

## Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement Self-assessment report Philippines

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Identifying reform needs, assessing progress and evaluating the effectiveness of anti-corruption policies and practices are central principles enshrined in the ADB/OECD Initiative and its Action Plan. In this context, the present self-assessment report from the Philippines was prepared as background to the Initiative's thematic review exercise on measures to curb corruption in public procurement in the Asia-Pacific region.

This thematic review on public procurement was initiated in reaction to the findings of the Initiative's 2003-2004 in-depth analysis of the legal and institutional anti-corruption frameworks of the Action Plan's then 21 endorsing countries against the standards of this Plan ("Anti-Corruption Policies in Asia and the Pacific – the legal and institutional frameworks", November 2004). In this study, public procurement was identified as one of the areas requiring particular attention in the Asia and Pacific region and where consequently the Initiative's Steering Group had a vital interest to promote reform.

With this aim, the group agreed to pursue analytical work on corruption in public procurement through a thorough review of relevant existing policies, practices and rules so as to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices. This thematic review further seeks to assess how countries translate into practice their commitment made under the Action Plan to curb corruption in public procurement. Eventually, the review's findings will provide governments with an analytical framework to design policies and procedures that ensure greater transparency and integrity in public procurement and to identify priorities for reform in this respect.

In line with the Action Plan's principle of self-assessment, the review is conducted on the basis of information provided by participating countries in reply to a questionnaire specifically prepared for this purpose by the ADB/OECD Initiative. The present document represents the replies submitted by the Philippines in this framework.

Further information on the exercise, on other participating countries and on the analysis' outcome is available at the Initiative's website at <http://www1.oecd.org/daf/asiacom/stocktaking.htm#trpp>.



## A. General framework

### *Legal and organizational framework:*

1. Please list and briefly describe laws and regulations related to government procurement, including those that give exemption to the standard government procurement rules. Where available, please attach a copy or indicate an internet-site for download of these regulations, if possible in English language. Ensure to include secondary legislation, rules and procedures. Also, please indicate relevant international or regional agreements<sup>1</sup> that your country is committed under, including its level of involvement (e.g. signature, ratification, implementation).

The Philippines' primary statute on public procurement is **Republic Act (RA) No. 9184** otherwise known as the "**Government Procurement Reform Act of 2003**". The law consolidates and standardizes procurement rules and procedures for all National Government Agencies (NGAs) including Government-Owned and/or Controlled Corporations (GOCCs) and Local Government Units (LGUs), which apply to procurement of goods and services, including infrastructure projects and consulting services. The law's coverage is from procurement planning up to the stage of contract implementation, termination of contract and warranty. There are also provisions on the alternative modes of procurement as these are resorted to by some agencies and allowed by other international financial institutions in certain instances. Aside from the provisions on penal, civil, and administrative sanctions, the law also provides for protest mechanisms and civil liability. In addition, it provides for a single Government Electronic Procurement System (G-EPS). It was signed into law by President Gloria Macapagal-Arroyo on January 10, 2003 and became effective on January 26, 2003.

The first set of its Implementing Rules and Regulations (IRR-A) was approved by the President on September 18, 2003 through Memorandum Order 119 and was deemed effective on October 8 of the same year.

This IRR-A governs and applies to the procurement of infrastructure projects, goods and consulting services by any branch, agency, department, bureau, office or instrumentality of the Philippine Government, including government owned and/or controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs) wholly funded by the GOP.

Concurrently, President Arroyo also signed on September 18, 2003, Executive Order No. 109-A entitled "Amending Executive Order No. 109 Dated May 27, 2002 Prescribing The Rules and Procedures On The Review And Approval Of All Government Contracts To Conform With Republic Act No. 9184, otherwise known as The Government Procurement Reform Act". According to Section 9 of E.O. 109-A, "transactions of governmental financial institutions in the ordinary course of business shall not be covered by the provisions of this Executive Order. Such transactions shall instead be subject to the applicable provisions of law and to guidelines, rules and regulations issued by the Department of Finance".

With respect to real property, its procurement is governed by the provisions of RA 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".

Contracts undertaken through Build Operate and Transfer (BOT) schemes and other variations is governed by RA No. 6957, as amended by RA No. 7718, and its Implementing Rules and Regulations.

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<sup>1</sup> e.g. APEC Non-Binding Principles on Government Procurement; WTO Agreement on Government Procurement; etc.

Government Contracts financed wholly or partly with Official Development Assistance (ODA) funds is governed by RA No. 4860, as amended, RA No. 8182, as amended by RA No. 8555, and RA No. 9184 and soon, by its Implementing Rules and Regulations-B, which is currently being crafted.

Certain provisions of the Civil Code of the Philippines have direct bearing on public sector procurement particularly those pertaining to natural obligations, estoppel, trusts, sales, barter or exchange, lease, partnership, agency, loan, deposit, aleatory contracts, compromises and arbitrations, guaranty, extra-contractual obligations, damages, and concurrence and preference of credits (Arts. 1156-2269, Phil. Civil Code). Unless special laws provide otherwise, the provisions of the Civil Code shall govern the contractual relations of parties. An existing law is deemed read into and forms part of a valid contract, as if expressly incorporated therein, unless clearly excluded by the parties (*Taurus Taxi vs. Capital Ins.*, 24 SCRA 454).

There are also Philippine Laws that provide preferences for particular categories of suppliers of goods and services: (a) the use of Philippine made materials in government constructions is mandated, if available, practicable and usable [RA No. 912 (1953)]; (b) the use of Philippine Flag air carriers and vessels is required [Presidential Decree (PD) No. 1466, the Flag Vessel Law and its IRR (1978)]; (c) bidding award of civil works is limited to Filipino individuals, and to corporations or partnerships 75% of the capital of which is owned by citizens of the Philippines [Letter of Instruction (LOI) No. 630 (1977)]; (d) prospective contractors for infrastructure projects are required to be duly licensed under Philippine Law [RA No. 4566 (1965)]; and (e) labor for infrastructure projects should be provided from local sources [Executive Order (EO) No. 182 (1987)].

