

BILL ON SECOND READING

S. No. 2248 — Modernizing the Procurement Activities of the Government

Senator Legarda Leviste. Mr. President I move that we consider Senate Bill No. 2248 as reported out under Committee Report No. 67.

The President. Is there any objection? [Silence] There being none, the motion is approved.

Consideration of Senate Bill No. 2248 is now in order. With the permission of the Body, the Secretary will read only the title of the bill, without prejudice to inserting in the *Record* the whole text thereof.

The Secretary. Senate Bill No. 2248, entitled

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

The following is the whole text of the bill:

Senate Bill No. 2248

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

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

Article I
General Provisions

SECTION 1. *Short Title.* - This Act shall be known as the "Government Procurement Reform Act of 2002."

SEC. 2. *Declaration of Principles.* -

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 controlled corporations, and local government units. Towards this end, the State shall establish a system that ensures transparency, competitiveness, efficiency, accountability, impartiality, equity and

adaptability to modern technology in all procurement activities of the government.

SEC. 3. *Scope and Application.* - This Act shall apply to the Procurement of Infrastructure Projects, Goods, and Consulting Services by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned or -controlled corporation and local government units, subject to any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory.

SEC. 4. *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* - 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, in the case of Government-Owned and Controlled Corporations, Government Financial Institutions and State-Owned Universities and Colleges; and the Budget for the contract approved by the respective *Sanggunian*, in the case of Local Government Units.

b) *BAC* - shall refer 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, contractor or consultant in compliance with the requirements set forth in 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) *Goods* - refer to items, supplies, materials and general support services which need to be procured in the pursuit of any government undertaking, project, or activity, such as equipment, furniture, stationery, construction materials, personal property of any kind, non-personal or contractual services to include among others, repair and maintenance of equipment and furniture, trucking, hauling, janitorial, security, and related or analogous services. These shall exclude Consulting Services, real estate and Infrastructure Projects.

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

i) *Infrastructure Projects* - shall 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 and sewerage systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government.

j) *IRR* - refers to the implementing rules and regulations to be promulgated in accordance with Section 65 of this Act.

k) *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 properties. 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.

l) *Procuring Entity* - refers to any branch, department, office, agency, or instrumentality of the government, including government-owned or controlled corporation, and local government units procuring Goods, Infrastructure Projects and Consulting Services.

m) *Head of the Procuring Entity* - refers to the head of a branch, department, office, agency, or instrumentality of the government, including government-owned and controlled corporation, as well as 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.

SEC. 5. *Standardization of Procurement Process and Forms.* - Pursuant to the objective of instituting a systematized Procurement process in government, and in order to ensure transparency, the Procurement process, including the forms to be used, shall, as far as practicable, be standardized.

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. 6. *Annual Procurement Plan.* - 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. 7. *The 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 Government Electronic Procurement Service (G-EPS) shall provide the said portal. Further, the GPB 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 2 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. 8. 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. 9. Competitive Bidding. - Subject to the provisions of Article XIII, the Procurement of Goods, Infrastructure Projects and Consulting Services shall be done through Competitive Bidding.

Article V Bids and Awards Committee

SEC. 10. The BAC and its Functions. - Except as otherwise allowed in this section, each Procuring Entity shall establish a single BAC to handle its procurement. The Head of the procuring entity may establish separate BACs whenever in his judgment the number and complexity of the items to be procured so warrant.

Similarly, separate BACs for decentralized and lower level offices may also be established as may be deemed fit by the Head of the Procuring Entity.

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, recommend the imposition of sanctions in accordance with Article XIX, 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 XIII hereof.

SEC. 11. Membership in the BAC. - The BAC shall have at least five (5) members, but not more than seven (7) and composed of the following:

a. *National government branches, departments, agencies, offices and instrumentalities, including Government-owned and controlled corporations, government Financial Institutions and State Universities and Colleges:*

Regular Members:

1. Chairman, who is at least a third ranking permanent official of the Procuring Entity;
2. An officer with knowledge, experience and expertise in procurement who, to the extent possible, represents the legal or administrative area of the Procuring Entity;
3. An officer with knowledge, experience and expertise in procurement who, to the extent possible, represents the finance area of the Procuring Entity;
4. An officer with knowledge, experience and expertise in procurement who, to the extent possible, represents the technical area of the Procuring Entity; and
5. A representative from the end user unit (designated on a contract to contract basis) who has knowledge of procurement laws and procedures.

The members of the BAC shall be designated by the Head of the Procuring Entity or their respective governing Boards.

b. *Local Government Units:*

The BAC shall be composed of one (1) representative each from the regular offices under the Office of the Chief Executive such as, but not limited to the following: Budget Office, Legal Office, Engineering Office, General Services Office, Administrative Office. The end user office shall always be represented in the BAC.

The member shall elect from among themselves who shall act as the Chairman.

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. *Observers.* - To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite 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. 13. *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. 14. *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. 15. *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 professionalized the same.

Article VI

Preparation of Bidding Documents

SEC. 16. *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 (ABC);
- 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. 17. *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. 18. *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. 19. *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. 20. *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 and nationwide 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.

Article VIII Pre-Bid Conference

SEC. 21. *Pre-Bid Conferences.* - At least one pre-bid conference shall be conducted for Infrastructure Projects with an approved budget of Five (5) Million Pesos and above, and for Procurement of Goods and Consulting Services with an Approved Budget of One (1) Million Pesos and above. For Infrastructure Projects costing less than Five (5) Million Pesos and for Procurement contracts of Goods and Consulting Services, costing less than One (1) Million Pesos, pre-bid conferences may be conducted at the option of the BAC.

The aforementioned amounts shall be subject to a periodic review by the GPPB. For this purpose, the GPPB is authorized to increase or decrease the threshold level to keep abreast with the changes in economic conditions: *Provided*, That any modification shall not be oftener than once in every two (2) years.

The Pre-bid conference(s) shall be held at least fifteen (15) calendar days before the deadline for receipt of bids. The proceedings shall be duly recorded and the minutes thereof made available to all prospective bidders, subject to the payment of reasonable fee to cover cost.

Article IX
Receipt and Opening of Bids

SEC. 22. *Eligibility Requirements for Goods and Infrastructure Projects.* - The eligibility of prospective bidders for the Procurement of Goods and Infrastructure Projects shall be determined by their compliance, within the period set forth in the Invitation to Bid, with the eligibility requirements prescribed in the Bidding Documents. The prospective bidder shall certify under oath as to the correctness of the statements made and the completeness and authenticity of the documents submitted.

SEC. 23. *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 prospective bidder shall certify under oath as to the 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 whose bids shall be considered for evaluation.

SEC. 24. *Receipt of Bids.* - Only those Bids received by the BAC on the date, time, and place specified in the Invitation to Bid shall be considered. Bids submitted after the deadline shall not be accepted.

SEC. 25. *Modification and Withdrawal of Bids.* - A bidder may be allowed to modify his Bid, provided that this is done only once and before the deadline for the receipt of Bids. The modification shall be submitted in a sealed envelope duly attached to his original Bid and marked as "Modification." A bidder is allowed to withdraw his Bid: *Provided, That* this is done at least five (5) calendar days before the deadline for the receipt of Bids: *Provided, further, That* he shall submit a letter of withdrawal and non-participation to the BAC. In such case, he shall no longer be allowed to submit another Bid for the same contract either directly or indirectly.

SEC. 26. *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. 27. *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 to be involved in the process of Bid evaluation and award of contract.

SEC. 28. *Bid Opening.* - The BAC shall publicly open all Bids at the time, date, and place specified in the Bidding Documents.

Article X
Bid Evaluation

SEC. 29. *Preliminary Examination of Bids.* - Prior to a Bid evaluation of all Procurement, the BAC shall first examine, using a "pass or fail" criterion, the technical components of the Bids submitted to determine whether all the required documents are present. For each required document, a bidder is rated "pass", if the document is included in its Bid, and "fail", if otherwise. Only Bids that are found to contain all the Bid requirements and rated "passed" shall be considered for evaluation.

SEC. 30. *Ceiling for Bid Prices.* - The Approved Budget for the Contract (ABC) shall be the upper limit or ceiling for the Bid prices. Bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be no lower limit to the amount of the award.

SEC. 31. *Bid Evaluation and Determination of the Lowest Calculated Bid for Goods and Infrastructure Projects.* - For purposes of comparison, the Bid prices of bidders for the Procurement of Goods and Infrastructure Projects who passed the preliminary examination shall be evaluated and corrected for minor deviations, such as computational errors and omissions, in accordance with the Bidding Documents. Any corrections for minor deviations shall be calculated in monetary terms and the corrected prices shall be referred to as calculated in monetary terms and the corrected prices shall be referred to as calculated prices. The Bids shall be ranked from lowest to highest in terms of their corresponding calculated prices. The Bid with the lowest calculated price shall be the "Lowest Calculated Bid".

SEC. 32. 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 Approved Budget for the Contract. Whenever necessary, the same process shall be repeated until the bid is awarded to the winning bidder.

