitive Bidding procedures (NCB) of the Philippines will apply, except that, unless otherwise agreed by the Bank in writing, the following procedures will apply to procurement of all goods and works contracts to be financed by the Bank under the Project:

- a. NCB bidding opportunities, including those which are invited by local government units, shall be advertised in national newspapers of general circulation, with sufficient time for bidders to prepare offers, which shall not be less than 30 days, unless a different time is specifically agreed upon by the Bank. Posting should also be done in the Government Electronic Procurement System Website.
- b. Foreign suppliers and contractors from eligible countries will be allowed to participate, if interested, without first being required to associate or enter into joint ventures with local firms. However, joint venture will be encouraged.
- c. Except for major or complex works, as defined in the Loan Agreement, where prequalification is required, prequalification of contractors shall only be undertaken upon prior Bank approval.
- d. Eligibility screening may be carried out prior to bidding with prior concurrence of the Bank.
- e. If any bidder is denied access to the bidding process for reasons unrelated to its financial and technical qualifications to perform the contract, prior concurrence of the Bank shall be sought.
- f. A ceiling can be applied with specific agreement by the Bank in advance bidding. The Approved Budget Estimate may be disclosed in the advertisement or in the bidding documents.
- g. The Bank’s domestic or regional preferences will not be applied in the evaluation of bids, and other preferences in effect in the Philippines will not be used, except with the prior concurrence of the Bank.
- h. Price negotiation shall not be allowed. However, in case of budget limitation, adjustment in quantities of goods or scope of work may be agreed upon, subject to the concurrence of the Bank.
- i. Bid opening shall be open to those who wish to attend, and the deadline for submission of bids should be the same as that for bid opening.
- j. Suppliers and contractors will not be required to purchase only local goods or supplies or to hire local labor, except unskilled labor.
- k. Explicit bid evaluation criteria will be set forth in the bid documents.
- l. Modifications exceeding 15% of the contract amount and material changes in the conditions during implementation require prior Bank concurrence.
- m. For foreign suppliers and contractors, prior registration (such as BFAD registration for drugs, agency accreditation, etc.) licensing (such as PCAB license, etc.) and/or other government authorization (such as Mayor’s permit, etc.) will not be a requirement for purposes of participating in bidding competitions. Such registration, licensing and/or other government authorization may, however, be required from the selected bidder as condition to signing the contract.

n. Bid and performance securities shall be specified in the bidding documents, which may be in the form of certified check, letter of credit, or bank guarantee from a reputable bank.

o. To obtain the best market prices available, open competitive bidding shall be maximized. For this purpose, restrictive importation permits from private association, as well as protective preferences for Philippine Flag vessels, shall not be required.

p. Within 72 hours from bid opening, but prior to bid evaluation, a copy of the certified minutes of bid opening shall be submitted to the Bank, which shall contain the following: (a) names of bidders provided with bid documents; (b) original amount (unevaluated) of the bid of each bidder as read; (c) date, time and place of bid opening; (d) summary of bid proceedings; and (e) names of bidders' representatives and other persons present.

q. Two-envelope system procedures will not be used unless there is prior clearance from the Bank.

4. The Philippines also assures you that, unless otherwise agreed by the Bank in writing, the following procedures will be adhered to in respect of the procurement of consultants' services to be financed by the Bank under the Project:

a. Mandatory joint venture or association with Philippine consulting firms will only be required if: (i) there is a sufficient number of capable domestic firms available to allow reasonable freedom of choice for the invited foreign firms; (ii) the desirable contribution by either firm will not be constrained by any prescribed manner or extent or participation; and (iii) association with specified named firms selected by the borrower will not be required.

b. Qualified consulting firms, which come to the attention of the agency requiring services, will also be eligible for the shortlist.

c. When circumstances warrant and with the Bank's prior "no objection", consulting firms may be asked to continue working on a project beyond the phase for which their services were originally contracted.

d. Price adjustments in consultant's contracts will remain in effect; there will be no ceiling on price adjustments under Bank financed contracts.

e. The Bank's standard Forms of Contract for Consultants' Services for Complex Time-Based Assignments and for Lump Sum Remuneration shall be used for contracts financed by the Bank.

f. The "Percentage of Construction Cost Method" will not be used to determine the compensation of Bank-financed consultancy services.

The Philippines understands that the Bank relies on the representations and assurances contained herein for entering into the Loan Agreement in respect of the Project. It further agrees that, unless otherwise agreed between the Philippines and the Bank in writing, these representations and assurances form an integral part of the said Loan Agreement.