2. Please explain the repartition of tasks and responsibilities in the procurement process among centralized, decentralized and specialized authorities (in particular: design of policies and standards; capacity building; definition of needs and terms of individual tenders; execution of different procurement stages from advertising to contract awarding; dispute resolution; control of the fulfillment of the terms and conditions by the contractor).

**Design of policies and standards and capacity building** – The Government Procurement Policy Board (GPPB) was established by virtue of RA No. 9184 as an independent inter-agency body that is impartial, transparent and effective, with private sector representation. The GPPB was created for the purpose of: (a) protecting national interest in all matters affecting public procurement, having due regard to the country's regional and international obligations; (b) formulating and amending, whenever necessary, the implementing rules and regulations (IRR) and corresponding standard bidding forms; (c) ensuring that procuring entities regularly conduct procurement training programs and prepare a procurement operations manual for all offices and agencies of government; and (d) conducting an annual review of the effectiveness of RA No. 9184 and recommend amendments thereto, as may be necessary.

Based on RA No. 9184 and its IRR, the GPPB has the following general duties and responsibilities:

- General public procurement policy formulation;
- Formulation, review and, when necessary, amendment of procurement laws, rules and regulations;
- Evaluation of the effectiveness of the government's procurement reform program;
- Ensuring compliance by all procuring entities with the government's procurement reform program;
- Professionalize government procurement practitioners through the management of procurement training programs, the establishment of a procurement course and certificate program, and the development and updating of the procurement manual and the standard bidding documents; and
- Supervise the management of the Government Electronic Procurement System (G-EPS).

The GPPB is supported by its Technical Support Office (TSO), which undertakes the tasks of monitoring the implementation of public procurement reforms in the Philippines, acting as the Secretariat of the GPPB, and conducting nationwide training programs on the procurement law.

**Definition of needs and terms of individual tenders** –

Section 7, Article II of RA No. 9184 states that: “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.”

As provided for in Rule V, Sections 11 and 14, all procuring entities shall create and establish a BAC and a BAC Secretariat, respectively.

The main functions of the BAC are as follows:

- Advertise/Post Invitation To Bid
- Conduct pre-procurement /pre-bid conferences
- Determine eligibility of bidders
- Receive bids
- Conduct evaluation of bids
- Undertake post-qualification
- Resolve Motions for Reconsideration
- Recommend awards of contract
- Recommend imposition of sanctions
- Recommend use of alternative methods of procurement
- Create the Technical Working Group (TWG)

To assist the BAC in the conduct of its functions, the Head of the Procuring Entity can also create a Secretariat that will serve as the main support unit of the BAC. In many instances, the Head of the Procuring Entity designates an existing organic office within the agency to perform as the Secretariat.

#### **Execution of different procurement stages from advertising to contract awarding –**

**Pre-Procurement Conference** – The BAC, through its Secretariat, can call for a pre-procurement conference to ensure, among others, that the intended procurement is in accordance with the project and annual procurement plans. The holding of a pre-procurement conference may not be required for small procurements (i.e. procurement for goods costing 2 million pesos and below, procurement for infrastructure projects costing 5 million pesos and below and procurement of consulting services costing 1 million pesos and below).

#### **Advertising – Function of the Procuring Entity's BAC**

Pursuant to Rule VII, Section 21.2.1 of RA No. 9184 and its IRR-Part A, the following are the rules in advertising and posting:

The Invitation to Apply for Eligibility and to Bid shall be advertised at least twice within a maximum period of fourteen (14) calendar days, with a minimum period of six (6) calendar days in between publications, in a newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement.

The Invitation to Apply for Eligibility and to Bid shall be posted continuously in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of the IRR-A, and the G-EPS during the maximum period of fourteen (14) calendar days stated above.

The Invitation to Apply for Eligibility and to Bid shall be posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned.

**Pre-bid Conference** – At least one (1) pre-bid conference shall be conducted for each procurement, unless otherwise provided for 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. In many instances, the members of the Technical Working Group (TWG) clarify issues and concerns with the prospective bidders during the pre-bid conference.

**Receipt and Opening of Bids** – The BAC shall determine the eligibility of prospective bidders.

**Eligibility Check and Bid Opening** – The Eligibility Documents, the Technical Proposal, and the Financial Proposal are placed inside individual envelopes and sealed. They are submitted to the BAC on the time, date and place specified in the Invitation to Apply for Eligibility and to Bid. The BAC shall first open the envelope containing the eligibility documents and conduct eligibility checking using the non-discretionary “pass or fail” criteria. The BAC goes over the presence or absence of the required documents. If all documents are found, the bidder is rated “passed”. If one or more documents are missing, the bidder is rated failed and eventually considered ineligible for that particular bidding. The sealed technical and financial proposals of the bidders who failed in the eligibility checking shall be returned to them unopened while the technical proposals of those who passed shall be opened. The financial proposals of those whose technical proposals are responsive as evaluated by the TWG shall be opened thereafter. The sealed financial proposals of those whose technical proposals are not responsive shall be returned to them unopened. All these should take place in one sitting, if possible.

**Bid Evaluation** – For the procurement of goods and infrastructure projects, the purpose of bid evaluation is to determine the **Lowest Calculated Bid**. The ranking of the total bid prices are so ranked from the lowest to the highest. In the case of consulting services, the BAC shall identify the bidder with the **Highest Rated Bid**. The eligibility documents, the technical proposals and the financial proposals of the successful bidders are evaluated by the BAC through the TWG observing the fifteen (15) days period requirement. When the lowest calculated responsive bid for goods and infrastructure projects or highest rated responsive bid for consulting services is identified, the BAC through the TWG shall conduct a post-qualification on the bidder that tendered the lowest calculated responsive bid for goods and infrastructure projects or the highest rated responsive bid for consulting services within the seven (7) days period requirement.

