



Policy Brief

SENATE ECONOMIC PLANNING OFFICE

August 2008

PB-08-05

Despite the passage of what is referred to as a world class law-- the Government Procurement Reform Act has not been enough to prevent notorious corruption cases from being committed.

Issues that continue to plague the procurement system, including the harmonization of rules with the procurement system of foreign donors and creditors, alignment of the procedures in the case of Build-Operate-Transfer (BOT) projects, and the challenge of operationalizing and implementing the reforms in all levels of government need to be looked into and addressed promptly.



The SEPO Policy Brief, a publication of the Senate Economic Planning Office, provides analysis and discussion on important socio-economic issues as inputs to the work of Senators and Senate Officials. The SEPO Policy Brief is also available at www.senate.gov.ph.

Plugging the Loopholes of the Philippine Procurement System

I. Background

Several studies in the past referred to the Philippine public procurement system as a spawning ground for official corruption. By government's own estimates, as much as PhP22 billion is lost each year in government spending due to corruption in procurement. Realizing the severity of the situation, a reform process was initiated, which resulted in the enactment of Republic Act No. 9184 otherwise known as the Government Procurement Reform Act (GPRA) of 2003.

The GPRA was envisioned to address the lack of transparency and competition, eliminate collusion and political interference as well as lessen the delays in the procurement process. However, despite the reforms and the recognition of GPRA by multilateral institutions such as the World Bank as a world class legislation,¹ controversies continue to haunt the Philippine procurement system. The latest of which was the National Broadband Network (NBN) deal controversy. In September 2007, allegations of bribery, collusion, and overpricing of the NBN deal caught the public's attention. Senate witness Rodolfo "Jun" Lozada² testified to the existence of nepotism and the "tailor-fitting" of projects in public procurement to benefit an elite few. Lozada, in his testimony in the Senate Blue Ribbon Committee hearing declared that the country has a "dysfunctional" and "supply driven" procurement system.

This briefer discusses the Philippine procurement system and the salient features of the GPRA. It identifies the modifications that supposedly made the law a powerful tool against routine corrupt procurement practices as well as its vulnerabilities. Issues that continue to plague the procurement system despite the GPRA and other reforms will also be looked into. Afterwards, a conclusion will be made and recommendations will be presented.

¹ Former World Bank Philippines Country Director Joachim von Amsberg recognized the GPRA as a legislation with "world class" quality during a press conference in 2007.

² Jun Lozada is an electronics and communications engineer who served as a technical consultant to former Socioeconomic Planning Secretary Romulo Neri on the National Broadband Network (NBN) project. He testified in the Senate and implicated former Commission on Elections chair Benjamin Abalos Sr and First Gentleman Jose Miguel Arroyo in the allegedly overpriced and anomalous ZTE-NBN deal.

II. The Government Procurement Reform Act of 2003

Signed by President Arroyo on January 2003, the GPRA applies to the procurement of infrastructure projects, goods and consulting services regardless of source of funds, whether local or foreign by all branches and instrumentalities of government.³ The law's coverage is from procurement planning up to the stage of contract implementation, termination of contract and warranty.

Among the salient features of the law are:

A. Use of information technology to promote transparency and competition

The old procedure took seven months and provided opportunities for the procuring agency to purposely disqualify prospective contractors it does not favor.

The procurement process prior to the enactment of the GPRA lacked transparency and competition since bid announcements were confined only to print media. Such practice opened the process to manipulation by officials to favor certain suppliers and contractors. There are anecdotes of contractors who hoard copies of newspapers to prevent circulation of the bidding invitation for local projects, thereby limiting competition to a few favored ones.

To level the playing field and to make the bid invitation known all over the country, in addition to print media with national circulation, bidding announcements are now posted on the website of the procuring agency as well as on the Philippine Government Electronic Procurement System (PhilGEPS) website.

B. Shift from pre-qualification to simple eligibility screening and post-qualification procedure to eliminate unnecessary delay.

The complex and highly subjective prequalification procedure gave members of the Bids and Awards Committee (BAC) a free rein to choose a favored entity, even without conducting any bidding yet. Under the old pre-qualification procedure, all required documents submitted by a bidder are validated and checked by the agency's BAC for veracity. The BAC then prepares a short list of the most eligible applicants who get to submit their respective bids. It takes seven months for BAC to decide on the winning bidder, an ample time for the procuring agency to purposely disqualify prospective bidders it does not favor.