Very truly yours,

REPUBLIC OF THE PHILIPPINES

By _____
Authorized Representative

Attachment 3 - Project Risk Assessment

Project Risk Assessment (As of March 2002)

Project Risk Assessment						
Project Name	Land Implementing Agency	Risk Assessment	Amount of Prior Review Threshold			
			Works		Goods	Firm
Human Development (HD)						
Women's Health & Safe Motherhood	DOH	Low	\$200,000	\$200,000	\$100,000	\$50,000
Third Elementary Education	DepEd	Average	\$5million	\$1million	\$100,000	\$50,000
Early Child Development	DSWD/DepEd/DOH	High	\$1million	\$50,000	\$200,000	\$50,000
Social Expenditure Management	DepEd/DSWD/DBM	Average	\$200,000	\$200,000	\$100,000	\$50,000
Rural Development(RD)						
Rural Finance II	Land Bank	Low	\$5million	\$5million	N/A	N/A
Rural Finance III	Land Bank	Low	\$5million	\$5million	N/A	N/A
Agrarian Reform Communities Development	DAR	Low	\$5million	\$1million	\$100,000	\$50,000
Water Resources Development	NIA	Average	\$5million	\$1million	\$100,000	\$50,000
Community Based Resources Management	DOF-MDFO	High	\$50,000	\$50,000	\$200,000	\$50,000
SZOPAD Social Fund	Szopad Social Fund Office	Average	\$75,000 And first contract estimated to cost less than \$50,000	\$50,000	\$100,000	\$50,000
Mindanao Rural Development	DA	Average	\$100,000	\$100,000	\$100,000	\$50,000
Land Administration & Management	DENR	Average	\$100,000	\$50,000	\$100,000	\$50,000
Infrastructure (Infra)						
LGU Urban Water & Sanitation-APL1	DBP/DILG	Average/High	\$300,000	N/A	\$100,000	\$50,000
LGU Urban Water & Sanitation APL-2	DBP/DILG	Average/High	\$300,000	N/A	\$100,000	\$50,000
Water Districts Development	Land Bank	Average	First 3 contracts & all contracts \$500,000 or more, first contract for each LGU	\$1million & first contract for each LGU	\$100,000	\$50,000
Subic Bay Freeport II	SBMA	Average	\$500,000	\$500,000	\$100,000	\$50,000
Manila Second Sewerage	MWSS	Average	\$5million	\$1million	\$200,000	\$100,000
LGU Finance & Development (LOGOFIND)	DOF/MDFO	High	\$300,000	\$100,000	\$100,000	\$50,000
National Road Improvement & Management	DPWH	Low	All ICB, all LTPBMC contracts and first 3 of PMP contracts	All ICB	\$200,000	\$50,000
Metro Manila Urban Transport	DPWH/MMDA	Average	All contracts	\$200,000	\$100,000	\$50,000
Energy						
Transmission Grid Reinforcement	NPC	Low	\$5million	\$1million	\$100,000	\$50,000
Global Environment Trust Fund/Montreal Protocol Grants						
Conservation of Priority Protected Areas (GEF)	DENR/NIPA	High	\$100,000	\$100,000	\$100,000	\$100,000
Mindanao Rural Development (GEF)	DENR	Average	\$2million	\$50,000	\$100,000	\$50,000
Ozone Depletion Substance (Montreal Protocol)	Land Bank	Average	All contracts	\$2million	\$100,000	\$50,000
MMURTRIP (GEF)	City of Marikina	Average	All contracts	All contracts	\$100,000	\$50,000

Attachment 4 - Republic Act 9184 Government Procurement Reform Act

ARTICLE I

GENERAL PROVISIONS

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

SEC. 2. **Declaration of Policy.** - It is the declared policy of the State to promote the ideals of good governance in all its branches, departments, agencies, subdivisions, and instrumentalities, including government-owned and/or controlled corporations, and local government units.

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

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

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

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

(a) *Approved Budget for the Contract (ABC)* - refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act and/or continuing appropriations, in the case of National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O. No. 518, series of 1979, in the case of Government-Owned and/or Controlled Corporations, Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units.

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

(c) *Bidding Documents* - refer to documents issued by the Procuring Entity as the basis for Bids, furnishing all information necessary for a prospective bidder to prepare a bid for the Goods, Infrastructure Projects, and Consulting Services to be provided.

(d) *Bid* - refers to a signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor or consultant in response to the Bidding Documents.

(e) *Competitive Bidding* - refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.

(f) *Consulting Services* - refer to services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.

(g) *G-EPS* - refers to the Government Electronic Procurement System as provided in Section 8 of this Act.

(h) *Goods* - refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services.

(i) *GPPB* - refers to the Government Procurement Policy Board established in accordance with Article XX of this Act.

(j) *Head of the Procuring Entity* - refers to: (i) the head of the agency or his duly authorized official, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned and/or controlled corporations; or (iii) the local chief executive, for local government units. Provided, That in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency.

(k) *Infrastructure Projects* - include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings and other related construction projects of the government.

(l) *IRR* - refer to the implementing rules and regulations to be promulgated in accordance with Section 75 this Act.

(m) *Portal* - refers to a website that aggregates a wide variety of content for the purpose of attracting a large number of users.

(n) *Procurement* - refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes", and other applicable laws, rules and regulations.

(o) *Procuring Entity* - refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

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

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

ARTICLE II

PROCUREMENT PLANNING

SEC. 7. ***Procurement Planning and Budgeting Linkage.*** - All procurement should be within the approved budget of the Procuring Entity and should be meticulously and judiciously planned by the Procuring Entity concerned. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan to be specified in the IRR.