**Post-Qualification** – Within seven days from the determination of the Lowest Calculated Responsive Bid or the Highest Rated Responsive Bid, as the case may be, the BAC, through the TWG, shall conduct and accomplish a post-qualification of the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid to verify and validate all the information and documents submitted by the concerned bidder to the BAC. If the bidder with the Lowest Calculated Responsive Bid for procurement of goods and infrastructure projects or the Highest Rated Responsive Bid for consulting services does comply with all the criteria for post-qualification, then, the concerned bidder shall be awarded the contract.

The Head of the Procuring Entity concerned awards the contract to the said bidder. In exceptional cases, the seven calendar day period may be extended by the GPPB.

**Award of Contract** - Within a period not to exceed fifteen (15) calendar days from the determination 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 he approves the recommendation, he shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. In the case of GOCCs and GFIs, the period provided herein shall be thirty (30) calendar days. Within the same period, the BAC is to inform all the losing bidders of its decision.

The winning bidder or his duly authorized representative shall formally enter into a contract with the concerned procuring entity and submit all the necessary documentary requirements to perfect the contract within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.

If there is a need for the approval of a higher authority, the approving authority for the contract or his duly authorized representative shall be given a maximum of twenty (20) calendar days from receipt thereof together with all the documentary requirements to approve or disapprove it. In the case of GOCCs, the concerned board or its duly authorized representative shall be given thirty (30) calendar days to complete the said contract.

The concerned procuring entity shall then issue the Notice to Proceed together with a copy or copies of the approved contract to the successful bidder within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority.

#### **Dispute resolution –**

Protest on Decisions of the BAC – According to Sec. 55 of RA No. 9184: “Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee which shall be equivalent to no less than one percent (1%) of the Approved Budget Contract.”

However, protests may only be resorted to after a motion for reconsideration is filed.

Resolution of Protests – According to Sec. 56 of RA No. 9184: “The protests shall be resolved strictly on the basis of the records of the BAC. Up to a certain amount specified in the IRR, the decisions of the Head of the Procuring Entity shall be final.”

Non-interruption of the Bidding Process – In no circumstance should any protest taken in any decision covered by the provisions of RA No. 9184 stay or delay the bidding process. The protests, however, have first to be resolved before any award can be made.

Report to Regular Courts – According to Sec. 58 of RA No. 9184: “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 procedure 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.”

Arbitration – Any and all disputes arising from the implementation of a contract covered by RA No. 9184 shall be submitted for arbitration in the Philippines according to the provisions of RA No. 876, otherwise known as the “Arbitration Law”. However, if the dispute is within the competence of the Construction Industry Arbitration Commission to resolve, the dispute will be referred thereto.

Appeals – The arbitral award and any decision provided in accordance with the abovementioned provisions of RA No. 9184 shall be appealable by way of a petition for review to the Court of Appeals. The petition is limited to only pure questions of law and shall be governed by the Rules of Court of the Philippines.

#### **Controls of the fulfillment of the terms and conditions by the contractor –**

Contract Prices – According to Sec. 61 of RA No. 9184:

“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 (NEDA) in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned.”

Warranty – (Sec.62)

#### **For Goods**

To assure that the supplier corrects manufacturing defects for a specific period after performance of contract

3 months for supplies / 1 year for equipment

To be covered by either retention money equivalent to 10% of every progress payment, or special bank guarantee equivalent to 10% of total contract price

#### **For Consulting Services**

Consultants are liable for structural defects and/or failures due to faulty and/or inadequate design and specifications as well construction supervision.

#### **For Infrastructure Projects**

The defects liability period for infrastructure projects shall be one (1) year from project completion up to final acceptance by the Government. During this period, the contractor shall undertake the repair works, at his own expenses, of any 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 the 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. After final acceptance of the project by the Government, the contractor shall be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by *force majeure* and those caused by other parties:

- Permanent Structures: Fifteen (15) years
- Semi-Permanent Structures: Five (5) years
- Other Structures Two (2) Years

3. Is procurement of goods governed by the same procedures as procurement of services?

The term “goods” by definition refers to all items, supplies, materials and general support services, except consulting services and infrastructure projects. Consequently, procurement of goods as well as the procurement of services, except those specifically mentioned is governed by the same rules of procedure.

Consulting services and infrastructure projects have different sets of bidding procedures.

4. Does the procurement law establish a Public Procurement Office (PPO)? Is the PPO appropriately staffed against its mandate? In this context, please state the total number of staff involved in public procurement country-wide. Are the procurement entities/PPO provided with adequate financial resources for the execution of their tasks?

RA No. 9184 defines a Procuring Entity as referring “to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or controlled corporations [GOCCs], government financial institutions [GFIs], and local government units [LGUs] procuring Goods, Consulting Services and infrastructure Projects”. The Head of the Procuring Entity refers either to the (i) head of the agency or his duly authorized official for NGAs; (ii) the governing board or its duly authorized official for GOCCs; or (iii) the local chief executive for LGUs. 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.

Each procurement entity establishes a single Bids and Awards Committee (BAC) for its procurement. In some instances, it may be deemed fit by the head of the procuring entity to create an additional number of BACs where the complexity and number of the items to be procured shall so warrant. The BAC shall have at least five (5) members, but not more than seven (7) members.

Regular Members:

- Chairman (3<sup>rd</sup> ranking Permanent Official);
- Member representing the Legal or Administrative areas of the Procuring entity;
- Member representing the Finance Area of the Procuring Entity

Provisional Members:

- An officer who has Technical expertise relevant to the procurement ;
- Representative from the end user unit
- Members of the BACs in the various local government units shall be designated by their respective Local Chief Executives.