Article XI Post-qualification

SEC. 33. 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 or the Highest Rated Bid, in the case of Procurement 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. 34. Failure of Bidding. - There shall be a failure of bidding when: a) no prospective bidder applies for eligibility check; b) no bids are received; c) all prospective bidders are declared ineligible or are disqualified from participating in the competitive bidding; or, d) all bids fail to comply with all the requirements or fail post-qualification. In this event, the Procuring Entity shall re-bid the contract either under the original or revised terms of reference. In the latter case, there shall be re-advertisement as required under Article VII.

SEC. 35. 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 Approved Budget for the Contract reflects the most advantageous prevailing price for the Government.

Article XII Award, Implementation and Termination of the Contract

SEC. 36. 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 the signed authority is required, the approving authority for the contract shall be given a maximum of twenty (20) calendar days to approve or disapprove it. If the aforementioned approving authority or his duly authorized representative fails to take any action on the contract within the period specified in the preceding paragraph, the contract concerned shall be deemed approved.

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. 37. 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 for amount as specified in the Bidding Documents.

SEC. 38. Failure to Enter into Contract and Post Performance Security. - If 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 fails to post the required performance security within the period stipulated in the Bidding Documents, the bid security shall be forfeited without prejudice to the imposition of sanctions prescribed under Article XIX. Thereupon, 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 accordance with the provisions of Section 34 of this Act.

SEC. 39. 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. 40. 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 XIII

Alternative Methods of Procurement

SEC. 41. 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 Sec. 47 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. 42. 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. 43. 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;
- 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. 44. 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. 45. 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 (P50,000.00); 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.

There is splitting of contracts when two (2) or more contracts for similar Goods are made in favor of one dealer or supplier within one (1) month of each other, and analogous cases.

SEC. 46. *Negotiated Procurement.* - Negotiated procurement shall be allowed only in the following instances:

- a) 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;
- b) 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 danger to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities; and
- c) Where the subject contract is adjacent or contiguous to an on-going infrastructure project: *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

- d) 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. 47. *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 XIV Protest and Appeals Mechanisms

SEC. 48. *Appeals from Decisions of the BAC.* - Decisions of the BAC in all stages of Procurement may be the subject of a written protest to the Head of the Procuring Entity. The protest is taken by the submission of a verified position paper and filing of a non-refundable protest fee. The amount of the protest fee, and the periods during which the appeals may be filed and resolved shall be specified in the IRR.

SEC. 49. *Resolution of Protest.* - All protests shall be resolved strictly on the basis of the official records in the custody of the BAC. No other document of whatever nature that are not in the custody of the BAC at the time the protest is filed, shall be considered. The decision of the Head of the Procuring Entity shall be final.

SEC. 50. *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. However, all protests shall first be resolved before any award is made.

SEC. 51. *Resort to Regular Courts; Certiorari.* - Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases filed in violation of the process 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 XV Settlement of Disputes

SEC. 52. *Arbitration.* - Any and all disputes arising from the implementation of a contract covered by the provisions of this Act shall be submitted for arbitration in the Philippines in accordance with the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": *Provided, however,* That disputes falling within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be mandatory for all contracts executed pursuant to the provisions of this Act. Recourse to arbitration however, shall be without prejudice to the right of both parties to the contract to mutually agree in writing, to resort to other alternative modes of dispute resolution.

SEC. 53. *Appeals.* - The arbitral award, and any decision issued in accordance with the immediately preceding Section are appealable, by way of a petition for review, to the Court of Appeals. The petition shall only raise pure questions of law and shall be governed by the Rules of Court.

Article XVI Contract Warranties

SEC. 54. *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 and/or the works performed 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 until five (5) years 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.

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 Secretary of the Department of Public Works and Highways 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 XVII The Government Procurement Policy Board

SEC. 55. *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.

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 is hereby transferred to the GPPB.

SEC. 56. 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 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 Communication, and Energy, and a representative from the private sector to be appointed by the GPPB.

Article XVIII
Penal Clause

SEC. 57. 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. Delay without any justifiable cause the screening process for eligibility or the opening of Bids or the post-qualification process.

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

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

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

1. When two or more bidders agree and submit different Bids as if they were 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 Rate 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 officers or employees who actually commit any of the foregoing acts.

SEC. 58. *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 XIX Civil Liability

SEC. 59. *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. 60. *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 XX Administrative Sanctions

SEC. 61. *Imposition of Administrative Penalties.* - (a) In addition to the provisions of Article XVII and XVIII 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.
7. 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.
8. Any document unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.
9. 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.

Article XXI

Indemnification of BAC Members

SEC. 62. *Indemnification of BAC and BAC Secretariat Members.* - The Procuring Entity shall indemnify public officials for all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceeding to which they 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.

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 XXII

Final Provisions

SEC. 63. *Agency Incentives.* - In instances where an agency generates savings from a procurement contract, fifty percent (50%) of such savings shall

accrue to the account of the agency and fifty percent (50%) will revert to the National Treasury. For purposes of this provision, savings shall mean to be the difference between the approved budget for the contract and the actual amount of the awarded contract. The DBM shall issue the necessary guidelines for the proper implementation of this provision.

SEC. 64. *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 and 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. 65. *Repealing Clause.* - This Act specifically repeals Executive Order No. 262 dated July 5, 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 and 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".

All other laws, presidential decrees or issuances, executive orders, letters of instruction, administrative orders, rules and regulations, and any part thereof which are inconsistent with the provisions of this Act are hereby repealed, modified or amended accordingly.

SEC. 66. *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. 67. *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.

Adopted,

SUSPENSION OF SESSION

Senator Legarda Leviste. I move that we suspend the session for one minute in order to be able to set up the equipment.

The President. All right. The setting up of the audiovisual equipment is allowed in the Chamber.

The session is suspended for one minute, if there is no objection. [*There was none.*]

It was 11:05 a.m.

RESUMPTION OF SESSION

At 11:08 a.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

Senator Legarda Leviste. Mr. President, to sponsor the measure, I ask that Sen. Edgardo J. Angara be recognized.

The President. Sen. Edgardo J. Angara is recognized.

SPONSORSHIP SPEECH OF SENATOR ANGARA

Senator Angara. Thank you, Mr. President.

Mr. President and my colleagues:

Today, the stench of corruption is the only constant in our public life.

Where it used to be a hyped newspaper headline, corruption is now a widespread cancer entrenched and institutionalized throughout the bureaucracy, attending official transactions, big and small.

No official transaction is immune from it, no contract too small for dirty fingers and greased pockets.

From the routine purchase of bond paper to the bidding of the major government infrastructure projects, to the hiring of consultants, nothing passes without a taint, or an envelope changing hands.

The system of procurement, which fuels the engine of government and the delivery of state services, has been a spawning ground for official corruption.

Not far from our office, as I stand here, Mr. President, is the black asphalt of an overpriced road, which text messages now refer to as the "President Dioskupo Napakamahal Avenue." Half a billion pesos was lost in this road construction scam, the

level of corruption of which has no parallel in the history of the country's road construction.

The Wages of Corruption

What are the brutal wages of official corruption in the Philippines?

Over the last 20 years, the World Bank estimates that some US\$48 billion—I repeat that, Mr. President, US\$48 billion—was lost to official corruption in the Philippines.

The US\$48 billion loss can almost cover our country's external debt or pay for our entire budget deficit and still provide a considerable surplus in return.

For every peso spent on public service, between 20 to 50 centavos is lost to corruption.

The magnitude of the loss to corrupt procurement, by the government's own estimate, is at least P22 billion a year or twice the budget of the Department of Health. This is equivalent to 520 million textbooks for our school children or 63,000 new classrooms. Mr. President, three times more to make up for the classroom backlog we are currently experiencing.

Or, 1,500 kilometers of concrete farm-to-market roads, if we do not use the bidding procedures of the Public Estates Authority.

The stench of official corruption has a heavy bearing on how international watchdogs of good government rate our country.

The recent *Transparency International* survey said that the Philippines was the 11th most corrupt nation in the world in 2002. That survey placed us in the global hall of shame.

Or, on how Filipinos view the dark, shady side of government.

The latest survey shows that 50% of the Filipinos perceive that there is a great deal of corruption in government. An incredible 98% can name a corrupt government agency outright. Seventy-eight percent (78%) readily named a government agency perceived as corrupt a few years back and judged as more corrupt today.

What Needs To Be Done

The task of fighting official corruption should mean snuffing out its roots. This means plugging the holes and the gaps in the obsolete and fraud-prone public procurement system.

We all know by now this sordid fact: that of the four top activities of government where corruption is most rampant, three involve public procurement. These are, Mr. President,

building of roads, providing free books to public schools and installing modern equipment like computers in government offices. The fourth source is collection of taxes.

Mr. President, Senate Bill No. 2248 proposes to overhaul the procurement rules, from the purchase of government supplies, to the hiring of consultants, to the bidding and award for government infrastructure projects.

The proposed reforms are aimed at promoting transparency, openness and instituting a genuine competition. It seeks to end the crippling delays in the procurement process—the same delays that open the windows for graft.