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

ARTICLE III

PROCUREMENT BY ELECTRONIC MEANS

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

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

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

ARTICLE IV

COMPETITIVE BIDDING

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

ARTICLE V

BIDS AND AWARDS COMMITTEE

SEC. 11. *The BAC and its Composition.* - Each procuring entity shall establish a single BAC for its procurement. The BAC shall have at least five (5) members, but not more than seven (7) members. It shall be chaired by at least a third ranking permanent official of the procuring entity other than its head, and its composition shall be specified in the IRR. Alternatively, as may be deemed fit by the head of the procuring entity, there may be separate BACs where the number and complexity of the items to be procured shall so warrant. Similar BACs for decentralized and lower level offices may be formed when deemed necessary by the head of the procuring entity. The members of the BAC shall be designated by the Head of Procuring Entity. However, in no case shall the approving authority be a member of the BAC.

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

SEC. 12. *Functions of the BAC.* - The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: Provided, that in the event the Head of the Procuring Entity shall

disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

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

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

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

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

SEC. 15. **Honoraria of BAC Members.** - The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the Department of Budget and Management (DBM) shall promulgate the necessary guidelines.

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

ARTICLE VI

PREPARATION OF BIDDING DOCUMENTS

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

- (a) Approved Budget for the Contract;

- (b) Instructions to Bidders, including criteria for eligibility, bid evaluation and post-qualification, as well as the date, time and place of the pre-bid Conference (where applicable), submission of bids and opening of bids;
- (c) Terms of Reference;
- (d) Eligibility Requirements;
- (e) Plans and Technical Specifications;
- (f) Form of Bid, Price Form, and List of Goods or Bill of Quantities;
- (g) Delivery Time or Completion Schedule;
- (h) Form and Amount of Bid Security;
- (i) Form and Amount of Performance Security and Warranty; and,
- (j) Form of Contract, and General and Special Conditions of Contract.

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

SEC. 18. **Reference to Brand Names.** - Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

SEC. 19. **Access to Information.** - In all stages of the preparation of the Bidding Documents, the Procuring Entity shall ensure equal access to information. Prior to their official release, no aspect of the Bidding Documents shall be divulged or released to any prospective bidder or person having direct or indirect interest in the project to be procured.

ARTICLE VII

INVITATION TO BID

SEC. 20. **Pre-Procurement Conference.** - Prior to the issuance of the Invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional.

The pre-procurement 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. 21. Advertising and Contents of the Invitation to Bid. - In line with the principle of transparency and competitiveness, all Invitations to Bid for contracts under competitive bidding shall be advertised by the Procuring Entity in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible dissemination thereof, such as, but not limited to, posting in the Procuring Entity's premises, in newspapers of general circulation, the G-EPS and the website of the Procuring Entity, if available. 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 to be used by the Procuring Entity for the eligibility check, the short listing 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 contract duration; and,
- (h) Such other necessary information deemed relevant by the Procuring Entity.

SEC. 22. Pre-bid Conference. - At least one pre-bid conference shall be conducted for each procurement, unless otherwise provided in the IRR. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon the written request of any prospective bidder.

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

ARTICLE VIII

RECEIPT AND OPENING OF BIDS

SEC. 23. Eligibility Requirements for the Procurement of Goods and Infrastructure Projects. - The 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 his duly authorized representative certifying to the correctness of the statements made and the completeness and authenticity of the documents submitted.

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

SEC. 24. *Eligibility Requirements and Short Listing for Consulting Services.* - The eligibility of prospective bidders for the Procurement of 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 his 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.

The eligible prospective bidders shall then be evaluated using numerical ratings on the basis of the short listing requirements prescribed for the Competitive Bidding concerned, within the period stated in the Invitation to Bid to determine the short list of bidders who shall be allowed to submit their respective bids.

SEC. 25. *Submission and Receipt of Bids.* - A bid shall have two (2) components, namely the technical and financial components which should be in separate sealed envelopes, and which shall be submitted simultaneously. The bids shall be received by the BAC on such date, time and place specified in the invitation to bid. The deadline for the receipt of bids shall be fixed by the BAC, giving it sufficient time to complete the bidding process and 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 26 of this Act, the GPPB may prescribe innovative procedures for the submission, receipt and opening of bids through the G-EPS.

SEC. 26 *Modification and Withdrawal of Bids.* - A bidder may modify his bid, provided that this is done before the deadline for the receipt of bids. The modification shall be submitted in a sealed envelope duly identified as a modification of the original bid and stamped received by the BAC.

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

SEC. 27. **Bid Security.** - All Bids shall be accompanied by a Bid security, which shall serve as a guarantee that, after receipt of the Notice of Award, the winning bidder shall enter into contract with the Procuring Entity within the stipulated time and furnish the required performance security. The specific amounts and allowable forms of the Bid security shall be prescribed in the IRR.

SEC. 28. **Bid Validity.** - Bids and Bid securities shall be valid for such reasonable period of time indicated in the Bidding Documents. The duration for each undertaking shall take into account the time involved in the process of Bid evaluation and award of contract.

SEC. 29. **Bid Opening.** - The BAC shall publicly open all bids at the time, date, and place specified in the bidding documents. The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee.

ARTICLE IX

BID EVALUATION

SEC. 30. **Preliminary Examination of Bids.** - Prior to Bid evaluation, the BAC shall examine first the technical components of the bids using “pass/fail” criteria to determine whether all required documents are present. Only bids that are determined to contain all the bid requirements of the technical component shall be considered for opening and evaluation of their financial component.