The main functions of the BAC are as follows:

- Advertise/Post Invitation To Bid
- Conduct pre-procurement /pre-bid conferences
- Determine eligibility of bidders
- Receive bids
- Conduct evaluation of bids
- Undertake post-qualification
- Resolve Motions for Reconsideration
- Recommend awards of contract
- Recommend imposition of sanctions
- Recommend use of alternative methods of procurement
- Create the Technical Working Group (TWG)

To assist the BAC in the conduct of its functions, the Head of the Procuring Entity also can create a Secretariat that will serve as the main support unit of the BAC. In many instances, the Head of the Procuring Entity designates an existing organic office within the agency to perform as the Secretariat.

However, the GPRA mandated that government entities procure its common-use supplies from the G-EPS (IRR-A Sec.8.1.2).

[Note: There are no official statistics as to the total number of government personnel involved in procurement activities. However, as of October 10, of 2002, the DBM's Procurement Service has been handling the purchase of goods and services for 1,797 client agencies. While this number by no means constitutes the total number of government offices nationwide, one can already make certain estimates. If every procuring entity would have at least five (5) BAC members plus two (2) Secretariat personnel plus three (3) sets of TWGs composed of at least five (5) members each, a procuring entity would have at least 22 government officials and employees involved in procurement. Multiply that number with 1,797 and you arrive at a figure of at least 39,534 personnel involved in procurement.]

The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty percent (25%) of their respective basic monthly salary subject to the availability of funds. The DBM, the agency mandated by law to promulgate the necessary guidelines, released Budget Circular 2004-5 dated March 23, 2004 for this purpose.

5. Please name the sectors, areas or conditions subject to particular procurement rules (if applicable, e.g. military; local governments; state owned enterprises; urgency).

RA No. 9184 provides for the application of alternative procurement methods such as selective bidding, direct contracting, repeat order, shopping and negotiated procurement subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided for in the said law. The specific terms and conditions, including the limitations and restrictions, for the application of each of the alternative methods abovementioned are specified in the said law's IRR-A.



In addition, within five (5) years from the effectivity of RA No. 9184, 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.

*Procurement policies and practices:*

6. Do model tender documents exist (e.g. handbooks, model forms, model contracts, etc)? If yes, is their use mandatory, and do they contain a specific anti-corruption clause?

The GPPB is tasked to develop generic procurement manuals and standard bidding forms, the use of which once issued shall be mandatory upon all Procuring Entities. Said board had already developed the Sample Forms for the Procurement of Goods, Civil Works and Consulting Services.

7. Please provide the latest available economy-wide annual total numbers and values of purchases, with breakdown a) by sector and b) by type of procurement. In this context, please describe the procurement types foreseen by law (e.g. sealed tender, direct purchase; limited tendering) and the policy of your Government towards these types.

Annual outlays for the period Fiscal Year 1999 to 2001 is estimated to have averaged more than Php 113 billion. This figure excludes procurement undertaken by LGUs and GOCCs which amounts to approximately Php 50 billion annually. Build-Operate-Transfer (BOT) projects are estimated to be around Php 372 billion in 2001 alone.

Philippines: Magnitude of National Government Procurement Outlays (billion pesos)

Expense Class	1997	1998	1999	2000	2001
Supplies and Materials	15.75	15.58	17.01	20.29	16.87
Library Books and Materials	0.03	0.15	0.09	0.22	0.07
Other Services	15.09	17.23	15.43	18.67	19.32
Gasoline, Oil and Lubricants	1.88	1.76	2.09	2.59	2.62
Land and Land Improvements Outlay	43.62	68.33	50.40	63.49	59.98
Building and Structures Outlay	17.53	12.57	10.17	11.43	6.57
Furniture, Fixtures, Equipment and Books Outlay	11.27	6.30	9.2	5.72	3.64
Information Technology (IT) Equipment Outlay	0.01	0.22	0.79	0.71	0.93
<b>Total</b>	<b>105.20</b>	<b>122.19</b>	<b>105.24</b>	<b>123.15</b>	<b>110.02</b>

8. Please explain under which conditions pre-selection procedures are conducted.

In essence, previous pre-qualification requirements have been replaced by an objective eligibility check and stronger post-qualification requirements. However, for procurement of consulting services, RA No. 9184 allows the short listing of eligible prospective bidders through an evaluation 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.

Nonetheless, whenever justified by the conditions, the Head of the Procuring Entity may, in order to promote economy and efficiency, resort to alternative methods of procurement. One of these methods is called *Limited Source Bidding* or *Selective Bidding*. It is a **method of procurement that involves the 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 as listed in the authorized government entity. Limited Source Bidding may only be employed under the following conditions as stated in the GPRA IRR-A Sec. 49 a and b:**

- a) Procurement of highly specialized types of goods (e.g. sophisticated defense equipment, complex air navigation systems, coal) and consulting services where only a few suppliers or consultants are known to be available, such that resorting to the public bidding method will not likely result in any additional suppliers or consultants participating in the bidding; or
- b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.

9. If your country is currently engaged in or planning a major reform of its procurement system, please briefly state the scope and objectives of this reform.

A current major reform area initially introduced in RA No. 9184 is in the field of procurement monitoring. Section 13 provides for the inclusion of at least two (2) observers to sit in proceedings conducted by a BAC in all stages of the procurement process in addition to the representative from the Commission on Audit (COA). One (1) observer should come from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other one (1) from a non-government organization, provided, that these representatives do not have direct or indirect interest in the contract to be bidded out. The observers should be duly registered with the Securities and Exchange Commission (SEC) and should meet the criteria set for observers in the IRR.

