
Philippines
Procurement Watch Inc
MONITORING OF THE PROCUREMENT OF
LOCAL GOVERNMENT UNITS BASED ON THE
IMPLEMENTING RULES AND REGULATIONS OF THE
GOVERNMENT PROCUREMENT REFORM ACT

I. Introduction and Background

Problems of delays, collusion, lack of transparency, excessive use of discretionary criteria, and lack of competition have long plagued government procurement of goods, consulting services and infrastructure projects. These problems have led to rampant and extensive graft and corruption and have increased the costs of doing business for both the government and the private sector. Given the rising concerns over and pressing need to combat graft and corruption in the public sector, reforming the public procurement process is very timely.

Public procurement used to be governed by a considerable number of laws, regulations and procedures, which created confusion and added to the lack of transparency in the bidding of government contracts. There was Presidential Decree No. 1594, the basic law on the procurement of works or infrastructure projects, Executive Order (EO) No. 164 for procurement of consulting services, and EO 262 for procurement of goods, which were being followed by the national government agencies (NGAs). Although EO 40 was issued in CY 2001 to consolidate the three aforementioned procurement laws into just one, EO 40 only covered the pre-procurement and bidding and award phases. For the contract implementation phase, the pertinent provisions of the three procurement laws were still in effect. Adding to the already confusing environment, the local government units (LGUs) followed a different set of procurement rules covered under republic Act No. 7160 or the Local Government Code of the Philippines.

The passage of Republic Act No. 9184 (RA 9184), also known as the Government Procurement Reform Act (GPRA), laid the legal foundation for overhauling the whole public procurement process. The GPRA applies to the three procurement types, namely, infrastructure projects, goods, and consulting services, and covers both NGAs and LGUs. The GPRA also standardized, to the extent possible, the procurement procedures that must be adopted by all agencies of government and required the issuance of the procurement manuals and standard bidding documents. These are all expected to contribute to the smooth flow of the procurement process.

II. Implementing Organization

Procurement Watch Incorporated (PWI) is a non-profit, non-partisan civil society organization (CSO) that was established on 15 February 2001 to instill good governance by combating graft and corruption in public procurement through advocacy, research, training, and partnerships.

PWI helped secure the passage of the GPRA by providing policy analysis, technical assistance, advocacy support, as well as the conduct of information campaigns for both the private and public sectors. Upon approval of the GPRA by the President on 10 January 2003, the formulation of the Implementing Rules and Regulations (IRR) by an Inter-Agency Technical Working Group immediately followed, of which PWI was a major player. Before

and after the approval of the IRR by the President, PWI is a part of a composite team established by the Department of Budget and Management, the government agency leading procurement reforms in the country and whose Secretary is the Chairperson of the Government Procurement Policy Board, that has been training officials of the national government agencies (NGAs) and local government units (LGUs) on the provisions of the IRR.

PWI also monitors public biddings of various NGAs and submits to the head of the Bids and Awards Committee (BAC) a Diagnostic Report reflecting actual observations on the bidding activity monitored.

III. The Funder

The Partnership for Transparency Fund (PTF) is an international non-governmental organization (NGO) registered as a not-for-profit corporation in New York, USA. The mission of PTF is to help CSOs aimed at fighting public corruption.

IV. The Project

On 09 June 2003, PWI received grant funds from PTF in the amount of \$8,200 (Php434,570.20) for the development of a public bidding checklist and the monitoring of two (2) procurement activities each of three (3) LGUs located in Metro Manila following the IRR-A of the GPRA. The grant funds also provided for the hiring of two Consultants/Technical Support Officers for the six-month duration of the Project, from 01 July to 31 December 2003.

The Public Bidding Checklists

The standardization of the procurement procedures is expected to greatly lessen the confusion previously experienced by both agencies and bidders. Whereas a lot of agencies seem to have their own set of procurement rules, all government agencies should now follow the same procurement procedures prescribed under the GPRA. While agencies, or at least the NGAs, try to religiously adhere to the provisions of the IRR/GPRA, each procurement type, however, still has its own peculiarities that are not clearly reflected in the IRR. For instance, the procurement of goods provide for the simultaneous submission by the prospective bidder of his eligibility, technical and financial envelopes, and all three envelopes are to be opened on the same day. Some BACs that are probably not familiar with the IRR conduct their eligibility check separate from the opening of the bid envelopes, contrary to the intention of the IRR. For procurement of consulting services, the number of eligible bidders and the minimum passing score that needs to be attained to be included in the shortlist should be determined, among others, by the BAC during the pre-procurement conference. Still, a lot BACs fail to do these during the pre-procurement conference, and actually do these during the shortlisting activity itself. This may open the BAC to accusations of favoring a bidder or group of bidders. If the favored bidder would rank number 3, a BAC could peg the number of shortlist of consultants at 3, thus limiting the competition and at the same time increasing the chances of the favored bidder to be awarded the contract. If the favored bidder ranked seventh, a BAC could fix the number of shortlist at 7 to ensure its participation. The public bidding checklists will help provide the BAC, including the observer, the proper guidance in performing the procedural aspect of its tasks.