SEC. 31. **Ceiling for Bid Prices.** - The ABC shall be the upper limit or ceiling for the Bid prices. Bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be no lower limit to the amount of the award.

SEC. 32. **Bid for the Procurement of Goods and Infrastructure Projects.** - 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 prices. The bid with the lowest calculated price shall be referred to as the “Lowest Calculated Bid.”

SEC. 33. **Bid Evaluation of Short Listed Bidders for Consulting Services.** - For the Procurement of Consulting Services, the Bids of the short listed bidders shall be evaluated and ranked using numerical ratings in accordance with the evaluation criteria 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 “Highest Rated Bid.” After approval by the Head of the Procuring Entity of the Highest Rated Bid, the BAC shall invite the bidder concerned for negotiation and/or clarification on the following items: financial proposal submitted by the bidder, terms of reference, scope of services, methodology and

work program, personnel to be assigned to the job, services/facilities/data to be provided by the Procuring Entity concerned, and provisions of the contract. 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.

ARTICLE X

POST-QUALIFICATION

SEC. 34. **Objective and Process of Post-qualification.** - Post-qualification is the stage where the bidder with the Lowest Calculated Bid, in the case of Goods and Infrastructure Projects, or the Highest Rated Bid, in the case of Consulting Services, undergoes verification and validation whether he has passed all the requirements and conditions as specified in the Bidding Documents.

If the bidder with the Lowest Calculated Bid or Highest Rated Bid passes all the criteria for post-qualification, his Bid shall be considered the "Lowest Calculated Responsive Bid," in the case of Goods and Infrastructure or the "Highest Rated Responsive Bid," in the case of Consulting Services. However, if a bidder fails to meet any of the requirements or conditions, he shall be "post-disqualified" and the BAC shall conduct the post-qualification on the bidder with the second Lowest Calculated Bid or Highest Rated Bid. If the bidder with the second Lowest Calculated Bid or Highest Rated Bid is post-disqualified, the same procedure shall be repeated until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid is finally determined.

In all cases, the contract shall be awarded only to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

SEC. 35. **Failure of Bidding.** - There shall be a failure of bidding if:

- a) No bids are received;
- b) No bid qualifies as the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid; or,
- c) Whenever the bidder with the highest rated/lowest calculated responsive bid refuses, without justifiable cause to accept the award of contract, as the case may be.

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 53 of this Act.

SEC. 36. *Single Calculated/Rated and Responsive Bid Submission.* - A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:

- a) If after advertisement, only one prospective bidder submits a Letter of Intent and/or applies for eligibility check, and meets the eligibility requirements or criteria, after which it submits a bid, which is found to be responsive to the bidding requirements;
- b) If after the advertisement, more than one prospective bidder applies for eligibility check, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements; or
- c) If after the eligibility check, more than one bidder meets the eligibility requirements, but only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements.

In all instances, the Procuring Entity shall ensure that the ABC reflects the most advantageous prevailing price for the Government.

ARTICLE XI

AWARD, IMPLEMENTATION AND TERMINATION OF THE CONTRACT

SEC. 37. *Notice and Execution of Award.* - Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

Within ten (10) calendar days from receipt of the Notice of Award, the winning bidder shall formally enter into contract with the Procuring Entity. When further approval of higher authority is required, the approving authority for the contract shall be given a maximum of twenty (20) calendar days to approve or disapprove it.

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

The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. All notices

called for by the terms of the contract shall be effective only at the time of receipt thereof by the contractor.

SEC. 38. *Period of Action on Procurement Activities.* - The procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned. Without prejudice to the provisions of the preceding section, the different procurement activities shall be completed within reasonable periods to be specified in the IRR.

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

SEC. 39. *Performance Security.* - Prior to the signing of the contract, the winning bidder shall, as a measure of guarantee for the faithful performance of and compliance with his obligations under the contract prepared in accordance with the Bidding Documents, be required to post a performance security in such form and amount as specified in the Bidding Documents.

SEC. 40. *Failure to Enter into Contract and Post Performance Security.* - If, for justifiable causes, the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid fails, refuses or is otherwise unable to enter into contract with the Procuring Entity, or if the bidder fails to post the required performance security within the period stipulated in the Bidding Documents, the BAC shall disqualify the said bidder and shall undertake post-qualification for the next-ranked Lowest Calculated Bid or Highest Rated Bid. 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.

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 XXIII.

SEC. 41. *Reservation Clause.* - The Head of the Agency reserves the right to reject any and all Bids, declare a failure of bidding, or not award the contract in the following situations:

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

SEC. 42. *Contract Implementation and Termination.* - The rules and guidelines for the implementation and termination of contracts awarded pursuant to the provisions of this Act shall be prescribed in the IRR. The rules and guidelines shall include standard general and special conditions for contracts.

ARTICLE XII

DOMESTIC AND FOREIGN PROCUREMENT

SEC. 43. **Procurement of Domestic and Foreign Goods.** - 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, in the interest of availability, efficiency and timely delivery of Goods, the Procuring Entity may give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality.