Current efforts are being made by the Office of the Ombudsman to conduct capacity building training workshops for third party observers, through the technical assistance of several private organizations like the Coalition Against Corruption, the Concerned Citizens of Abra for Good Government (CCAGG) and the Procurement Watch Inc. (PWI), and financial assistance from several foreign multilateral financial institutions such as the European Commission, in order to enhance the capacities and competencies of third party observers to meet the tremendous demand from literally thousands of Procuring Entities across the country.

The Feedback and Handling Mechanism for Procurement Monitoring Reports is currently being developed by PWI and the Office of the Ombudsman through the funding assistance of The Asia Foundation.

## **B. Transparency and Fairness**

### *Transparency of general procurement policies and regulations:*

10. Are the existing laws, regulations and policy guidelines on public procurement publicly available and, if yes, where/how?

Generally, Philippine laws are published in at least two newspapers of general circulation prior to the date of its effectivity. Furthermore, all laws, executive orders and other issuances are also published in the Official Gazette, a journal that is accessible to the general public. There are also several websites that a person may visit regarding procurement concerns in the Philippines such as the official website of the Department of Budget and Management (DBM) at [www.dbm.gov.ph](http://www.dbm.gov.ph) and non-government organizations such as the Procurement Watch Incorporated (PWI) at [www.procurementwatch.org.ph](http://www.procurementwatch.org.ph).

11. In your country, do certain territorial entities or institutions establish lists of eligible contractors (sometimes called “white-lists”)? If yes, please explain the criteria for a company to be included in or excluded from this list, and what use is made of such lists.

Many major government agencies such as the Department of Public Works and Highways (DPWH) maintain a computer database of eligible contractors categorized mainly by their previous work performance, operational and financial capabilities. Erring or non-complying contractors or service providers are black-listed for certain periods of time depending on the gravity of the offenses committed.

The Government-Electronic Procurement System (G-EPS) has a centralized electronic database of all manufacturers, suppliers, distributors, contractors and consultants registered under the system.

The DBM Procurement Service for example includes the Construction Industry Authority of the Philippines’ (CIAP) list of blacklisted contractors in its official website. The GPPB also posts a list of blacklisted contractors and suppliers in its own website. The Office of the Ombudsman has prepared its own Guidelines on the Imposition of Liquidated Damages, Sanctions/Penalties and the Blacklisting of Violating Suppliers and Contractors.

12. Is a bid security and/or a performance guarantee required from the bidder? What are the procedures for advertisement of procurement opportunities?

Bid Security – Section 27 of RA No. 9184 states that: “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 are as follows:

The Bid Security shall be in an amount at least equal to, and not lower than, a percentage of the approved budget for the contract to be bid, as advertised by the concerned procuring entity, in a form of:

Form of Security	Minimum Amount in % of Approved Budget for the Contract to be bid
Cash, certified check, cashier’s check, manager’s check, bank draft or irrevocable letter of credit	One percent (1%)
Bank guarantee	One and a half percent (1 ½%)
Surety bond	Two and a half percent (2 ½%)
Foreign government guarantee	One hundred percent (100%)

Performance Security – Section 39 of RA No. 9184 states that : “Prior to the signing of the contract, the winning bidder 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 performance security in such form and amounts as specified in the Bidding Documents.”

Form of Security	Minimum Amount in % of Total Contract Price
1. Cash, certified check, cashier’s check, manager’s check, bank draft or irrevocable letter of credit	Five percent (5%)
2. Bank guarantee	Ten percent (10%)
3. Surety bond	Thirty percent (30%)
4. Foreign government guarantee	One hundred percent (100%)

Advertising – All Invitations to Bid for contracts under competitive bidding is required to 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.

*Transparency of procurement opportunities:*

13. Describe where and how tender opportunities are published, including if their publication is mandatory or depends on certain criteria (if so, please list)? Please state if a fee has to be paid to receive tendering documents and – if yes – how this fee is fixed and whether other processing fees apply. Please briefly explain whether your country allows adequate and reasonable time for interested suppliers to prepare and submit responsive bids.

**IRR on Advertising**

As provided for in the IRR-A of RA No. 9184, the rules on advertising are as follows:

- Invitation to Apply for Eligibility and to Bid shall be advertised at least twice within a maximum period of fourteen (14) calendar days, with a minimum period of six (6) calendar days in between publications, in a newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement.
- The Invitation to Apply for Eligibility and to Bid shall be posted continuously in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of the IRR-A, and the G-EPS during the maximum period of fourteen (14) calendar days stated above.
- The Invitation to Apply for Eligibility and to Bid shall be posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned.

For Procurement of Goods (with an approved budget contract costing P2 Million and below), Infrastructure Projects (with an approved budget contract costing P5 Million and below), and Consulting Services (with an approved budget contract costing P1 Million and below and/or those whose duration is four (4) months or less, the Advertising of Invitation to Apply and to Bid shall be as follows:

- In a conspicuous place in the agency premises – certified by the Head of the BAC Secretariat
- In the G-EPS
- In website of agency (if any) and its service provider (if any)

Advertising of Invitation to Apply and to Bid for goods costing above P2 Million, for infrastructure projects costing above P5 Million, and for consulting services costing above P1 Million and/or those whose duration is above four (4) months shall be as follows:

- Newspaper advertisement
- In a conspicuous place in the agency premises – certified by head of BAC Secretariat
- In the G-EPS
- In website of agency (if any) and its service provider (if any)

**Fees on Bid documents**

There are no uniform government-wide schedules of fees imposed on the acquisition of bid documents by potential bidders. Since the IRR is silent on the issue, the amounts that potential bidders are charged depend highly on the discretion of the concerned Procuring Entity. For instance, the BAC of the Office of the Ombudsman passed Resolution No. 3, 24 November 2004, providing for the revised bidding fees.