Two Technical Support Officers were hired, one starting on 01 July 2003 (Ms. Carolina R. Belisario) and the other on 10 July 2003 (Ms. Frances Caerina Sy), to draft the public bidding checklist for the procurement of goods, consulting services, and infrastructure projects. In preparation for the monitoring of LGU procurements, the TSOs also observed the proceedings of bid openings of projects of some government corporations that have

already adopted RA 9184 in their bidding activities, namely, the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR).

The draft IRR/RA 9184 was forwarded to the President for her approval on 11 July 2003. Said draft IRR became the basis for the TSOs to formulate the draft public bidding checklists. While the draft public bidding checklists had already been completed by the TSOs in September 2003, it could not be subjected yet to a full review by the core members of the Technical Working Group (TWG) that drafted the IRR of RA 9184 as the IRR was not yet approved by the President. In the meantime, the TSOs, with guidance from the Executive Director, continued to observe the bidding activities of PCSO, PAGCOR, and other agencies.

After the approval by the President of the IRR, and with its effectivity on 08 October 2003, the draft checklists were subjected to several focus group discussions (FGDs) by the core members of the TWG. FGDs were undertaken on 01 October 2003 at the Medical Plaza Ortigas, and on 20 and 21 October 2003 at the Holiday Inn Galleria Manila, with officials of the Department of Budget and Management (Atty. Jose Luis C. Syquia, Acting Executive Director of the Technical Support Office of the Government Procurement Policy Board (TSO-GPPB), and Atty. Dennis S. Santiago, Procurement Training Advisor of the TSO-GPPB), the Department of Public Works and Highways (Director Antonio V. Molano, Jr.), the National Economic and Development Authority (Engr. Elmer H. Dorado), and the Economic Governance Technical Assistance (Ms. Roderika Taduran) in attendance.

The final draft of the public bidding checklists was submitted to the DBM, which elevated it to the GPPB for further discussion. The GPPB approved the final draft and issued on 11 December 2003, GPPB Circular No. 04-2003 (copy attached) disseminating the Standard Public Bidding Checklists¹ for proper guidance of the Bids and Awards Committee (BAC), its Technical Working Group and Observers. PWI has, since then, been distributing said checklists to BAC Observers during its regional trainings (copy of checklist attached).

Monitoring Two (2) Procurement Activities of Three (3) LGUs in Metropolitan Manila²

PWI offered its services to the City Governments of Marikina, Quezon City and Manila to observe two public biddings each conducted by their respective BACs using as legal basis for the procurement the GPRA, and not the Local Government Code³. Letters were sent to the Local Chief Executives⁴ (LCEs) of the three LGUs together with a draft Memorandum of Agreement (MOA) specifying the responsibilities of each party in the envisioned partnership. In the MOA, PWI's responsibilities included the following: provision of a copy of the bidding checklist; observation of two bidding activities; and the preparation

¹ The public bidding checklist details the step-by-step procedures to be followed in undertaking a procurement activity following the usual path from pre-procurement conference to award of contract. The user of the checklist would simply note if the indicated step was followed or not by marking the appropriate yes or no box under the remarks column.

² The metropolis is located in the center of Luzon Island and is home to around 9,454,040 Filipinos (2000 census). It has a contiguous area of 636 square kilometers and covers 13 cities and 4 municipalities, each independently managed.

³ RA 7160, also known as the Local Government Code of 1991, was enacted by the State in line with its policy of providing a more responsive and accountable local government structure instituted through a system of decentralization whereby LGUs were delegated more powers, authority, responsibilities, and resources.