ARTICLE XIII

BIDDING OF PROVINCIAL PROJECTS

SEC. 44. **Bidding of Provincial Projects.** - Priority programs and infrastructure projects funded out of the annual General Appropriations Act which are intended for implementation within the province shall be subject to the same public bidding and to the procurement processes prescribed under this Act. For purposes of this Article, Engineering District civil works projects, subject to consultation with the concerned Members of Congress, are included and subsumed in the term "provincial projects" and shall be governed by this Section and Section 45 hereof.

SEC. 45. **Provincial Bidders.** - Within five (5) years from the effectivity of this Act, a contractor who participates in the bidding of provincial priority programs and infrastructure projects, whose principal office is within the same province, and who submits the lowest bid among the provincial bidders which is higher than the lowest bid made by a contractor with principal office outside the said province shall be granted the privilege to match the bid made by the latter: Provided, however, That the release of funds for said projects shall be published in a local newspaper with the widest circulation and the website of the DBM, the mechanisms of which shall be spelled-out in the IRR.

ARTICLE XIV

LEASE OF COMPUTERS, COMMUNICATIONS, INFORMATION AND OTHER EQUIPMENT

SEC. 46. **Lease Contracts.** - Lease of construction and office equipment, including computers, communication and information technology equipment are subject to the same public bidding and to the processes prescribed under this Act.

ARTICLE XV

DISCLOSURE OF RELATIONS

SEC. 47. **Disclosure of Relations.** - In addition to the proposed contents of the Invitation to Bid as mentioned under Section 21 of this Act, all bidding documents shall be accompanied by a sworn affidavit of the bidder that he or she or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree. Failure to comply with

the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this Act.

ARTICLE XVI

ALTERNATIVE METHODS OF PROCUREMENT

SEC. 48. **Alternative Methods.** - Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

- a) *Limited Source Bidding, otherwise known as Selective Bidding* - a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;
- b) *Direct Contracting, otherwise known as Single Source Procurement* - a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;
- c) *Repeat Order* - a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;
- d) *Shopping* - a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or
- e) *Negotiated Procurement* - a method of Procurement that may be resorted to under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the Government is obtained.

SEC. 49. **Limited Source Bidding.** - Limited Source Bidding may be resorted to only in any of the following conditions:

- a) Procurement of highly specialized types of Goods and Consulting Services which are known to be obtainable only from a limited number of sources; or

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

SEC. 50. **Direct Contracting.** - Direct Contracting may be resorted to only in any of the following conditions:

- a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,
- c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

SEC. 51. **Repeat Order.** - When provided for in the Annual Procurement Plan, Repeat Order may be allowed wherein the Procuring Entity directly procures Goods from the previous winning bidder whenever there arises a need to replenish goods procured under a contract previously awarded through Competitive Bidding, subject to post-qualification process prescribed in the Bidding Documents and provided all the following conditions are present:

- a) The unit price must be equal to or lower than that provided in the original contract;
- b) The repeat order does not result in splitting of requisitions or purchase orders;
- c) Except in special circumstances defined in the IRR, the repeat order shall be availed of only within six (6) months from the date of the Notice to Proceed arising from the original contract; and,
- d) The repeat order shall not exceed twenty-five percent (25%) of the quantity of each item of the original contract.

SEC. 52. **Shopping.** - Shopping may be resorted to under any of the following instances:

- a) When there is an unforeseen contingency requiring immediate purchase: Provided, however, That the amount shall not exceed Fifty Thousand Pesos (P50,000); or
- b) Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding Two Hundred Fifty Thousand Pesos (P250,000): Provided, however, That the Procurement does not result in Splitting of Contracts:

Provided, further, That at least three (3) price quotations from bona fide suppliers shall be obtained.

The above amounts shall be subject to a periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons.

SEC. 53. *Negotiated Procurement.* - Negotiated Procurement shall be allowed only in the following instances:

- a) In cases of two failed biddings, as provided in Section 35 hereof;
- b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,
- e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the Government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

SEC. 54. *Terms and Conditions for the use of Alternative Methods.* - The specific terms and conditions, including the limitations and restrictions, for the application of each of the alternative methods mentioned in this Article shall be specified in the IRR.

ARTICLE XVII

PROTEST MECHANISM

SEC. 55. **Protests on Decisions of the BAC.** - Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

SEC. 56. **Resolution of Protests.** - The protests shall be resolved strictly on the basis of records of the BAC. Up to a certain amount to be specified in the IRR, the decisions of the Head of the Procuring Entity shall be final.

SEC. 57. **Non-interruption of the Bidding Process.** - In no case shall any protest taken from any decision treated in this Article stay or delay the bidding process. Protests must first be resolved before any award is made.

SEC. 58. **Report to Regular Courts; Certiorari.** - Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

ARTICLE XVIII

SETTLEMENT OF DISPUTES

SEC. 59. **Arbitration.** - Any and all disputes arising from the implementation of a contract covered by this Act shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of this Act: Provided, That by mutual agreement, the parties may agree in writing to resort to alternative modes of dispute resolution.

SEC. 60. **Appeals.** - The arbitral award and any decision rendered in accordance with the foregoing Section shall be appealable by way of a petition for review to the Court of Appeals. The petition shall raise pure questions of law and shall be governed by the Rules of Court.

ARTICLE XIX

CONTRACT PRICES AND WARRANTIES

SEC. 61. **Contract Prices.** - For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB.