**IRR on Pre-bid and Deadline of Submission of Bids**

The deadline for the receipt of bids shall be fixed by the BAC, giving reasonable time to prospective bidders to study and prepare their bids. The deadline shall also consider the urgency of the procurement involved.

The following periods from the last day of the period for advertising and/or posting of the Invitation to Apply for Eligibility and to Bid up to the opening of bids shall be observed:

- For goods, a maximum period of thirty (30) calendar days from the last day of the period of advertising and/or posting of the Invitation to Apply for Eligibility and to Bid up to the opening of bids.
- For infrastructure projects, the bidding documents shall be issued within thirty (30) calendar days from the last day of the period of advertising and/or posting of the Invitation to Apply for Eligibility and to Bid, and the opening of bids shall be conducted within the following periods from the last day of the issuance of the bidding documents:

Estimated Contract Cost (in Pesos)	Period
Up to twenty five (25) million	15 to 30 calendar days
Above twenty five (25) million up to fifty (50) million	15 to 45 calendar days
Above fifty (50) million up to two hundred (200) million	30 to 60 calendar days
Above two hundred (200) million	60 to 90 calendar days

- For consulting services, a maximum period of ninety (90) calendar days from the last day of the period of advertising and/or posting of the Invitation to Apply and to Bid up to the opening of the bids.

14. Are selection and award criteria prescribed by law? If yes, are they prescribed in an exclusive manner? Please name these criteria a) for procurement of goods, and b) for procurement of services (e.g. technical requirements, qualification of the bidder, evaluated price, expertise/experience, etc.) and those that are explicitly excluded (e.g. nationality of the bidder or other affinity, etc.). Is the description of these criteria in the tender documentation mandatory?

RA No. 9184 and its IRR requires that the Invitation to Bid shall contain, among others:

- A brief description of the subject matter of the procurement;
- 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;
- The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conferences if any, the submission and receipt of bids, and the opening of bids;
- The Approved Budget for the Contract (ABC) to be bid;
- The source of funds;
- The period of availability of the bidding documents, and the place where these may be secured;
- The contract duration; and
- Such other necessary information deemed relevant by the procuring entity.

**Transparency of contract evaluation and award procedures:**

15. What is the procedure if none of the bids or too few – relative to a prescribed limit – fulfill the technical requirements as defined in the call for tender (e.g. reopening of the bid, negotiations, etc.)? Do you keep a register of all bids received?

A failure of bidding is declared if:

- No bids are received;
- No bid qualifies as the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid; or
- 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 abovementioned occurrences, the contracts shall be re-advertised and re-bid using the same processes and rules. If there is a second failed bidding, the BAC may resort to negotiated procurement.

Each BAC Secretariat records all bids received by its Procuring Entity.

16. Where and how are actions and decisions in the procurement process recorded? How long and where are these records preserved, and who can access this information?

The BAC Secretariat holds in its custody all procurement related documents which includes but not limited to, all eligibility requirements submitted by bidders, minutes and taped recordings of the BAC and TWG meetings as well as pre-bid conferences and opening of bids, and various memoranda containing the schedules of activities and decisions of the BAC and TWG.

There are no clear cut rules on records management of procurement documents. In the Office of the Ombudsman, certain personnel from the General Services Division were designated as the BAC Secretary and the support staff of the BAC Secretariat tasked to perform procurement related functions and acts as the custodian of all procurement records. The BAC Secretariat applies generally accepted records management principles such as storing regular documents for a period of not less than five years before any disposal is even considered. Since the Office of the Ombudsman is relatively a new government agency, procurement related records as far back as in the early 1990s are still in storage.

By law, all procuring entities are mandated to ensure equal access to information in all stages of the preparation of the bidding documents. Prior to their official release, no aspect of the bidding documents can be divulged or released to any prospective bidder or person having direct or indirect interest in the project to be procured.

17. How and to whom is the final decision on awarding the tender disclosed? Do reasons for the selection of the winning bidder have to be stated? Are post-awarding negotiations allowed and, if yes, under what conditions?

Based on the BAC's 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, he shall immediately issue the Notice of Award to the recommended bidder.

Post awarding negotiations are not specifically provided for in RA No. 9184. Section 61 states that "*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*". (italics supplied)

The same law defines "extraordinary circumstances" as referring to "events that may be determined by the National Economic Development Authority [NEDA] in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned". Its IRR requires that any request for price escalation under extraordinary circumstances be submitted to NEDA with the endorsement of the procuring entity. The "burden" of proving the occurrence of extraordinary circumstances will rest on the procuring entity that made the request. The NEDA will only respond to such request after it has received the "proof" and the necessary documentation.

18. Are framework contracts allowed? If yes, what measures are taken to control against corrupt or unnecessary demands?

Framework contracts are not mentioned in RA No. 9184 and its IRR-A. However, these framework contracts are usually utilized in grant-in aids like the ones coming from the European Union-European Commission (EU-EC). There are items to be procured wherein the EC undertakes the procurement through framework contracts and the beneficiary agency has no participation in the procurement process. The only thing that the government agency concerned could do is to report to the EC the performance and the deficiencies committed by the supplier chosen by the EC.

RA No. 9184 provides for alternative modes of procurement which are as follows:

- Limited Source Bidding (otherwise known as Selective Bidding)
- Direct Contracting (otherwise known as Single Source Procurement)
- Repeat Order
- Shopping
- Negotiated Procurement

Other regulatory measures against possible corruption or abuse are found in RA No. 9184's IRR-A (Rule XVI, Sections 48-55) such as the prohibition against splitting of government contracts. Splitting of government contracts refers to the act of breaking up government contracts into smaller quantities and amounts or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of the law.

## C. Integrity

### *Integrity of procurement personnel:*

19. Do codes of ethics or similar instruments exist that explicitly apply to procurement personnel and entities? If yes, do they specifically address corruption risks, and do they contain conflict of interest provisions (e.g. provisions making mandatory the declaration of personal interests by agents and buyers)?