The use of discretion in the bidding process will be limited, to rein in would-be-crooks.

Discredited modes of awarding contracts—such as the simplified bidding used in choosing the contractor of the country's costliest road project will be part of history.

The Safeguards Are In The Details

What are the present rules and how do we propose to change them? The reforms in Senate Bill No. 2248 lie in the details—the proposed new rules of public procurement.

The first feature of the reform measure seeks to address the lack of competition and transparency in the procurement process. At present, advertising of Invitations to Bid is limited to publication in print media. This is open to manipulation by unscrupulous government officials to favor certain contractors and suppliers.

Perhaps, few of us are strangers to anecdotes of contractors buying all printed copies of local newspapers to prevent circulation of the bidding announcement for local projects. This effectively limits competition to a few favored ones.

To level the playing field, we propose that, in addition to print media with national circulation, bidding announcements should be posted on the Internet, on the website of the concerned agency, as well as on the Government Electronic Procurement System (G-EPS) website. This makes the bidding announcement known all over the country and not limited within a particular locality or region.

The optimum use of information technology will also be harnessed to include the application of an electronic system of auditing all the bidding transactions to promote transparency and accountability.

The second key reform is the adoption of a simple eligibility check method, veering away from the present complex and highly subjective prequalification procedure.

At present, prospective bidders undergo detailed and subjective prequalification. It is at this stage that unscrupulous members of the Bids and Awards Committee (BAC) can effectively limit the number of suppliers or contractors who can participate in the bidding.

Based on accounts of contractors and suppliers who participate regularly in government procurements—and based on my experience in the Executive department—it is in the prequalification stage where “favorites” are practiced and enforced. At this point, without conducting any bidding yet, the winner is already known. Normally, the victor is the entity that can pay the “right” price.

To completely eliminate this evil practice, we propose to replace the present system with a method that uses a “Pass/Fail” marking system where incomplete documents are given a “fail” mark, while complete documents give bidders clearance to proceed to the next stage of the process.

This proposal alone is expected to reduce the bid processing time for civil works from six to two months for small contracts, and from 12 to four months for large contracts.

On the other hand, the bid processing time for the purchase of supplies, materials and goods, will drop from three months to a mere three weeks for small contracts, and from six to two months for large contracts.

This dramatic cut in processing time will inevitably result in a drastic reduction in opportunities for corruption.

The third major feature, Mr. President, is the elimination of the floor price and the use of the approved budget for the contract as the ceiling price. A floor price is hardly efficient since it prevents the government from taking advantage of potential savings from lower bids. On the other hand, bids offered above the budget ceiling are a waste of government time and effort and will be automatically rejected.

Take the case of the Voters Registration and Identification System (VRIS) of the Comelec. The Supreme Court voided the VRIS contract on the basis that Photokina's bid was beyond the amount appropriated by Congress for the project. Had the contract been bid out under our proposed reforms, the enormous time and resources spent and the delay encountered by the electoral modernization would have been avoided.

The fourth reform minimizes the discretion of the Bids and Awards Committee members. At present, the members of the Bids and Awards Committee decide on bid offers using the standards of quality and price. In reality, it is difficult to measure quality and its trade-off with price. It requires too much subjectivity, which in turn, exposes the process to legal challenges.

Let us take an actual example, Mr. President. The DILG Fire Trucks Scam in 1999 is a classic example of this defect. When the contract was recommended for award to Columbian Motors Corporation, which ranked first in the bid evaluation, Daeyang, which ranked second, filed a complaint questioning the credibility of the bidding process. This Body weighed in through the Senate Blue Ribbon Committee investigation. Eventually, Columbia pulled out from the bidding, while Daeyang was awarded the contract.

To avoid this costly and unnecessary occurrence, we propose that the Bids and Awards Committee will no longer exercise discretion in the processing of bids. Instead, it will follow a clear two-stage eligibility criterion that separates the review of quality from the ranking of bid price.

This way, Mr. President, protests from losing bidders will be minimized since the determination of the winning bid is a straightforward process and free largely from discretion.

Another key reform is the requirement of a five-year warranty on civil works, and the imposition of a cap on price adjustments and change orders. Mr. President, there is a rampant practice in bidding for public works projects by unscrupulous bidders submitting ridiculously low bids and then increasing the price or the contract by submitting extra work and change orders. This will prevent anomalies, such as the DPWH car repair scam, from happening.

Finally, and most importantly, is the adoption of open and competitive public bidding as the norm in all levels of government procurement.

The use of alternative modes of procurement, such as limited source bidding, direct contracting, repeat order, shopping and negotiated procurement will be allowed but only in well-defined exceptional circumstances, whenever competitive public bidding cannot be reasonably applied.

Conclusion

In conclusion, Mr. President, this is an urgent measure that needs to be passed into law. We need to seize this very narrow window of opportunity to minimize, if not completely eradicate the evils of corruption in our midst.

Some may find these reforms groundbreaking. Undoubtedly, it is a strong solution, not for the weak of continence. But in the light of our predicament, we cannot afford or be satisfied with anything less.

We believe this measure is a timely solution to a timeless affliction. With the help of our esteemed colleagues in this

Chamber, we are in a position to usher this landmark measure into law and effectively address the problems of graft and corruption.

Our people are weary of traveling on roads paved by opportunism and deceit. Let us take the path that shall infuse integrity and honesty in the very basic operations of good government.

And while we may not be able to fight graft and corruption at all levels, we are nevertheless in the best position to nip its greatest bloom in the bud. We need this law. We need it now.

In this light, Mr. President, I earnestly urge our colleagues in this Chamber to approve this bill which is certified as urgent by the Administration.

Thank you, Mr. President.

Senator Legarda Leviste. Mr. President, I move that we suspend consideration of the measure. But before that, I have a cosponsorship speech; I will not read it anymore. May I request that it be inserted in the records. We have a lot to take up this morning, and we have no more time.

SPONSORSHIP SPEECH OF SENATOR LEGARDA LEVISTE

The following is the written sponsorship speech of Senator Legarda Leviste:

I am privileged to cosponsor this morning another landmark measure, which if enacted into law, would introduce significant reforms in the implementation and execution of government contracts, which have been often tagged as the breeding and breathing ground for graft and corruption.

Delays, collusion, lack of transparency, undue use of discretionary criteria, and lack of competition have long plagued government procurement of goods, supplies, materials, consulting services and infrastructure projects. According to a Social Weather Station survey, there are three top government activities where corruption is rampant, namely: building of roads, providing books to public school children, and installing equipment in government offices.

At a time when government needs to fully utilize as much revenues as it can, in a period when the expeditious completion of government projects are necessary for the nation's progress, we cannot afford to lose scarce resources and limited funding to rampant malpractices

in government procurement. Due to the lack of administrative and legislative measures to combat graft and corruption in procurement, we are thus tolerating such malpractices, which in effect, escalate to unreasonable proportions the costs of doing business for both the government and the private sector.

One important step to take to combat corruption is to reduce the opportunities to resort to it. And such opportunity may be reduced by introducing streamlined and uniform procedures and imposing rules and policies.

The Government Procurement Reform Act incorporates all legal provisions governing public procurement into one streamlined law. Currently, the provisions that govern public procurement are spread out across numerous laws, executive orders, administrative orders, and circulars. This has created confusion and conflicting interpretations of appropriate procedures, which, not surprisingly, has aggravated the said problems.

This proposed measure shall reduce the confusion and conflicts in interpretation of government procurement and as a result, save time and effort needed to prepare and evaluate bids and award contracts by transforming the pre-qualification process into an "eligibility screening" using transparent, non-discretionary criteria. Eligibility screening will involve a simple check of the presence or absence of required documents. This change will markedly hasten the bidding process and expand the pool of bidders, creating more competition and thus lowering the costs to the government.

And then, to ascertain that the documents of eligible bidders are genuine and thus to ensure that they can meet all the requirements of the contract, detailed verification/ validation of documents will be done during the post-qualification stage, in contrast to conventional pre-qualification. The verification/ validation will then be done sequentially, starting with the bidder with the lowest calculated bid or highest rated bid, in the case of consulting services. If the documents of the bidder with the lowest calculated bid/highest rated bid are all verified and validated then the said bid will be declared as the winner and awarded the contract.

The approval of this measure will tighten the lid on the graft and corruption that has plagued government procurement for too long.

By aiming to inculcate the basic principles of good governance—transparency, accountability, equity, effectiveness, efficiency, and economy—in the procurement procedure, I join our esteemed colleague, Senator Angara, in urging this august Chamber to work conscientiously for the immediate passage of Senate Bill No. 2248, "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for other Purposes."