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

SEC. 62. **Warranty.** - (a) For the procurement of Goods, in order to assure that manufacturing defects shall be corrected by the supplier, manufacturer, or distributor, as the case may be, for a specific time after performance of the contract, a warranty shall be required from the contract awardee for such period of time as may be provided in the IRR, the obligation for which shall be covered by either retention money in the amount equivalent to a percentage of every progress payment, or a special bank guarantee equivalent to a percentage of the total contract price, to be provided in the IRR. The said amounts shall only be released after the lapse of the warranty period, provided that the Goods supplied are free from defects and all the conditions imposed under the contract have been fully met.

(b) For the procurement of infrastructure projects, the contractor shall assume full responsibility for the contract work from the time project construction commenced up to a reasonable period as defined in the IRR taking into consideration the scale and coverage of the project from its final acceptance by the government and shall be held responsible for any damage or construction of works except those occasioned by force majeure. The contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work and shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, Government Service Insurance System bond, or callable surety bond.

The contractor shall undertake the repair works, at his own expense, of any defect or damage to the infrastructure projects on account of the use of materials of inferior quality within ninety (90) days from the time the Head of the Procuring Entity has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the government shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.

Any contractor who fails to comply with the preceding paragraph shall suffer perpetual disqualification from participating in any public bidding and his property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of government in his favor shall be offset to recover the costs.

ARTICLE XX

THE GOVERNMENT PROCUREMENT POLICY BOARD

SEC. 63. **Organization and Functions.** - A Government Procurement Policy Board (GPPB) is hereby established to: (a) protect national interest in all matters affecting public Procurement, having due regard to the country's regional and international obligations; (b) formulate and amend, whenever necessary, the IRR and the corresponding standard forms for Procurement; (c) ensure that Procuring Entities regularly conduct Procurement training programs and prepare a Procurement operations manual for all offices and agencies of government; and (d) conduct an annual review of the effectiveness of this Act and recommend any amendments thereto, as may be necessary.

The GPPB shall convene within fifteen (15) days from the effectivity of this Act to formulate the IRR and for other related purposes. The GPPB shall be supported by a technical support office.

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

SEC. 64. **Membership.** - The GPPB shall be composed of the Secretary of the Department of Budget and Management, as Chairman, the Director-General of the National Economic and Development Authority, as Alternate Chairman, with the following as Members; the Secretaries of the Departments of Public Works and Highways, Finance, Trade and Industry, Health, National Defense, Education, Interior and Local Government, Science and Technology, Transportation and Communications, and Energy, or their duly authorized representatives and a representative from the private sector to be appointed by the President upon the recommendation of the GPPB. The GPPB may invite a representative from the Commission on Audit to serve as a resource person.

ARTICLE XXI

PENAL CLAUSE

SEC. 65. **Offenses and Penalties.** - (a) Without prejudice to the provisions of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act" and other penal laws, public officers who commit any of the following acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years:

1. Open any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents

required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.

2. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in the IRR.
3. Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take a particular action which favors, or tends to favor a particular bidder.
4. Splitting of contracts which exceed procedural purchase limits and competitive bidding.
5. When the head of the agency abuses the exercise of his power to reject any and all bids as mentioned under Section 41 of this Act with manifest preference to any bidder who is closely related to him in accordance with Section 47 of this Act.

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

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

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

1. When two or more bidders agree and submit different Bids as if they were bona fide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest Bid.
2. When a bidder maliciously submits different Bids through two or more persons, corporations, partnerships or any other business entity in which he has interest to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.
3. When two or more bidders enter into an agreement which call upon one to refrain from bidding for Procurement contracts, or which call for withdrawal of Bids already submitted, or which are otherwise intended to secure an undue advantage to any one of them.

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

In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the Government.

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

1. Submit eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.
2. Submit Bidding Documents of whatever kind and nature that contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.
3. Participate in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.
4. Withdraw a Bid, after it shall have qualified as the Lowest Calculated Bid/ Highest Rated Bid, or refuse to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

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

SEC. 66. **Jurisdiction.** - Jurisdiction over the offenses defined under this Article shall belong to the appropriate courts, according to laws existing at the time of the commission of the offenses.

ARTICLE XXII

CIVIL LIABILITY

SEC. 67. **Civil Liability in Case of Conviction.** - Without prejudice to administrative sanctions that may be imposed in proper cases, a conviction under this Act or Republic Act

No. 3019 shall carry with it civil liability, which may either consist of restitution for the damage done or the forfeiture in favor of the government of any unwarranted benefit derived from the act or acts in question or both, at the discretion of the courts.

SEC. 68. **Liquidated Damages.** - All contracts executed in accordance with this Act shall contain a provision on liquidated damages which shall be payable in case of breach thereof. The amount thereof shall be specified in the IRR.

ARTICLE XXIII

ADMINISTRATIVE SANCTIONS

SEC. 69. **Imposition of Administrative Penalties.** - (a) In addition to the provisions of Articles XXI and XXII of this Act, the Head of the Procuring Entity, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, for the following violations:

1. Submission of eligibility requirements containing false information or falsified documents.
2. Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
3. Allowing the use of one's name, or using the name of another for purposes of public bidding.
4. Withdrawal of a Bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.
5. Refusal or failure to post the required performance security within the prescribed time.
6. Termination of the contract due to the default of the bidder.