⁴ The Local Chief Executive (LCE) shall head each LGU and shall exercise general supervision and control over all programs, projects, services and activities of its LGU. The LCEs for a municipality, city and province is the municipal mayor, city mayor, and governor, respectively.

of a Diagnostic Report for each bidding activity observed. The concerned LGU's responsibilities were the following: to invite PWI to attend at least two bidding activities; and to adhere to the provisions set forth in RA 9184 and its IRR (copy of draft generic MOA attached).

A) For Marikina City

In its letter dated 02 June 2003, PWI offered its services to the Mayor of Marikina City to act as observer in two public biddings that the BAC of the City Government would conduct. On 24 June 2003, PWI, represented by its President and Chairman, Dr. Jacinto C. Gavino, Jr., together with PWI Executive Director Cipriano A. Ravanos, Jr. and PWI Program Director for Advocacy Ma. Kristina V. Pimentel, met with the Mayor of Marikina City, Honorable Marides C. Fernando, to follow up on the Mayor's action on the 02 June 2003 letter of PWI. Together with her City Administrator Melvin Cruz and General Services Chief Adrian Salvador, Mayor Fernando welcomed the initiative of PWI as it supported her thrust of greater accountability and honesty in government transactions. The Mayor, however, mentioned an LGU trait that may run counter to the objective of the GPRA on equal opportunity given to all bidders, that is preference of LGUs for local suppliers. This is understandable as this would translate to higher revenues for the City Government in the form of income taxes, permit fees, etc.⁵

For a clearer delineation of responsibilities between PWI and the City Government of Marikina, a draft MOA was prepared by PWI and forwarded to Mr. Salvador on 15 July 2003 for his comments before its onward transmittal to the Office of the Mayor. On 30 September 2003, Dr. Gavino visited the Office of the Mayor to follow up on the draft MOA but was informed that the draft MOA was remanded to the Legal Department of the City Government. PWI staff was asked to resend a copy of the draft MOA to the Office of the Mayor. Constant follow-ups by PWI with the Office of the Mayor yielded no positive results as the other party repeatedly replied that the draft MOA was being studied further. As such, PWI decided to no longer pro-actively pursue the matter.

B) For Quezon City

PWI similarly offered its services to the City Government of Quezon to act as observer in two public biddings that the City would conduct. On 22 September 2003, PWI met with the officials of the Quezon City Government, specifically Mr. Rolando Montiel and his staff at the General Services Office (GSO), to follow up on the proposal of PWI. The following were the concerns raised by Mr. Montiel during the meeting:

- a. The lack of representation for LGUs during the formulation of the Bill and eventually with the IRR. The LGUs were hardly consulted by the Department of the Interior and Local Government (DILG);
- b. The LGUs are using the Local Government Code in the absence of the IRR/RA 9184. As the GPRA repealed certain provisions in the Local Government Code, there are no transitory guidelines given as to what rules to govern the matters covered by the repealed provisions in the absence of an approved IRR/RA 9184; and
- c. The role of people's organizations/non-governmental organizations (POs/NGOs) have been watered down as NGOs and civil society organizations, under the IRR/RA

⁵ This is similar to the policy espoused under Rule XIII of the GPRA whereby a provincial bidder in the bidding of provincial projects is given the right to match the lowest bid, if submitted by a non-provincial bidder. While Rule XIII would want to present itself as an opportunity for upgrading of the capabilities of local suppliers and contractors, it is in reality a channel for the local suppliers and contractors to benefit from contracts funded under the Priority Development Assistance Funds of members of Congress.

9184, are now merely observers. The Local Government Code authorized the representatives from NGOs to be voting members of the then Prequalification, Bids and Awards Committee (PBAC) of the LGU. Apparently, Mr. Montiel is a proponent of people empowerment.

PWI was informed that as soon as the IRR/RA 9184 is approved and when the DILG issues a Department Circular to LGUs instructing the latter to adopt the IRR shall the BAC of the Quezon City Government be reconstituted. The BAC shall then invite PWI to sit as observer in their bidding activities.

Developments occurred when the City Administrator's Office requested certain legal documents from PWI. On 06 November 2003, PWI submitted the requested copy of its Articles of Incorporation to the Office of Atty. Ochoa, the City Administrator. PWI was informed that the Quezon City Government was already finalizing the MOA and on 24 November 2003, PWI picked up the MOA from the Office of the City Administrator, and was signed by Dr. Jacinto C. Gavino, Jr., representing PWI, with Engr. Cipriano A. Ravanes Jr., as witness.