SUSPENSION OF CONSIDERATION OF S. NO. 2248

Senator Legarda Leviste. I move now that we suspend consideration of the measure.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

SPECIAL ORDERS

Senator Legarda Leviste. Mr. President, I move now that we transfer from the Calendar of Ordinary Business to the Calendar for Special Orders Committee Report No. 92 on Senate Bill No. 2398, entitled

AN ACT ELIMINATING THE PREPARATORY RECALL ASSEMBLY AS A MODE OF INSTITUTING RECALL OF ELECTIVE LOCAL GOVERNMENT OFFICIALS, AMENDING FOR THE PURPOSE SECTIONS 70 AND 71, CHAPTER 5, TITLE ONE, BOOK 1 OF REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE "LOCAL GOVERNMENT CODE OF 1991," AND FOR OTHER PURPOSES.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

BILL ON SECOND READING

S. No. 2398 — Eliminating the Preparatory Recall Assembly of Elective Local Government Officials

Senator Legarda Leviste. Mr. President, I move that we consider Senate Bill No. 2398 as reported out under Committee Report No. 92.

The President. Is there any objection? [*Silence*] There being none, the motion is approved.

Consideration of Senate Bill No. 2398 is now in order. With the permission of the Body, the Secretary will read only the title

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conducted, I looked hurriedly at the Constitution. There is very little we can proceed from.

Senator Pimentel. Yes, Mr. President.

Senator Arroyo. I mean to go from this matter, and it will really be addressed to our good sense to craft something that may not damage the government machinery. Without prejudice to an extended interpellation because, as I have said earlier I have not studied this very well, I will just make my reservation to interpellate at some future time.

Thank you, Mr. President.

Senator Pimentel. Thank you, Mr. President.

The President Pro Tempore. The Majority Leader is recognized.

Senator Legarda. Mr. President, I move that we suspend the interpellation on Senate Bill No. 2132.

The President Pro Tempore. Is there any objection? [Silence] There being none, the motion is approved.

SUSPENSION OF CONSIDERATION OF S. NO. 2132

Senator Legarda. I move that we suspend consideration of the measure, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Legarda. I move that we suspend the session for one minute, Mr. President.

The President Pro Tempore. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 5:13 p.m.

RESUMPTION OF SESSION

At 5:16 p.m., the session was resumed.

The President Pro Tempore. The session is resumed.

BILL ON SECOND READING

S. No. 2248 — Government Procurement Act
(Continuation)

Senator Legarda. Mr. President, I move that we resume consideration of Senate Bill No. 2248 as reported out under Committee Report No. 67.

The President Pro Tempore. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 2248 is now in order.

Senator Legarda. We are in the period of interpellations.

I move that we recognize the sponsor, Sen. Edgardo J. Angara.

The President Pro Tempore. Sen. Edgardo J. Angara, the sponsor, is recognized.

Senator Legarda. And to interpellate, I move that we recognize Senator Pimentel.

The President Pro Tempore. To interpellate, Sen. Aquilino Q. Pimentel Jr. is recognized.

Senator Pimentel. Mr. President, will the distinguished chairman and sponsor of this bill respond to a few questions?

Senator Angara. With pleasure, Mr. President, to one of the more thoughtful, incisive and studious member of this Chamber.

Senator Pimentel. That will end my interpellation effectively, Mr. President.

Senator Angara. That was the intention, Mr. President, to shorten it.

Senator Pimentel. Mr. President, in any event, can we ask the sponsor to kindly briefly tell us: What is the need for this bill?

Senator Angara. Mr. President, I will provide an answer that I can possibly make as simple and concise as possible.

Mr. President, the procurement system in our country is probably the bane of our government operations. The procurement system has produced tremendous amount of waste and has become a terrible source of corruption in public life.

And one principal culprit in the loss of scarce public resources, Mr. President, is, we submit, a defective procurement system.

Now, what does this law intend to do?

First of all, make public bidding transparent and if possible, for the first time, we shall employ e-bidding. The employment of technology to public bidding and the Internet and the web-sites so that everyone and the whole world will know that there is one particular contract up for bidding in Mindoro Oriental or in Quezon.

Second, Mr. President, our effort will be at shortening what is a very protracted process of public bidding in this country.

Mr. President, when I was secretary of Agriculture, I was really dismayed because we have the money, in fact, sometimes billions of money for irrigation projects. But it takes at least one year just to be able to bid out that contract and I ultimately found out the reason—the bureaucracy waits for preferred/favorite contractors to finish their previous contract so that they can enter the bidding and they have used the prequalification method as the mechanism to preselect already the winner.

So, Mr. President, shorten the bidding time so that: first, we save the cost of money. Delay costs the contractor interests and other costs which, of course, he will pass on to the contract. Second, by simplifying and shortening the process, we eliminate opportunity for fraud. And then third—this is the heart of this reform—we will now abandon as I said the prequalification process. We will just go simply to a simple testing whether a bidder has complied with all the documentary requirements and then we will eliminate—and this what I said is the heart of the matter—as much as possible the discretion being given to bids and awards committees in determining price and quality.

As we know, Mr. President, it is so difficult to determine quality. But by a process of assigning already points to certain elements, then less discretion would be employed that will result in faster bidding and we hope less judicial challenges.

Many of our contracts, Mr. President, are subject to TRO because every time a losing contractor loses, he goes to court and says, "You made a wrong judgment about the quality of my bid." So we will try and eliminate that area of controversy which is rich for litigation.

Senator Pimentel. I would like to thank the distinguished gentleman for that reply, Mr. President.

Let me point out that I hear the same complaint, Mr. President, from the armed forces. I had a brief conversation with the new Chief of Staff, General Santiago, and he told me that the bidding process in the armed forces is one reason there is a delay also in the modernization of the armed forces. Because according to him, as the distinguished gentleman pointed out, it takes a long time before the process can be terminated and then of course, a longer time, in fact, for the goods to be delivered.

And so we have a situation where the process itself, shall we say, for lack of a better term, the manual process of bidding actually would result in the adverse delivery of services by the agency concerned, Mr. President, for the simple reason that the delay in the bidding process, we add it to the delay in the delivery of the goods, we have prejudiced the public twice in that respect.

In effect, what I am saying is this is a good bill. However, Mr. President, can we kindly clarify the distinguished gentleman's position that the prequalification process would be eliminated by this e-bidding procedure that will be embodied in this bill once approved as a law?

Senator Angara. Let me correct myself, Mr. President, so that that point of prequalification will not be misunderstood. My statement about it will not be misunderstood.

When I said, Mr. President, that we are going to reform the prequalification, what I mean is to substitute the prequalification to an eligibility check. What does that mean? We put out a tender; we invite contractors to submit bids; and then there are certain requirements: financial capacity, track record, list of officers, et cetera. That is the one being determined in the prequalification stage at the present time, Mr. President. But we can simplify that by just saying that this is really a simple question of eligibility.

Do they have the sufficient capitalization? Do they have track record in doing projects like these? Who are their officers?

In other words, Mr. President, it is just a check, almost a mechanical thing. And when we put it in a computer, we can determine the qualifications of even a hundred bidders. Maybe almost literally, in a flash, in ten minutes we can say that bidders "a" to "aa" are all qualified because they complied with the documentary requirements.

So, it is really documentary requirement, Mr. President. And then that eliminates the long delay that we are now encountering in prequalification.

Mr. President, just the prequalification stage for civil works could take at least six months to almost a year. And that costs the government—our taxpayers' money.

Senator Pimentel. Yes, certainly. Because as time flies by the cost of money also grows, Mr. President. And what might be appropriated today in this particular amount may not suffice one year later.

Senator Angara. That is what is happening in the armed forces, Mr. President.

Senator Pimentel. Exactly.

Senator Angara. What we voted for modernization in 1995 is not worth the same peso now.

Senator Pimentel. Now, Mr. President, since we are talking of a procurement, meaning putting the bidding process, the tenders in the web, for example, are we not putting some limitations

that for certain amounts foreign bidders are not qualified? Are we going into that?

Senator Angara. No, Mr. President. We are not putting a nationality requirement, although, of course, we know that public works are generally open only to Philippine nationals. What I can remember is that public works and other works may be bidden internationally, and international firms may come in only because that is part of the covenant in the financing of that particular project.

Senator Pimentel. So, in effect, the financing agreements will serve as the basis for opening the tender to foreign participants.

Senator Angara. That is correct, Mr. President. That is an international practice.

Senator Pimentel. I suppose we have to make that clear, otherwise, the tendency would be for foreign participants to swamp the locals, as it were,—

Senator Angara. And outbid everybody.

Senator Pimentel. —and outbid everybody. Because, obviously, they will have more money, more qualification, perhaps, in terms of organizational ability to perform the job and in that respect would prejudice the locals.

Senator Angara. That is a correct statement of this law and the existing practice, Mr. President.

Senator Pimentel. Again, internally, Mr. President, talking only about bidders within the country, assuming that there is no financial package coming from outside sources, that no such package is involved in a particular project.

One of the complaints that I must bring out to this Chamber is that, contractors from Mindanao,—and I have talked to them, say, Davao, Cagayan de Oro, and other parts of Mindanao—are complaining that by and large, and usually, Manila bidders would take the cake of projects, even projects that are supposed to be implemented, let us say, in Mindanao. And I bring this to the attention of this Chamber and to the kind sponsor so that maybe, even in this bill, we can craft something that will not lead to a monopolization of contracts being awarded to Manila-based contractors.