Refusal to clarify or validate in writing its Bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification.

Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.

All other acts that tend to defeat the purpose of the Competitive Bidding.

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

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

SEC. 70. *Preventive Suspension.* - The head of the procuring entity may preventively suspend any member of the Technical Working Group or the Secretariat, or the BAC if there are strong reasons or prima facie evidence showing that the officials or employees concerned are guilty of the charges filed against them under Articles XXI and XXII of this Act or for dishonesty as defined by the Civil Service Laws. In all cases, procedural and substantive due process as mandated by the Constitution and Civil Service Laws, rules and regulations, shall be strictly observed.

SEC. 71. *Lifting of Suspension and Removal of Administrative Disabilities.* Lifting of preventive suspension pending administrative investigation, as well as removal of administrative penalties and disabilities shall be in accordance with the provisions of Sections 52 and 53, Chapter 6 (Civil Service Commission), Book V of Executive Order No. 292, the Administrative Code of 1987

ARTICLE XXIV

LEGAL ASSISTANCE AND INDEMNIFICATION OF BAC MEMBERS

SEC. 72. *Private Legal Assistance.* All the members of the BAC are hereby authorized to engage the services of private lawyers or extend counsel immediately upon receipt of Court Notice that a civil or criminal action, suit or proceeding is filed against them. The lawyer's fee shall be part of the indemnification package for the BAC members, subject to the provisions of Section 73 hereof.

SEC. 73. *Indemnification of BAC Members.* - The GPPB shall establish an equitable indemnification package for public officials providing services in the BAC, which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceeding to which they may be, or have been made, a party by reason of the performance of their functions or duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion.

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

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

ARTICLE XXV

FINAL PROVISIONS

SEC. 74. **Oversight Committee.** - There is hereby created a Joint Congressional Oversight Committee to oversee the implementation of this Act for a period not exceeding five (5) years from the effectivity of this Act. The Committee shall be composed of the Chairman of the Senate Committee on Constitutional Amendments and Revision of Laws and two members thereof appointed by the Senate President, and the Chairman of the House Committee on Appropriations, and two members thereof to be appointed by the Speaker of the House of Representatives.

SEC. 75. **Implementing Rules and Regulations and Standard Forms.** - Within sixty (60) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the GPPB, jointly with the members of the Oversight Committee created under Section 74 hereof. The said rules and regulations shall be approved by the President of the Philippines. For a period not later than thirty (30) days upon the approval of the implementing rules and regulations, the standard forms for Procurement shall be formulated and approved.

SEC. 76. **Repealing Clause.** - This law repeals Executive Order No. 40, series of 2001, entitled "Consolidating Procurement Rules and Procedures for All National Government Agencies, Government-Owned-or-Controlled Corporations and/or Government Financial Institutions, and Requiring the Use of the Government Electronic Procurement System"; Executive Order No. 262, Series of 2000, entitled "Amending Executive Order No. 302, series of 1996, entitled "Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/ Supplies by the National Government" and Section Three (3) of Executive order No. 201, series of 2000, entitled "Providing Additional Policies and Guidelines in the Procurement of Goods/Supplies by the National Government"; Executive Order No. 302, series of 1996, entitled "Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/ Supplies by the National Government" and Presidential Decree No. 1594 dated June 11, 1978, entitled "Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts." This law amends Title Six, Book Two of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991"; the relevant provisions of Executive Order No. 164, Series of 1987, entitled "Providing Additional Guidelines in the Processing and Approval of Contracts of the National Government"; and the relevant provisions of Republic Act No. 7898 dated February 23, 1995, entitled "An Act Providing for the Modernization of the Armed Forces of the Philippines and for Other Purposes." Any other law, presidential decree or issuance, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

SEC. 77. **Separability Clause.** - If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SEC. 78. *Effectivity Clause.* - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved:

FRANKLIN M. DRILON
President of the Senate

JOSE DE VENECIA JR.
*Speaker of the House
of Representatives*

This Act which is a consolidation of House Bill No. 4809 and Senate Bill No. 2248 was finally passed by the House of Representatives and the Senate on December 18, 2002.

OSCAR G. YABES
Secretary of the Senate

ROBERTO P. NAZARENO
*Secretary General
House of Representatives*

Approved:

GLORIA MACAPAGAL-ARROYO
President of the Philippines

Attachment 5 - World Bank Comments to the Government Procurement Reform Act (RA 9184)

General

1. The law provides for a protest review mechanism to be conducted by the procuring entity, who, as such, will become judge and party. The Law is silent on any award which could be granted. Any protest should be referred to an independent entity who would be entitled to receive protests, challenge a procurement decision and suspend a contract award. All decisions of such independent entity should be final.
2. The law provides for a two envelopes system that deprives from the benefits expected from public bid opening. Furthermore, the two envelopes are not opened simultaneously during the public bid opening which is a greater area of concern.
3. The evaluation criteria appears to be based on a point system ranking; it should be on monetarily quantifiable elements in order to be more transparent.

Specific Comments

Section 11 - The BAC and its composition.

We are of the view that there might be too many members and their roles could be more detailed.

Section 12: Functions of the BAC.