The old system was replaced with GPRA, a method that uses a simple "pass/fail" marking system where incomplete documents are given a fail mark, while complete documents give bidders clearance to proceed to the next stage of the process. Once the documents of the bidder with the lowest calculated bid are verified and validated, he is then declared the winner.

The law also sets a three-month time limit for the procurement process-- from the opening of bids up to the awarding of contract.

³ 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-Transfer (BOT) schemes and other variations are governed by RA No. 6957, as amended by RA No. 7718, and its Implementing Rules and Regulations. Government contracts financed wholly or partly with Official Development Assistance (ODA) funds are governed by RA No. 4860, as amended by RA No. 8182, as amended by RA No. 8555.

C. Removal of bracketing in evaluating bid prices, and the use of the approved budget for the project as the ceiling on bid prices.

Previously, BAC members of agencies were allowed excessive use of discretionary criteria as they were allowed to decide on bid offers using the standards of quality and price. Experts pointed out that it is difficult to measure quality and its trade off with price since it requires too much subjectivity, which, in turn, exposes the process to legal challenges.

The GPRA recognizes the PhilGEPs as the sole portal, which will serve as the primary source of information on all procurement in government.

The absence of a cap on price adjustments and change orders was often taken advantage by unscrupulous contractors. Bidders for public works projects frequently submitted ridiculously low bids and once awarded the contract, would submit extra work and change orders—resulting in increases in contract price. Meanwhile, the practice of setting a floor price aside from being inefficient prevented the government from taking advantage of potential savings from lower bids.

With the GPRA, the practice of setting a floor price was eliminated. The approved budget for a contract (ABC) is now being used as the ceiling. The ABC is made public at the time the Invitation to Bid is published. A cap on price adjustments and change orders is also imposed. The law stipulates that change orders are limited to 10 percent of total project cost. If change orders exceed 10 percent of the project cost, which usually results from a faulty design, the cost of such change in the design will be charged against the designer.

D. Standardization of the procurement process and forms.

Prior to GPRA, there was no general procurement law. In place were 117 laws including executive orders (EOs), presidential decrees (PDs) and administrative orders (AOs), which were employed in order to fill in for the lack of a general procurement law. This array of laws often resulted in confounding and conflicting interpretations of the provisions that increased the possibilities of delays and irregularities in the bidding and procurement process. The old system also provided varying procurement processes for each sector, e.g. one process for infrastructure and another one for agriculture. Moreover, there used to be no or hardly any monitoring and assessment of the implementation of the contract.

The GPRA, in contrast, recognizes the PhilGEPs as the sole portal which will serve as the primary source of information on procurement in government. Among the features of the PhilGEPs are the electronic bulletin board, which also serves as a public tender board; a registry of all manufacturers, suppliers, distributors and consultants; and an electronic catalog of all current purchases and sales. The law also integrates all the various schemes into a uniform system regardless of sector classifications.

E. Institutionalized participation of civil society organizations in all stages of the procurement process to improve transparency.

EO 40, which was issued in 2001 to consolidate the rules and procedures of government procurement, requires the BAC to select and invite, in addition to

the representative of the Commission on Audit, at least two observers from the relevant sectors to sit in and monitor the procurement proceedings from the bidding to the awarding of contract.

The GPRA upholds the said practice and expands the BAC and civil society's monitoring duty from bidding to the completion of the project.

F. Adoption of open and competitive bidding in all levels of public procurement

While open competitive bid is the primary method of procurement under the GPRA, alternative modes such as limited source bidding, repeat order, single source procurement, shopping and negotiated contracts are allowed under the law but subject to certain conditions.

*Now that the GPRA
is in place, the
evaluation process is
made simpler
and more transparent.*

G. Professionalization of procurement officials.

The GPRA established the Government Procurement Policy Board (GPPB), which is mandated to formulate and amend the GPRA Implementing Rules and Regulation (IRR), establish a sustainable training program to develop the capacity of government procurement officers and employees, and ensure the conduct of regular procurement training programs by the procuring entities.

The GPPB is composed of the Department of Budget and Management Secretary (DBM) as Chair and the National Economic and Development Authority Director-General (NEDA) as Alternate Chair, with the following as Members: the Secretaries of the Departments of Public Works and Highways, Finance, Trade and Industry, Health, National Defense, Education, Interior and Local Government, Science and Technology, Transportation and Communications, and Energy, and a representative from the private sector to be appointed by the President upon the recommendation of the GPPB.