Senator Angara. That is true, Mr. President.

Senator Pimentel. I mean, I bring this up because, really, this is a common complaint of Mindanao contractors as well as the Visayan-based contractors.

Senator Angara. That is true, Mr. President. And the favorite technique used to preselect a favorite bidder is the prequalification. Through the prequalification, one can narrow down the bidders to a few whom one would like to favor, and it could be just simply Manila-based contractors.

Senator Pimentel. As a final question, before we make the reservation for further interpellation, Mr. President, let me just put into the *Record* that the complaint of Mindanao-based contractors is that bidders from Manila would get the award but they do not implement the project. The project is subcontracted to Mindanao contractors, which goes to show that the Mindanao contractors also have the capability to implement these projects. But somehow, I understand that there is a mafia within DPWH or some other agencies.

Therefore, this is a matter that, I think, Congress has every right to forestall so that the disenchantment of our people will not continue to prevail under these circumstances, Mr. President.

Senator Angara. I think that comment is quite apt and fitting. This is now the occasion really to bring out these malpractices so that we can understand the thrust of this bill in the present context and understand that there is really compelling need to reform our purchasing practices.

Senator Pimentel. Thank you, Mr. President. May I reserve my other questions to some other date.

Senator Angara. Thank you, Mr. President.

The President Pro Tempore. Sen. Franklin M. Drilon is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 2248

Senator Drilon. Mr. President, I move that we suspend consideration of Senate Bill No. 2248.

The President Pro Tempore. Is there any objection? [*Silence*] There being none, the motion is approved.

SUSPENSION OF SESSION

Senator Drilon. I move that we suspend the session for one minute.

The President Pro Tempore. Is there any objection? [*Silence*] There being none, the session is suspended for one minute.

Tuesday, December 3, 2002

RECORD OF THE SENATE *Suspension of Consideration of S. No. 2248*

They were not only transferred in another assignment, Mr. President, but they were also dismissed?

Senator Barbers. Some were transferred, Mr. President, and some are still facing administrative as well as criminal investigations. There were six jail personnel who were dismissed but several now are facing administrative sanctions and several are facing investigations.

MANIFESTATION OF SENATOR DE CASTRO
(That He Be Made a Coauthor of S. No. 2373)

Senator De Castro. All right. I would like to thank the sponsor for that, Mr. President.

And because of the convincing and satisfactory answer of the sponsor and with the permission of the authors and the sponsor, Mr. President, may I be made a coauthor of this laudable bill?

Senator Barbers. With open arms, Mr. President.

Senator De Castro. I would like to thank the sponsor for that, Mr. President.

Senator Barbers. Thank you, Mr. President.

Senator Legarda. There are no more interpellations...[Pause] Ah, the Senate President. All right.

The President. We reserve our right to interpellate at a later time.

SUSPENSION OF SESSION

Senator Legarda. I move that we suspend the session for one minute, Mr. President.

The President. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 4:30 p.m.

RESUMPTION OF SESSION

At 4:35 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

Senator Legarda. The Senate President has reserved to interpellate the sponsor on Senate Bill No. 2373, an Act Providing for the Professionalization of the BFP and the BJMP. I move that we suspend the period of interpellations.

The President. Is there any objection? [Silence] There being none, the motion is approved.

SUSPENSION OF CONSIDERATION OF S. NO. 2373

Senator Legarda. I move that we suspend consideration of Senate Bill No. 2373.

The President. Is there any objection? [Silence] There being none, the motion is approved.

BILL ON SECOND READING
S. No. 2248—Government Procurement Act
(Continuation)

Senator Legarda. Mr. President, I move that we resume consideration of Senate Bill No. 2248 as reported out under Committee Report No. 67.

The President. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 2248 is now in order.

Senator Legarda. We are in the period of interpellations. May I ask that the sponsor, Sen. Edgardo J. Angara, be recognized.

The President. Sen. Edgardo J. Angara is recognized.

Senator Angara. Thank you, Mr. President.

Mr. President, the parliamentary situation is, Senator Pimentel and the Senate President no less have started their interpellations. And so we are now ready to...

Senator Legarda. Yes, there are no more reservations and the others have withdrawn their reservations, Mr. President. I move that we close the period of interpellations on Senate Bill No. 2248 under Committee Report No. 67.

The President. Is there any objection? [Silence] There being none, the motion is approved.

Senator Legarda. Is Senator Angara ready for committee amendments?

Senator Angara. Not yet.

SUSPENSION OF CONSIDERATION OF S. NO. 2248

Senator Legarda. I move that we suspend consideration of Senate Bill No. 2248. The committee and individual amendments will be ready by tomorrow, according to the sponsor, Mr. President.

The President. Is there any objection? [Silence] There being none, the motion is approved.

My view is, when we passed this law, that was the consensus of the majority of the members of the Senate and the House where their knowledge and wisdom were inputted.

Now, my question is: Why do we have to be dictated upon by the FATF in putting up the amount of threshold money, Mr. President? We decided to put up the amount of P4 million as a threshold because we believe this is the right amount as this was the subject of a long debate in the Senate. Then all of a sudden we changed the threshold. Why do we allow these people to dictate on us?

Senator Magsaysay. That is a very legitimate concern of the gentleman from Caraga, Mr. President. May I note here, however, that the original committee report after several hearings of both the House and the Senate worked on the basis of a threshold of US\$10,000 or half-a-million pesos. That was the official committee report signed. The basis of this is that the international standard threshold is, was and still remains to be US\$10,000. But because the Senate, the House and a lot of us here felt that this might affect badly the banking system, we raised it to P4 million. In fact, it was even P8 million in the House version and it was P3 million in the Senate version. So, we put it together and divided it by 2 and the Bicameral set it at P4 million. But I, as chairman then and chairman now, incidentally, accepted this and Senator Pangilinan and I worked on the basis of the Senate, and the House knows better.

But, maybe, Mr. President, if we did not change it and it remained at US\$10,000, we would not be, one year after, required to have that threshold. Meaning, the FATF is not dictating on us. It is just requiring us: "If you want to be delisted from the noncooperative countries and territories, please comply with some of the 40 FATFs that we deemed essential as far as the Philippines is concerned."

In fact, in Hong Kong when the AMLC attended the Hong Kong regional conference sometime in January this year, when we showed our implementing rules and regulations that was much stronger than the law itself, the FATF regional, the Japanese, stood up and congratulated the Philippines' AMLC for having very strong implementing rules and regulations. But the caveat was, the law did not satisfy the threshold and the suspicious transaction and the opening of the account without court order, so we have to come back and go back to work. But if we insist that we are a sovereign country, which we are, that we do not care what the FATF requires and we will just do our thing, I think we are living in a time warp owing to the financial standards and practices that are already in place. We, being one of the last 11 countries, will stand tall but in the eyes of the world we are nothing but just like the 10 other countries, meaning, we cannot comply.

In fact, Mr. President, informal talks have been going around since Thailand became the standard—that the Philippines has so

much graft and corruption going on in all levels of government and that we refuse to amend or satisfy the requirements because we ourselves are not with clean hands. That is the brutal assessment of the informal talks among countries, even in regional Asia. But to me, I am saying that we are as good as anybody. We should not be paranoid. We should not be dictated on. It is really up to Congress, the Senate and the House, to say that we want to comply with the world standard that 150 countries have already done. We want to be amongst them so that our economic situation would not be weakened by our noncompliance. Let us just pass it, nothing more, nothing less, Mr. President.

Senator Barbers. Mr. President, I made particular mention on this because, if the gentleman will recall, I was a member of the bicameral conference committee where we spent sleepless nights and there was an intense debate on the threshold amount. If my memory would serve me right, we even suspended the debate many times because it was a heated debate as to what amount would be considered as the threshold, that is why I am very particular on this.

I am happy with the response of the gentleman, Mr. President. I am a member of the oversight committee and I will try to discuss some more details with the chairman.

Thank you very much, Mr. President.

Senator Magsaysay. We appreciate that comment coming from a fellow member of the oversight committee, Mr. President.

Thank you, Mr. President.

Senator Legarda. Mr. President, I move that we suspend the period of interpellations on Senate Bill No. 2419 under Committee Report No. 110.

The President. Is there any objection? *[Silence]* there being none, the period of interpellations on Senate Bill No. 2419 is hereby suspended.

SUSPENSION OF CONSIDERATION OF S. NO. 2419

Senator Legarda. Mr. President, I move that we suspend consideration of Senate Bill No. 2419.

The President. Is there any objection? *[Silence]* There being none, consideration of Senate Bill No. 2419 is hereby suspended.

BILL ON SECOND READING S. No. 2248—Government Procurement Act (Continuation)

Senator Legarda. Mr. President, I move that we resume

consideration of Senate Bill No. 2248 under Committee Report No. 67.

The President. Is there any objection? [Silence] There being none, resumption of consideration of Senate Bill No. 2248 is now in order.

Senator Legarda. Mr. President, we are in the period of committee amendments. I move that we recognize the sponsor, Sen. Edgardo J. Angara.

The President. Sen. Edgardo J. Angara is recognized. We are now in the period of committee amendments.