Section 47 of RA No. 9184 requires prospective bidders to submit, alongside all the required bidding documents, a sworn affidavit that he or she or any officer of their corporation is not related to the Head of Procuring Entity by consanguinity or affinity up to the third (3<sup>rd</sup>) civil degree.

There is no government-wide specific code of procurement ethics at present. Nevertheless, there are efforts through programs like the Integrity Development Review Project initially started with several key public sector agencies such as the Office of the Ombudsman and the Department of Education, to introduce institutional reforms such as the establishment of agency specific policies on gifts, internal reporting and the formulation of a specific code of ethics to include normative bureaucratic behavior with regard to procurement activity. The Office of the Ombudsman is currently finalizing this year its very own code of ethics in relation to procurement activities. PWI has also attempted to develop a code of ethics specific to BAC members. The document was a result of a series of discussions with select LGU BAC members and DepEd BAC members. The said document has been submitted to the GPPB.

At present, there is a general law that provides for the Code of Conduct and Ethical Standards for Public Officials and Employees, RA No. 6713. While it does not explicitly address procurement concerns, it does state the general duties of public officials and employees and enumerates prohibited acts and transactions often involving conflicts of financial and material interests. Furthermore, it defines certain important concerns such as (receiving of) gifts and relatives often associated with procurement irregularities.

20. Does your country provide for specific training for procurement personnel that include integrity issues? Please list manuals or policy guidelines that might exist to clarify procurement procedures and principles to procurement personnel (if existing please attach a copy or internet-address for download).

The GPPB is mandated by law to establish a sustained training program to further professionalize and develop the capacities of the BACs, BAC Secretariats and Technical Working Groups of Procuring Entities. The Procurement Watch Incorporated (PWI) and several NGOs are helping the GPPB in providing trainings/seminars to procurement personnel and NGO observers all over the country. Even the Office of the Ombudsman is helping in training the NGO observers on how to monitor public sector procurement.

21. Is procurement personnel required – and if yes by what regulation and to what institution – to report attempts by suppliers to undermine the impartiality and independence of action by offering bribes, benefits or other forms of inducement?

Non-reporting of attempted bribes and similar activities by unscrupulous suppliers is neither mandatory nor penalized under existing anti-corruption laws.

22. Which penal and/or administrative sanctions are applicable to procurement personnel for accepting or soliciting bribes? Are public officials liable for the economic damage that the procuring entity suffers? What is the policy that applies to procurement personnel for accepting or soliciting small facilitation payments such as gifts, benefits, hospitality (e.g. outright forbidden, accepted under certain circumstances, etc.; please explain).

Procurement personnel caught for soliciting and/or accepting bribes can be criminally and administratively penalized under any or all of the following laws:

- PD No. 46 – Prohibition against Gifts
- RA No. 9184 – Government Procurement Reform Act (Sections 65-71)
- RA No. 3019 - Anti-Graft and Corrupt Practices Act (Section 9)
- RA No. 6713 – Code of Conduct and Ethical Standards (Section 11)
- RA No. 7080 – Plunder Law (Section 2, as amended by R.A. No. 7659)
- Revised Penal Code (Articles 210, 211, 211-A, 212)
- RA No. 1379 – Law on Unexplained Wealth (Section 2)

RA No. 9184 also provides for the imposition of civil liabilities upon conviction that 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. All procurement contracts covered by the said law requires the inclusion of a provision for liquidated damages which shall be payable in case of breach thereof.

RA No. 6713 excludes unsolicited gifts of nominal value or insignificant value not given in anticipation of, or in exchange for a favor from a public official from the legal definition of the term “gift”. Traditionally, as still practiced in many agencies, such unsolicited gifts of nominal value are often received as tokens of hospitality or gratitude and are therefore generally accepted. However, there is also a growing trend to establish a strict “no gifts policy” to include unsolicited gifts of nominal value, in order to avoid potential abuse and legal ambiguities. In this regard, the Office of the Ombudsman is finalizing its “no gift policy” for all personnel involved in procurement.



*Integrity of bidders and suppliers:*

23. Which penal sanctions are applied to a bidding company as a legal person and to its employees if it is found guilty of corruption related to the bidding procedure? Is the company liable for the economic damage that the procuring entity suffers?

According to RA No. 9184, 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 offenses. These erring private individuals who commit any of the prohibited acts under the said law shall be imprisoned for a period no less than six (6) years and one (1) day to a maximum of fifteen (15) years.

Without prejudice to administrative sanctions that may be imposed in proper cases, upon conviction, the company may be held civilly liable and required to pay liquidated damages.

24. Do your country's laws and regulations permit authorities to suspend, temporarily or permanently, from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official? If yes, is such disqualification mandatory or optional and which body decides on the disqualification and its exact terms? Which means are employed to implement the disqualification (e.g. publicly available list, declaration in the bidding process...)?

Private individuals convicted of committing any prohibited acts under R.A. 9184 shall be permanently disqualified from transacting business with the government.

In addition, Section 69 of RA No. 9184 states: "...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, as well as disqualification from further participating in the public bidding being undertaken by the procuring entity concerned, where applicable, for the following violations:

- Submission of eligibility requirements containing false information or falsified documents
- 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
- Allowing the use of one's name, or using the name of another for the purpose of public bidding
- 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 the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid
- Refusal or failure to post the required performance security within the prescribed time
- Termination of 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 undocumented 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, such as an eligible contractor not buying bid documents, and contractors habitually withdrawing from bidding or submitting letters of non-participation for at least three (3) times within a year, except for valid reasons."

In addition to the penalty of suspension, the Bid Security or the Performance Security posted by the erring bidder or prospective bidder shall also be forfeited.