H. Inclusion of penal clause and civil liability.

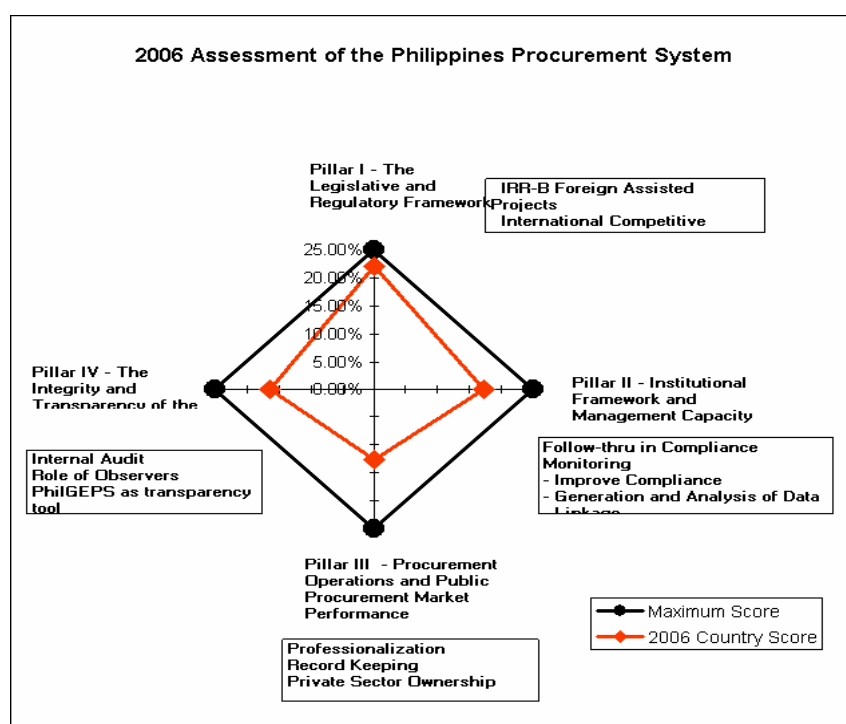
The Anti-Graft and Corrupt Practices Act (RA 3019), the Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713), and the Civil Service Law, were among the laws that provide penal/administrative sanctions to procurement officials who are proven guilty of soliciting/accepting bribes from bidders/contractors prior to the GPRA.

The GPRA, without prejudice to the other laws, provides for the penalty of imprisonment from six to 15 years for both BAC/procurement officials and bidders/contractors proven guilty of committing the offenses defined by the GPRA.

In sum, the GPRA makes the procurement process much simpler and faster. The major difference is in the assessment of suppliers. Both the old and new schemes evaluate the contents of the bids of all bidders. However, now that the GPRA is in place, the evaluation process is made simpler and more transparent.

III. Gaps in the GPRA

Nearly five years after the passage of the GPRA, procurement experts and government officials⁴ agree that the law is enough to prevent anomalous transactions in government procurement. In fact, in the World Bank's assessment of the Philippine procurement system in 2006, the legislative and regulatory framework received high marks. However, the World Bank was quick to point out that despite the political effort, the implementation of the law has not progressed as fast as expected and that actual operations still fail to meet expectations. As such, despite having a "world class" procurement law, the procurement system faces several challenges including the harmonization of the rules with the procurement system of foreign donors and creditors, and aligning of the procedures in the case of BOT projects. Another major challenge is operationalizing and implementing these reforms in all levels of government.



Source: *Accelerating Inclusive Growth and Deepening Fiscal Stability*, World Bank Report presented at the Philippine Development Forum 2008

A. Misguided priorities

Ideally, a government project, whether funded by a loan or through a BOT scheme, should be an identified priority in the Medium-Term Philippine Investment Plan (MTPIP). The list of MTPIP projects originates from the various departments, who are supposed to know the priority requirements of their respective sectors. NEDA is mandated to exercise "oversight" function and consider how the various project proposals of the different departments

⁴ Former Secretaries of DBM and UP Professors Benjamin Diokno and Emilia Boncodin agree that the GPRA greatly improved transparency and significantly curtailed opportunities for corruption in procurement. Current DBM Secretary Rolando Andaya and GPPB Executive Director Ruby Alvarez, both lawyers, insist that the GPRA sets the procurement reforms in the right direction.

PROCURING THE NATIONAL BROADBAND NETWORK

The 2004-2010 MTPDP envisions that the entire country will be linked by a “cyber- corridor” or digital infrastructure by 2010. The MTPIP originally pegged the cost for all digital infrastructure projects and ICT capacity building programs at PhP2.2 billion for 2005-2010.