Senator Angara. Thank you, Mr. President.

Mr. President, the committee is pleased to introduce some amendments. Some are editorial and some are substantive.

The President. Please proceed.

COMMITTEE AMENDMENTS

Senator Angara. On page 25, line 23, delete the phrase beginning with the word "and" and ending with the word "performed." This is mainly editorial because the topic is not about works. It is about goods.

The President. All right. The amendment is in line 23, page 25.

Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. On page 27, line 14, between the word "Energy" with a comma (,) and the word "and", insert the following: OR THEIR DULY AUTHORIZED REPRESENTATIVES.

So that line, Mr. President, will read: "Transportation and Communication, and Energy OR THEIR DULY AUTHORIZED REPRESENTATIVES".

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. On the same page, line 15, immediately after the period (.) on the initial "GPPB", add the following sentence: THE GPPB MAY INVITE A REPRESENTATIVE FROM THE COMMISSION ON AUDIT TO SERVE AS A RESOURCE PERSON.

The President. Is that after the period?

Senator Angara. That is after the period, Mr. President, and a new sentence.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. On page 28, delete lines 1, 2, and 3 which is subparagraph (2) and in lieu thereof, insert the following:

2. DELAYING, WITHOUT JUSTIFIABLE CAUSE, THE SCREENING FOR ELIGIBILITY, OPENING OF BIDS, EVALUATION AND POST-EVALUATION OF BIDS, AND AWARDED OF CONTRACTS BEYOND THE PRESCRIBED PERIODS OF ACTION PROVIDED FOR IN THE IRR.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. Next sentence, Mr. President, subparagraph (3):

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 TEND TO FAVOR A PARTICULAR BIDDER.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. Mr. President, finally, subparagraph (4):

4. SPLITTING OF CONTRACTS WHICH EXCEED PROCEDURAL PURCHASE LIMITS AND COMPETITIVE BIDDING.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. On page 30, line 6, between the words "its" and "officers", insert the word "DIRECTORS,". So that it will read: "its DIRECTORS, officers or employees..."

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. That is the end of the committee amendments, Mr. President. That completes the committee amendments.

The President. We now proceed with the period of individual amendments.

The Majority Leader is recognized.

Senator Legarda. Mr. President, we will go page by page for the individual amendments.

Senator Magsaysay will introduce his ...

Senator Angara. On page 1, Mr. President, is there any amendment? [Silence] Page 2? [Silence] There is none. Page 3? [Silence] There is none. Page 4? [Silence] There is none. Page 5? [Silence] There is none.

Senator Magsaysay. Mr. President, before I put forward my individual amendment, may I ask—this is on page 5, line 10, it says, “Accordingly, there shall be a single portal that shall serve as a primary source of information on all government procurement.”

“There shall be” this is obligatory that this is exclusive—“a single portal.” And I strongly believe, Mr. President, that this will not give us the flexibility to access other portals that are already in place like BayanTrade which has been there for more than three years, or the website of business to business of Shoemart that is working very well, and will have to go through this exclusive single portal.

May I know if the terminology should be, in order to be inclusive, “there MAY BE a single portal...”

The President. The proposed amendment is to insert the words MAY BE between the words “there” and “shall” in line 10, page 5?

Senator Magsaysay. That is correct, Mr. President.

Senator Angara. But before that, Mr. President, let me reply to the very good point raised by the e-commerce expert of this Chamber.

The choice, the mandatory language is deliberate because we wanted to have only one portal through which suppliers can access, because otherwise, it would be very difficult if there are several portals; it will be difficult to regulate and perhaps control. Whereas, if there is only one portal—and the experts behind me are saying that that would be technically acceptable—then it will be easier to monitor all the bids, and it will be much more convenient for suppliers to access rather than have several portals.

Senator Magsaysay. Actually, the intention of the obligatory single portal seems to be, at first glance, Mr. President. But the principle of e-government or *e-gobyerno* is not simply computerizing existing processes.

May I read into my notes, Mr. President? “We are adding a computerized or Internet-enabled front end to existing processes.”

E-government is about reengineering, transforming, reinventing bureaucratic procedures, using information and communications technologies anywhere in the world. Because if we go online, and we go a portal, we are not limiting ourselves to

Philippine supplier or to accredited government supplier. The beauty of opening this up to just about anybody, as long as he complies with the designs and specs or standards of any products or services, is that even other countries may supply on a business to business.

But if we will again regulate, meaning, like an NFA being the sole importer of rice or regulate, like Customs is the sole—we do not get the transformation of openness because the online is openness.

So what we are trying to attain here with the noble requirements is again regulating it to a single portal which will again make, demand some requirements, that is better done through the marketplace. But with a single portal, the marketplace is diminished substantially. And this is a statement of certain sectors which have already put in quite a lot of capital and efforts knowing, like BayanTrade—I am not ashamed to mention this—these are invested by companies like the Lopezes, San Miguel, Ayala, the companies of the Lopezes and other big players, putting themselves together to conduct a business-to-business transaction, and getting the most effective and most cost-effective and efficient way because it is such a large marketplace and not regulated into a single portal.

Senator Angara. Yes, I can see the point of the distinguished gentleman, Mr. President. It is really serving and balancing the needs of efficiency on the part of government ensuring that suppliers will not have to surf too long and look for a portal. And by just accessing this particular portal, they know that they will have access almost to all the information they need. But I can see that the private service providers may also want to open their own portals.

Senator Magsaysay. Actually, they already have.

Senator Angara. Yes, they already have. Perhaps, Mr. President, we can provide in the law that they can connect to the government electronic procurement service, if that will satisfy the...

Senator Magsaysay. Will this single portal be a requirement for the purchasing entity to limit itself to that particular portal? That is my point, Mr. President. Because if the other private portals, whether they are here or in the US, or in Japan, are giving better prices, better terms, better quality, I do not see why we have to go through a single portal of the government. Because if we do that, we will be left under the mercy of certain committees or clerks that might not have the capacity to be more efficient than the private sector. Because the beauty of this is that the private sector is market-driven. If it does not succeed in one year or so, it will collapse. So it will do its best.

That is why even the gentleman is saying that he favors privatization. Meaning, as his speech showed yesterday that we should not have government get mixed up with Meralco's management.

We are also stating here that we should not have a single government portal, no matter how well-meaning, because it will be a disincentive to market efficiencies, Mr. President.

SUSPENSION OF SESSION

Senator Angara. Yes, I understand the point of the distinguished gentleman, Mr. President.

Can we just ask for a one-minute suspension, Mr. President?

The President. The session is suspended, if there is no objection. [There was none.]

It was 6:07 p.m.

RESUMPTION OF SESSION

At 6:10 p.m., the session was resumed.

The President. The session is resumed.

MAGSAYSAY AMENDMENT

Senator Magsaysay. Thank you, Mr. President.

We have harmonized our own minds with the senator from Aurora. May I introduce a simple amendment on page 5, line 10. Delete the word "shall" and insert the word MAY.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Magsaysay. Thank you very much, Mr. President.

Senator De Castro. Mr. President.

The President. Sen. Noli De Castro is recognized.

MANIFESTATION OF SENATOR DE CASTRO (S. No. 2135 Was Filed by Him as Referred to Committees on Public Works; and Constitutional Amendments, Revision of Codes and Laws)

Senator De Castro. Just a manifestation, Mr. President.

Mr. President, this representation filed Senate Bill No. 2135 that was referred to the Committees on Public Works; and Constitutional Amendments, Revision of Codes and Laws, and this bill seeks to amend Presidential Decree No. 1594 by providing for a five-year warranty period from its final acceptance by the government of infrastructure projects. May I move that we just put this on record.

Senator Angara. We accept the manifestation and we are more than glad to acknowledge that this substitute measure already incorporates the proposal of the distinguished senator.

Senator De Castro. Thank you, Mr. President.

The President. We are now on?

EJERCITO ESTRADA AMENDMENTS

Senator Angara. On page 6, Mr. President, with the permission of the Body, Sen. Loi Ejercito Estrada left her own amendments.

On page 6, line 7, delete the comma (,) after the word "Bidding"—I think it is a typographical error—and put a period (.).

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. On page 7...

LEGARDA AMENDMENTS

Senator Legarda. Mr. President, I have an individual amendment on page 6. On page 6, line 21, between the word "representative" and the comma (,), insert the phrase PROVIDED, THAT IN THE EVENT THE HEAD OF THE PROCURING ENTITY SHALL DISAPPROVE SUCH RECOMMENDATION, SUCH DISAPPROVAL SHOULD BE BASED ONLY ON VALID, REASONABLE AND JUSTIFIABLE GROUNDS TO BE EXPRESSED IN WRITING, COPY FURNISHED THE BAC.

The President. What does the sponsor say?

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

There may be need to reformulate the sentence.

Senator Angara. Subject to style, Mr. President.

The President. All right, subject to style.

The President. All right.

Senator Angara. Mr. President, the parliamentary situation is that we have produced a clean copy of the draft incorporating the committee amendments as well as the individual amendments. We have a few remaining, both editorial and substantive individual amendments as a result of the clarification made by Sen. Sergio Osmeña.