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

Procedures for the blacklisting of manufacturers, suppliers, distributors, contractors, or consultants for government projects shall be undertaken in accordance with the guidelines to be issued by the GPPB.

25. Do bidders have to explicitly declare their abstention from any means that could improperly influence the procurement process or decision and, if yes, do such declarations also cover such unlawful practices by subcontractors or other third parties?

Procuring Entities may require additional documentary requirements or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids. Such declarations may form part of these additional requirements. Often these unlawful practices and related concerns are discussed and clarified during the pre-bid conferences.

26. Do bidders have to disclose commissions, gratuities, or fees that have been or have to be legally paid to individuals or sub-contractors for their services provided for instance in the preparation of a bid or the execution of the contract?

Again, the existing procurement law and its IRR are silent on these explicit declarations, even with respect to legal payments to subcontractors. However, these related concerns are often discussed during pre-bid conferences to identify or discover any impropriety such as relationships between the subcontractors with any member of the BAC or the Head of the Procuring Entity, etc. Sub-contracting is frowned upon because the bidder should be capable of delivering what has been specified in the bidding.

## D. Accountability

### *Separation of responsibilities and independent scrutiny:*

27. Which means are employed to avoid insulation of procurement staff and to ensure mutual control? (e.g. rotation of officers, decisions taken/validated by more than one actor, etc.)?

Unless removed for a cause, BAC members have a fixed term of one (1) year from the date of appointment, renewable at the discretion of the Head of the Procuring Entity. In no case shall the approving authority be a member of the BAC.

Members of the various Technical Working Groups (TWG) are regularly changed on a jury duty basis in order to avoid familiarity with the bidders.

Decisions both of the BAC and the TWGs are collegial. However, when there is no unanimous decision arrived at the TWG, the minority position can still submit a separate recommendation to the BAC for consideration.

During the period of action on procurement activities especially during the period of submission and evaluation of the bid documents, the bidders are prohibited from communicating with the BAC and TWG members. All communication and submission of documents are to be officially coursed through the BAC Secretariat.

28. Are there regular and systematic internal and external audits of procuring entities/PPOs? If yes, are they mandatory; which bodies are in charge of this audit; are the audit reports publicly available? Are independent actors/NGOs invited to monitor the procurement procedures and what is the setting prescribed by law?

External audits on the procuring entities' procurement activities are undertaken by the Commission on Audit (COA) on a regular post-transaction basis and its findings reflected in an audit observation report. If its findings are not acted upon by the agency concerned, it may also be included as part of their annual audit report for that agency. These audit reports are issued and distributed in a manner provided by regulations of the COA. An audit becomes final and public once a copy is received by the head of an agency. Any citizen can ask the Public Information and Media Relations Office of the COA for copies of the report.

The Office of the Ombudsman, to promote transparency for its part, even gives advance copies of procurement contracts or purchase orders for the resident auditor's perusal prior to any audit.

Internal audits on procurement are highly dependent on the discretion of the heads of the various agencies due to the weak implementation of the government's Internal Audit System (IAS).

The G-EPS shall include an audit trail feature for on-line transactions and allows the COA to verify the security and integrity of the electronic system.

As previously discussed, in addition to the COA representative, the BAC shall invite in all stages of the procurement process two (2) private sector observers to sit and monitor the procurement proceedings.

The observers shall come from organizations duly registered with the SEC and should:

- a. Have knowledge, experience or expertise in procurement;
- b. Have no direct or indirect interest in the contract to be bid out;
- c. Comply with other criteria as determined by the BAC

*Review and complaint mechanisms:*

29. Do your laws and regulations provide for review and complaints procedures? If yes, are they at administrative and/or judicial levels; what is the time limit for complaint/appeal, if any? How many complaint cases related to procurement are handled per year?

In terms of compliance and review, the BAC is responsible for ensuring that the Procuring Entity abides by the standards set forth in R.A. 9184 and its IRR-A, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procurement Entity to the GPPB on a semestral basis. Observers may prepare this report jointly or separately with the BAC for submission to the Head of the Procuring Entity.

Observers may also give a copy of their report to the Office of the Ombudsman (OMB) / Resident Ombudsman if the BAC is found to have failed in following the prescribed bidding procedures or for any justifiable and reasonable ground where the award of contract will not redound to the benefit of the government.

A Joint Congressional Oversight Committee was formed to oversee the implementation of RA No. 9184 for a period of five (5) years from its effectivity date.

There is no exact data on how many complaint cases related to procurement are handled per year.

(For filing of complaints or protests, please see the answer to # 30)

30. Who is entitled to initiate a complaint procedure (e.g. competing bidders, any citizen, etc.) and how are potential informants protected against retaliation (e.g. confidentiality, anonymity)? Are the decisions of the body handling complaints binding? What are the consequences if a complaint is proven valid (e.g. reopening of the bidding, liquidation of damages, etc.)?

Decisions of the BAC in all stages of procurement may be protested in writing, to the head of the procuring entity, provided that a prior motion for reconsideration should have been filed by the party concerned within the reglementary periods provided for in R.A. 9184's IRR and the same has been resolved. Resolution of protests shall be on the basis of BAC records. The protest must be filed within seven (7) calendar days from receipt of the BAC resolution denying its motion for reconsideration. The Head of the Procuring Entity shall resolve the protest within seven (7) calendar days from receipt thereof, and his decision shall be final up to the limit of his contract approving authority. For LGUs, the decision of the local chief executive shall be final. Such protests must first be resolved before any award is made.

Court action may only be resorted to after the protests contemplated shall have been completed. Other remedies provided for in the IRR-A of R.A. No. 9184 could be resorted to by the parties concerned if a complaint is proven valid.

There is a strong lobby among key public sector agencies and civil society groups for Congress to legislate a comprehensive whistle blower act. This initiative seeks to provide adequate incentives and protection for both internal and external whistleblowers.