PWI expected the MOA to be signed soon thereafter by the Mayor of Quezon City, Honorable Feliciano Belmonte, as the MOA had already been extensively reviewed by the City Government officials. Several follow-ups were made by PWI on the signing of the draft MOA from the period running from 03 December 2003 to 11 February 2004, when the MOA was finally signed by Mayor Belmonte.

After several phone calls failed to elicit a positive response from the GSO to discuss a more concrete plan of activities, PWI, on 17 March 2004, visited the GSO to discuss further actions that will have to be taken in support of the signed MOA. However, Mr. Fidel Marcelo and Ms. Fe Bass of the General Services Office informed PWI that the Quezon City Government has deferred all procurement activities until after the election ban on award of contract, i.e., 45 days after 10 May 2004. Both officials suggested that PWI follow up the matter after the lapse of the period for the election ban on award of contracts.

It is quite upsetting to note that even after the MOA has been signed by the Mayor, the GSO, as coordinating Office, felt that it was not a priority at that time. Granted that priorities have changed with the impending national and local elections, PWI felt that commencing with the preparatory activities that will lay the groundwork for the successful implementation of the partnership, e.g., meetings with the reconstituted BAC, briefings on the IRR/RA 9184, etc., would benefit both parties. However, to date, PWI has not been invited in any bidding activities conducted by the Quezon City Government.

C) For Manila

PWI initially chose to monitor the bidding activities of the municipality of Pateros to get some insights on how a municipal government conducts its bidding. A letter dated 12 August 2003 was sent to the Mayor of Pateros, Honorable Rosendo P. Capco offering the services of PWI to observe two public biddings conducted by the Municipal Government. However, in a meeting with the staff of Mayor Capco on 18 September 2003, PWI was informed that the municipality of Pateros, while classified as a first class municipality, had a small budget for procurement. PWI, therefore, replaced the municipality of Pateros with the city of Manila. Unofficial discussions with officials of the City of Manila were encouraging. A letter dated 22 September 2003 and signed by Dr. Gavino was sent, together with a draft MOA, to the Mayor of Manila, Honorable Jose L. Atienza, offering the services of PWI to monitor public biddings

PWI followed up the draft MOA with the Office of the Mayor and was informed on 28 October 2003 that the Office is waiting for the recommendation of the Secretary of the

Bidding Committee. On 05 December 2003, PWI inquired as to the status of the MOA and was notified that the draft MOA was already forwarded to the Central Government Supplies Office (CGSO) on 02 December 2003. Atty. Jaime P. Valencia Jr. was referred to PWI as its contact person in the said office. On 16 January 2004, PWI called the CGSO to make inquiries as to the status of the MOA. The Assistant Head of the CGSO replied that they would be the one to call and inform PWI of the status of the draft MOA. PWI has not received any communication from the CGSO and decided not to pro-actively pursue the matter.

V. Problems encountered

Prior to the enactment and effectivity of the GPRA and its IRR, the LGUs adopted the provisions of Republic Act No. 7160, otherwise known as the Local Government Code (LGC). Section 37 of the LGC provides that the Local PBAC⁶ shall have the governor or city or municipal mayor as the Chairman. Moreover, Section 364 of the LGC provides that the Committee on Awards⁷ shall have the LCE as the Chairman of the Committee.

On the other hand, Section 11.2.2 of the IRR/RA 9184 provides that the LCE shall designate the members of the BAC. The members shall elect among themselves who shall act as the Chairman and Vice-Chairman. Section 11.2.5 of the IRR/RA 9184 further provides that in no case shall the head of the procuring entity and/or the approving authority be the Chairman or a member of the BAC.

While the City Governments would claim that they are reluctant to adopt the new Law because of their lack of familiarity, the real reason would appear to be the diminution in the authority or discretion exercised by the LCE in the selection of contract awardee. To illustrate the resistance of the LGUs in implementing RA 9184 and its IRR, the League of Municipalities of the Philippines (LMP) wrote the procurement oversight committee, the Government Procurement Policy Board (GPPB) requesting for the deferment of the implementation of the Law by the LMP on municipalities. In the signed letters dated 29 January and 04 March 2004 (attach copy) by the National President of the LMP, Honorable Ramon Guicom requested the GPPB that the creation of the BAC for municipalities under RA 9184 and its IRR be deferred so as not to derail the Implementation of critical projects in the municipal level. How can a simple creation or reconstitution of the BAC disrupt the implementation of the projects at the municipal level? The creation of a BAC is not that time consuming assuming that the criteria for BAC selection, its composition, functions and responsibilities stated under Sections 11 and 12 of the IRR/RA 9184 are followed and taken into consideration. Thus, the position of the GPPB, in a Memorandum dated 25 March 2004 (PM No. 04-2004 attached) was to deny the request of LMP for deferment. On the same note, the League of Cities of the Philippines signed and adopted a Resolution requesting for the extension of the deadline for compliance by cities with the mandate of RA 9184 and its IRR. Similarly, the ruling of the GPPB was to deny such extension.