The President. Before the sponsor proceeds, for the record, we are using an amended copy as of 04 December 2002.

COMMITTEE AMENDMENTS

Senator Angara. That is correct, Mr. President.

The first amendment, Mr. President, is on page 3, between lines 11 and 12. Insert a new subsection to provide a definition of "portal" which was requested by Sen. Serge Osmeña which I think is quite reasonable. And therefore we propose that we insert the following subparagraph. This will be subparagraph I:

PORTAL - IS A WEBSITE THAT AGGREGATES A WIDE VARIETY OF CONTENT IN HOPE OF ATTRACTING MILLIONS OF READERS.

The President. All right. That is an individual amendment, accepted by the sponsor.

Senator Angara. Yes, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. And the subsequent subparagraphs be renumbered accordingly, Mr. President.

The President. All right. So renumbered.

Senator Angara. On page 4, line 29, Mr. President, as a result of this definition, remove the close bracket (])...

The President. Open bracket ([(].

Senator Angara. Rather, the open bracket ([), so that the original sentence will now be reinstated: "Accordingly, there shall be a single portal that shall serve as the primary source of information on all government procurement."

The President. On page 5, line 1, the closing bracket (]) should be deleted?

Senator Angara. That is correct, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. And on page 5, line 2, consistent with that and consistent with the amendment last Wednesday, Mr. President, in lieu of the word "Service", insert the word SYSTEM.

The President. "Electronic Procurement SYSTEM," instead of "Service".

Senator Angara. That is correct, Mr. President.

The President. Is there any objection? [Silence] There being none, the amendment is approved.

Senator Angara. And any other reference to "Service" should be changed to SYSTEM.

The President. Only as preceded by "Electronic Procurement".

Senator Angara. That is correct, Mr. President.

The President. All right. As an omnibus amendment, the word "Service" preceded by the phrase "Government Electronic Procurement" is hereby changed to SYSTEM.

Senator Angara. That completes both committee and individual amendments, Mr. President.

SUSPENSION OF SESSION

Mr. President, I move that we suspend the session for one minute.

The President. Is there any objection? [Silence] There being none, the session is suspended for one minute.

It was 6:22 p.m.

RESUMPTION OF SESSION

At 6:23 p.m., the session was resumed.

The President. The session is resumed. The sponsor is once more recognized.

MAGSAYSAY AMENDMENT

Senator Angara. Mr. President, Senator Magsaysay is recommending that on page 12, line 17, the word "place" be changed to ADDRESS, which is more comprehensive.

The President. What does the sponsor say?

lower the threshold which I am not inclined to accept or to support because almost everyone will be reported to the AMLC? Now, this is the "Suspicious Transactions" section for whatever reason.

Anyway, what will AMLC do upon receiving a suspicious transaction report?

Senator Magsaysay. In our amendments, Mr. President, we are trying to introduce two regimes of reporting. One is the covered transaction reporting which is triggered by the threshold. This is just covered transactions. We are not talking about suspicious transactions.

And then the other regime is the suspicious transaction reporting which does not have a threshold as long as there is a reasonable evidence that this comes from dirty money, from a criminal activity, then that is suspicious although there is no underlying economic sense in the transaction. So these are the two regimes that were required of us by the FATF.

Senator Sotto. Is this present in the Thailand law, Mr. President?

Senator Magsaysay. That is correct. These are present with the Thailand model, Mr. President.

Senator Sotto. Both, the suspicious transactions and the threshold, the covered transactions?

Senator Magsaysay. That is correct.

Senator Sotto. But their covered transaction's threshold is two million baht?

Senator Magsaysay. Two million baht.

Senator Sotto. And not P500,000?

Senator Magsaysay. Two million baht cash and five million baht for property transactions.

Senator Sotto. So, what happens, Mr. President, if one is submitted as a suspicious transaction?

Senator Magsaysay. If the bank reports that there is a suspicious transaction, then the council will have to evaluate and, based on our law, will have the option to call the account holder to explain and the account holder has the opportunity to explain that that suspicious account is not really something to be afraid of. That it is clean money.

Senator Sotto. He will be called. He will be interviewed.

Senator Magsaysay. Yes, Mr. President.

Senator Sotto. Will the AMLC immediately proceed to freeze the account?

Senator Magsaysay. No. That is why there is an evaluation and note also that the AMLC consisting of the BSP governor, the SEC commissioner and the IC chairman, they have to work collegially in the sense that it has to be a unanimous decision to issue a freeze order or to open a suspicious account.

So, there are a lot of safety measures in this law, Mr. President.

Senator Sotto. So, there is no automatic filing of cases in court.

Senator Magsaysay. No automatic filing of cases. There will have to be an evaluation.

Senator Legarda. Mr. President, the Minority Leader would continue his interpellations tomorrow.

I move that we suspend the period of interpellations on Senate Bill No. 2419.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

SUSPENSION OF CONSIDERATION OF S. NO. 2419

Senator Legarda. Mr. President, I move that we suspend consideration of Senate Bill No. 2419.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

BILL ON SECOND READING

S. No. 2248—Government Procurement Act (Continuation)

Senator Legarda. Mr. President, I move that we resume consideration of Senate Bill No. 2248 as reported out under Committee Report No. 67.

The President. Is there any objection? *[Silence]* There being none, resumption of consideration of Senate Bill No. 2248 is now in order.

Senator Legarda. I move that the sponsor, Sen. Edgardo J. Angara, be recognized.

The President. Sen. Edgardo J. Angara is recognized.

Senator Legarda. We are in the period of individual amendments.

Senator Angara. It is accepted, Mr. President.

The President. Is there any objection? *[Silence]* There being none, the amendment is approved.

Senator Angara. That ends the amendments of Senator Magsaysay.

The President. All right. The Majority Leader is recognized.

Senator Legarda. I move now that we close the period of individual amendments, Mr. President, on Senate Bill No. 2248.

The President. Is there any objection? *[Silence]* There being none, the period of amendments is terminated.

APPROVAL OF S. NO. 2248 ON SECOND READING

Senator Legarda. Mr. President, I move that we vote on Second Reading on Senate Bill No. 2248, as amended.

The President. Is there any objection? *[Silence]* There being none, we shall now vote on Second Reading on Senate Bill No. 2248, as amended.

As many as are in favor of the bill, say *aye*.

Several Members. *Aye*.

The President. As many as are against the bill, say *nay*. *[Silence]*

Senate Bill No. 2248, as amended, is approved on Second Reading.

SUSPENSION OF SESSION

With the permission of the Chamber, the Chair declares a one-minute suspension of the session, if there is no objection. *[There was none.]*

It was 6:25 p.m.

RESUMPTION OF SESSION

At 6:28 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

SUSPENSION OF CONSIDERATION OF S. NO. 2248

Senator Legarda. Mr. President, while waiting for our colleagues to join us in the hall, I move that we suspend consideration of Senate Bill No. 2248.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

Senator Legarda. I move that we proceed to the Reference of Business.

The President. Is there any objection? *[Silence]* There being none, the motion is approved.

The Secretary will read the Reference of Business.

REFERENCE OF BUSINESS

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Acting Secretary [Atty. Reyes].

November 29, 2002

The Honorable
FRANKLIN M. DRILON
President of the Senate
GSIS Bldg., Financial Center
Pasay City 1308

Mr. President:

I have been directed to inform the Senate that the House of Representatives on November 28, 2002 passed House Bill No. 5511, entitled

AN ACT PROVIDING MEASURES TO ENHANCE THE ACCEPTABILITY OF AGRICULTURAL LANDS AS SECURITY FOR LOANS OBTAINED FROM LENDERS, BANKS AND OTHER FINANCIAL INSTITUTIONS THEREBY PROMOTING ACCESS TO RURAL CREDIT, PROVIDING MECHANISMS THEREFOR AND FOR OTHER PURPOSES,

to which it requests the concurrence of the Senate.

Very truly yours,

(Sgd.) ROBERTO P. NAZARENO
Secretary General

The President. Referred to the Committees on Agrarian Reform; and Ways and Means

The Acting Secretary [Atty. Reyes].

December 2, 2002

RESUMPTION OF SESSION

At 5:20 p.m., the session was resumed.

The President. The session is resumed. The Majority Leader is recognized.

CONFERENCE COMMITTEE REPORT ON
S. NO. 2248/H. NO. 4809
(Government Procurement Act)

Senator Legarda. Mr. President, we are in receipt of the Bicameral Conference Committee Report on the disagreeing provisions on Senate Bill No. 2248 and House Bill No. 4809 on the Government Procurement Reform Act. I ask that the sponsor, Sen. Edgardo J. Angara, be recognized to present the report.

The President. Sen. Edgardo J. Angara is recognized to submit the report to the Chamber for approval.

REPORT OF SENATOR ANGARA

Senator Angara. Thank you, Mr. President.