Neither the BAC, nor the Head of the Entity, should recommend the imposition of sanctions in accordance with Article XXIII. The entity responsible for the imposing sanctions should be independent and exercise its duties at a central level. Note that the structure of the first paragraph of Section 12 is confusing and could lead to interpretation issues.

Section 15 - Honoraria of BAC Members.

It would be better to leave the percentage of the honoraria out of the legislation.

Section 17: Form and Contents of Bidding Documents.

- a. *The approved budget should not be part of the Bidding Documents. (Note that the estimated budget should not be part of such documents either.)*
- b. *The qualification requirements should be added after or before paragraph d).*
- c. *The criteria for bid evaluation should be a separate paragraph. Such paragraph should mention that they are quantified in monetary terms. The use of points should be avoided except for consulting services. The use of such non-discriminatory bid*

evaluation criteria allows to indisputably identify the lowest evaluated responsive bid. Quantifying bid evaluation criteria in monetary terms is the only method that leads to transparent evaluation and that allows bidders to submit an effective protest to the awarding authority.

Section 21 - Advertising

The approved budget should not be part of the Invitation to Bid.

Section 23 and 24 - Eligibility Requirements.

The qualification requirements are not defined. No distinction is made between eligibility and qualification requirements.

Section 55 - Submission and Receipt of Bids.

It is recommended that bids be submitted in one envelope and that the price be read at the opening of bids. The use of a two-envelope system deprives the process from the benefits expected from public bid opening.

Section 27 - Bid Security.

Bid security should not be requested for smaller contracts.

Section 29 - Bid Opening.

This Section should mention that the Bids will be opened immediately after the deadline for submission of bids. The Minutes of the opening meeting should be made available to the bidders free of charge.

Section 30 - Preliminary Examination of Bids.

See above comment on Section 25. Bids should be submitted in one envelope.

Section 31 - Ceiling for Bid Prices.

As mentioned above in our comments on Section 17 and 21, the Bid price should not be publicized and as such, no bidder should be disqualified if its price exceeds the approved budget. This Section should be removed.

Section 32 - Bid for the Procurement of Goods and Infrastructure Projects.

The first sentence should read: "For the procurement of Goods and Infrastructure Projects, the BAC shall evaluate the financial component of the bids strictly in accordance with the evaluation criteria set forth in the Bidding Documents, and no others."

Section 33 - Bid Evaluation on Short Listed Bidders for Consulting Services.

This Section should mention that there will be no negotiations on unit rates.

Section 34 - Objectives and Process of Post-Qualification.

The law does not state the principle clearly and the words “verification and validation” could be open to discussion. It would be clearer to state that the BAC will ensure that the Lowest Calculated Bidder (or Highest Rated Bidder, as the case may be) meets all the qualifications set out in the Bidding Documents.

Section 35 - Failure of Bidding.

The process to be followed if there is a failure of bidding or if no bid qualifies should be to review the causes justifying the rejection and considering making revisions to the conditions of the contract, design and specifications, scope of the contract or a combination of these before inviting new bids.

Section 40 - Failure to Enter into Contract and Post Performance Security.

This Section should be revisited. The bid security should be cash[ed] in all cases.

Section 43 - Procurement of Domestic Preference and Foreign Goods.

The conditions and the nature of the preference which could be granted should be explained in detail.

Section 44 and 45 - Bidding of Provincial Projects and Provincial Bidders.

The preference provided at the provincial level is unduly restrictive and would be counterproductive since the process would not be fair and equitable to all bidders.

Section 48 - Alternative Methods (of Procurement).

Some of the alternative methods should be removed. See explanation further.

Section 49 - Limited Source Bidding:

Paragraph a): This paragraph should read: “Procurement of highly specialized types of Goods and Consulting Services which are known to be obtainable only from a limited number of sources in which case all of these sources must be invited to bid, or”

Paragraph b): Limited bidding should not be permissible for the case mentioned in subparagraph b). The grounds which such procurement would be opened to limited source bidding are unclear.

Section 53 - Negotiated Procurement.

This type of procurement should be avoided. Subsections b), c) and d) could be taken

care of under Direct Contracting. Concerning paragraph a) we refer you to our comment on Section 35.

Section 55 and 56 - Protest on Decisions of the BAC and Resolution of Protests.
All the decisions of such entity should be binding on the [parties]. It would be preferable to have an independent entity, other than the head of the procuring entity, decide on protests. Furthermore, the applicable rules on the protest process should be more detailed in the IRR.

Section 60 - Appeals.
Arbitration should be final and binding.

Section 62 - Warranty.
The sanction provided for in the last paragraph seems harsh.

Section 63 - Organization and Functions.
The GRP should also audit the procurement operations of procurement entities.

Article XXI - Penal Clause (Sections 65 and 66).
Would be better addressed in the Penal Code.

Sections 70, 71, 72 and 73
Would be better dealt [with] in the Legislation governing the conduct of Public Servants.

Section 75 - Implementing Rules and Regulations and Standard Forms.
60 days is too short.

Other Comments

It would have proved useful to have the following addressed in the law:

- a. Provision for equitable price adjustment when the contract time for completion extends beyond the period of time for which the private contracting party can control its cost forecast.*
- b. Provision for bidders to update their contract price on the day of contract signing since they are not responsible for the delays encountered by the government contracting party and, therefore, should not be subject to the consequences of that delay.*



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