Another problem encountered is the insistence of one of the LGUs on the issuance of a Circular by the DILG enjoining the LGUs to implement the provisions of the GPRA and

⁶ The PBAC is responsible for the prequalification of contractors, bidding, evaluation of bids and the recommendation of awards for LGU-funded infrastructure projects.

⁷ The Committee decides on the winning bids and on questions of awards on procurement and disposal of supplies or property except in cases of procurement through emergency purchase.

its IRR as the former exercises supervisory powers over the latter. Although the MOA between the Quezon City Government and PWI was signed even without the issuance by the DILG of a Circular, it would at the very least show the resistance of the LGUs to the new Law. Unfortunately, this dilatory tactic of the LGU consumed the time that could have been devoted to orienting the LGU on the new Law and the monitoring of two biddings of the LGU.

In an Orientation Seminar conducted by the Department of Budget and Management for both national government and local government officials on the GPRA with members of PWI acting as resource speakers on certain topics, one of the resource speakers asked the participants who they will invite as observers in the bidding activities of their agencies. One of the participants raised his hand and answered in the local dialect, "One that has no knowledge of procurement, so that he cannot ask any question." Although he may have said it in jest, it is quite alarming to find government agencies that actually prefer NGOs with little or no knowledge of procurement. Could the three LGUs have the same distressing attitude?

The month of December 2003 was practically useless when it came to following up matters with the LGUs. The whole government bureaucracy was in a festive mood and getting a clear response was already difficult. After December 2003 when a possible extension of the grant appeared feasible, another major problem encountered was the shift in interest of the LGUs to the coming national and local elections in May 2004. The local officials, we were told, have focused their efforts on ensuring that the coming elections would be peaceful.

While it is understandable that some difficulties may arise in adjusting to the new reforms institutionalized by RA 9184, it is worth mentioning that the LGUs were already made aware of these reforms through the advocacy efforts made by the CSOs and other champions of procurement reforms prior to the enactment of RA 9184. Quite a number of LGUs were invited and participated in training sessions offered by the GPPB on awareness of the new Law.

The lack of familiarity on the new Law has become the LGUs convenient excuse, however, we feel that much of the resistance may have stemmed from the lack of consultation between the LGUs (as stakeholders) and the proponents of the procurement bill. It has somehow become a "turf war". The LCE used to have full control and discretion in the awarding of contracts. It has been reported that a large number of contracts are not awarded through public bidding, but through negotiated procurement⁸. Worse, these contracts were allegedly awarded to relatives, close allies and/or friends of the LCE.

Furthermore, procurement under RA 9184 mandates the invitation of two observers in any stage of the procurement. Section 13 of the IRR/RA 9184 stresses that a qualified observer must have knowledge, experience and expertise in the procurement at hand. The presence of an observer knowledgeable on procurement serves as a deterrent to corruption. The local officials may view this type of observer as a reform ally or partner. Unfortunately, the local officials may also view the observer as a threat. Could this have been the case with PWI and the three cities (Marikina, Manila and Quezon Cities)? Insofar as we have no factual data to back this claim or refute it, this has certainly roused our curiosity.

VI. Recommendations for Future Actions

PWI feels there is a need to assess and determine the reason for the LGU's resistance in complying with the provisions of RA 9184. A case study to look into the

⁸ This method of procurement is employed under certain circumstances, such as but not limited to the following: a) failure of two consecutive biddings; b) imminent danger to life and property; and c) take-over of a project.

problems and difficulties encountered by the LGUs in the implementation of the new procurement law is highly recommended. The case study could showcase the LGU's views as well as the end-users' and also the suppliers' point of view for better appreciation of the problem.

VII. Financial Report

For the period 01 July 2003 to 15 September 2004, a total of PhP298,893.84 has been spent representing payment for salaries of the two Technical Support Officers, development of the public bidding checklist and supplies and materials. A balance of PhP135,676.36 (please refer to attachment).

Report submitted by PWI
October 2004