Mr. President, the conference committee on the disagreeing provisions of Senate Bill No. 2248 and House Bill No. 4809 met and fully discussed the subject matter in a conference, and hereby report the outcome of the proceedings which are provided hereunder:

1. The conferees agreed to adopt the Senate version as the working draft at the bicameral conference;
2. Except for a few provisions, the Senate and House versions are substantially similar in many respects;
3. With the exception of the provisions discussed shortly, the Senate version supplied the default provisions in the final report, with modifications from the House version;
4. Section 3 of the House version on the *Governing Principles on Government Procurement* was adopted as Section 3 of the reconciled version;
5. Section 5 of the Senate version was adopted as Section 4 of the reconciled version with the following amendments:
 - a. The scope and application of the measure to include all procurement activities regardless of funding source, whether local or foreign, was broadened and at the same time, it was made clear that all international treaties and agreements to which the country is a signatory shall be observed;

b. The applicability of the measure was subjected to the provisions of CA 138. (Flag Law)

6. Section 10 of the House version was adopted as Section 11 of the reconciled version, leaving the composition of the Bids and Awards Committee to be defined in the implementing rules and regulations to allow for greater flexibility;

7. Section 14 of the Senate version on the grant of honoraria to BAC members was adopted as Section 15 of the reconciled version;

8. Section 14 of the House version on pre-bid conference was adopted as Section 21 of the reconciled version effectively making the holding of pre-bid conferences dependent upon the threshold level to be prescribed in the IRR;

9. Section 15 of the House version on the eligibility requirements of bidders was adopted as Section 23 of the reconciled version with the revision mandating that the eligibility requirements provide fair and equal access to all bidders.

This is consistent with the policy direction against allowing preferential treatment in favor of a class of bidders regardless of funding source;

10. Section 17 of the Senate version on reference to brand names was adopted as Section 18 of the reconciled version;

11. Section 20 of the Senate version which appears as Section 21 of the reconciled version was revised and the phrase "and nationwide" was deleted to reflect the policy against discrimination of community or local newspapers in the advertisements of invitations to bid;

12. Section 26 of the Senate version on the requirement of bid security was adopted as Section 27 of the reconciled version;

13. Section 27 of the House version which enumerates the instances when there is a failed bidding and which allows the BAC to resort to negotiated procurement after the second failed bidding was adopted as Section 35 of the reconciled version, with the following revision as additional ground for a failure of bidding:

Whenever the bidder with the lowest calculated responsive bid/rated bid refuses without justifiable cause, to accept the award of contract, as the case may be, in order to forestall collusion.

14. Section 35 of the House version was adopted as Section 43 of the reconciled version which effectively lays down the policy of providing open access to all bidders for the procurement of domestic and foreign goods. The section also defines the policy

that in the interest of availability, efficiency and timely delivery of procured goods, preference shall be given to the purchase of domestically produced and manufactured goods, consistent with our treaty and other international obligations;

15. Section 37 of the Senate version on the requirement of a performance security for bids was adopted as Section 39 of the reconciled version;

16. Section 37 of the House version was adopted as Section 45 of the reconciled version giving provincial contractors who submitted the lowest bid to match the winning bid of a nonresident contractor for provincial projects;

17. Section 39 of the House version on *Contract Price Adjustment* was adopted as Section 61 of the reconciled version with the replacement of the word, "adjustment" with the word **ESCALATION**;

18. Section 41 of the Senate version on the *Disclosure of Relations* was adopted as Section 47 of the reconciled version;

19. Section 47 of the Senate version was adopted as Section 53 of the reconciled version with the revision that the phrase "adjacent or contiguous" will be spelled out in paragraph (d) to be defined in the IRR;

20. Section 55 of the Senate version was adopted as Section 62 of the reconciled version with the following revisions:

a. The period of the warranty for infrastructure projects shall be defined in the IRR which shall take into account the scale and coverage of the project;

b. The winning bidder shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, GSIS bond or callable fund;

21. Section 56 of the Senate version was adopted as Section 63 of the reconciled version with the revision allowing the GPPB (Government Procurement Policy Board) to be supported by a technical support staff;

22. Section 57 of the Senate version on the matter of membership in the GPPB was adopted as Section 64 of the reconciled version;

23. Sections 55 and 56 of the House version on the matter of preventive suspension and the grounds for lifting the same were adopted as Sections 70 and 71 of the reconciled version;

24. Section 57 of the House version was adopted as Section 72 in the reconciled version which provides for the assumption of government of lawyers' fees incurred by BAC members in connection with cases filed against them in their official capacity;

25. Section 64 of the Senate version on *Agency Incentives* was deleted;

26. A new Section 74 of the reconciled version was placed, providing for a Joint Congressional Oversight Committee with a time limit of five years from the effectivity of the Act, composed of three (3) members from each House of Congress; and finally,

27. Section 65 of the Senate version was adopted as Section 75 of the reconciled version with the revision stating that the IRR shall be formulated jointly by the GPPB and the Joint Congressional Oversight Committee.

With that, Mr. President, I respectfully move that the Senate adopt the conference committee report as explained.

**APPROVAL OF CONFERENCE COMMITTEE REPORT
ON S. NO. 2248/H. NO. 4809**

The President. Is there any objection? [*Silence*] There being none, the Bicameral Conference Committee Report on the disagreeing provisions of House Bill No. 4809 and Senate Bill No. 2248 is hereby adopted.

The following is the whole text of the Conference Committee Report:

CONFERENCE COMMITTEE REPORT

The Conference Committee on the disagreeing provisions of House Bill No. 4809, entitled

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

and Senate Bill No. 2248, entitled

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

after having met and discussed the subject matter in full and free conference, has agreed and does hereby recommend to their respective Houses that House Bill No. 4809 and Senate Bill No. 2248, be approved in accordance with the attached copy of the Consolidated Bill as approved by the conferees.

Approved,

CONFEREES ON THE PART
OF THE SENATE:

(Sgd.) EDGARDO J. ANGARA
Chairman

(Sgd.) AQUILINO Q. PIMENTEL JR.

(Sgd.) RAMON B. MAGSAYSAY JR.

(Sgd.) LOREN LEGARDA

(Sgd.) ROBERT S. JAWORSKI

CONFEREES ON THE PART OF THE
HOUSE OF REPRESENTATIVES:

(Sgd.) ROLANDO G. ANDAYA JR.
Chairman

(Sgd.) NEPTALI M. GONZALES II

PLARIDEL M. ABAYA

(Sgd.) IMEE R. MARCOS

(Sgd.) CARLOS M. PADILLA

(Sgd.) ROLEX T. SUPILICO

(Sgd.) DIDAGEN P. DILANGALEN

MAURICIO G. DOMOGAN

(Sgd.) ARTHUR D. DEFENSOR

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

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

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 opportu-
nity 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 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 Sec. 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, officer 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 Sec. 75 of this Act.

m) *Portal* - refers to a website that aggregates a wide variety of content for the purposes 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. *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 Sec. 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 by 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 Secretariat 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.* - Specification for the requirements 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 Invitation 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 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 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 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 Sec. 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 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. *Bids 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 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 Sec. and Sec. 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 Sec. 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 of 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 Sec. 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 (P50,000.00); 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 (P250,000.00): *Provided, however,* That the Procurement does not result in Splitting of Contracts: *Provided, further,* That at least three (3) price quotations from bona fide suppliers shall be obtained.

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 Sec. 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 certified 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 Sec. 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 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 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 Sec. 41 of this Act with manifest preference to any bidder who is closely related to him in accordance with Sec. 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 Commission 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 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 Sec. 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 Sec. 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 Sec. 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,

BILL ON SECOND READING
**S. No. 2018—Exemption of Judiciary Members
 from Salary Standardization Law**
 (Continuation)

Senator Legarda. Mr. President, I move that we resume consideration of Senate Bill No. 2018 as reported out under Committee Report No. 20.

The President. Is there any objection? [*Silence*] There being none, resumption of consideration of Senate Bill No. 2018 is now in order.

Senator Legarda. Mr. President, we are in the period of interpellations. I ask that the sponsor, Sen. Francis N. Pangilinan, be recognized.

To continue with his interpellations, I ask that Sen. Edgardo J. Angara be recognized.

The President. Sen. Francis N. Pangilinan and Sen. Edgardo J. Angara are recognized.

Senator Pangilinan. Thank you, Mr. President.

ACKNOWLEDGMENT OF THE OFFICIAL VISIT OF
 REPRESENTATIVES FROM THE PHILIPPINE JUDGES
 ASSOCIATION, THE PHILIPPINE ASSOCIATION OF
 COURT EMPLOYEES AND THE METROPOLITAN AND
 CITY COURT JUDGES ASSOCIATION

Mr. President, before we proceed with the interpellation, I would just like to acknowledge the presence of the representatives of the Philippine Judges Association, the Philippine Association of Court Employees, and the Metropolitan and City Court Judges Association. They are with us in the gallery.

Senator Angara. Thank you, Mr. President.

Mr. President, yesterday, I reported that Sec. Emilia Boncodin will send to us today the position paper of the department with respect to this proposal. And we have on hand the letter of Secretary Boncodin dated 18 December 2002