Following the State of the Nation Address (SONA) in 2006, the MTPIP was updated and the projects were classified into Super Regions. The 2006-2010 MTPIP listed only three major cyber corridor projects, namely: (1) ICT Education and Distance Learning Program, (2) improving the Philippine Postal Corporation’s Financial and Operational State through ICT, and (3) the expansion and upgrading of the Philippine Television Networks Inc. (Phase 1).

However, during NEDA’s presentation of the Comprehensive and Integrated Infrastructure Program (CIIP) in May 2007, the National Network Broadband (NBN) project was included as a priority cyber-corridor project, critical to meet the objectives set in the MTPDP. Though it plans to integrate some of the ICT programs originally in the MTPIP, the NBN project, which will provide last mile connectivity gained notoriety not only because of the purported high level corruption involved in the deal, but also because original government plans at no point envisioned a separate backbone to be financed, owned and operated by, and dedicated to the needs of the government.

The NEDA-ICC, in March 2007, approved the US\$329 million (PhP16.7 billion) loan offer of the China Export-Import Bank to finance the NBN project on condition that the project would be awarded to the Chinese company ZTE.

Citing government’s tendency to distort its priorities, UP Economists Raul Fabella and Emmanuel De Dios, in their study of the NBN and Cyber Education Projects, pointed out: “To begin with, *if* the government seriously believed the NBN backbone was a vital project, then it ought first to have completed the preliminary work – ideally all the way to a feasibility study – of identifying the magnitude and urgency of the need, the technology and equipment required to fill it, and a ballpark figure for its cost. Only then could government have defined the terms of reference for an honest-to-goodness competitive bidding for a BOT, or even decided the magnitude of the loan it needed to borrow.”

should relate to one another in the big picture and fit within the overall resource constraints.

However, agencies sometimes present project proposals to the NEDA-ICC that are not in the MTPIP, and thus by definition, not a priority. While the BOT law allows unsolicited project proposals, it does so under rigid restrictions. For an unsolicited proposal to be accepted and undertaken by government, it should satisfy the following requirements: (1) the project involves a new concept or technology, (2) no direct government guarantee, subsidy or equity is required, and (3) the government agency or local government unit has invited by publication comparative or competitive proposals.

It has been observed though that, oftentimes, the interested contractors/suppliers rather than the proponent agencies themselves spearhead the conceptualization and preparation of project specifications and even the feasibility studies, which are submitted to the ICC for evaluation. The said practice gained, the label “supply driven” for the procurement system.

Congressional Initiatives and the discretionary use of the Countrywide Development Fund (CDF) to finance infrastructure and livelihood projects and the purchase of equipment by legislators also affect the priorities set by the Executive. A World Bank report on managing public resources cited that even with the GPRA, the actual procurement practice in district level projects tends to be non-transparent as some elected officials are reported to pre-determine the winning contractors. This jeopardizes the credibility of the process and compromises the integrity of the BAC members.

B. Procurement and ODA

Whereas the GPRA applies to the procurement of infrastructure, goods and consulting service regardless of source of funds, whether local or foreign, the provision in Section 4 of the law which states: “Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is signatory shall be observed,” leaves the procurement process in precarious situation.

An example is imposition of caps on bids. The new procurement rules disallow bids above the so-called approved budget contract. However, some international financial institutions strongly disagree with government’s proposal to impose a cap on bids for Official Development Assistance (ODA) projects.

Table 1. Various Proposals in Congress Aimed to Improve the Procurement System

SB/ HB No.	Proposals
SBN 1793 (By Sen. Mar Roxas)	Amends Section 4 of the GPRA and proposes that competitive bidding shall govern procurement in relation to executive agreements with foreign nations.
SBN 1963 (by Sen. Francis Escudero)	Places under the coverage of RA No. 9184 the procurement of infrastructure projects, goods and consulting services funded by loan or credit under the ODA Act. Mandates the BAC to post its decision relative to criteria, ratings and calculations of bids on the procuring agency's website or that of the GPPB. Calls for stricter selection/ invitation of observers by limiting the number of times an observer can be invited by a procuring agency. This is being proposed in consideration of the fact that the observers who become regulars of the BAC become friendly, if not, even cohorts in anomalous biddings and transactions.
SBN 2160 (by Sen. Benigno Aquino, Jr.)	Seeks to remove any ambiguity in the interpretation of the scope and application of RA 9184 by amending Sec. 4 to make it very clear that it applies to all government procurement activities, regardless of source of funds, whether local or foreign, and that only treaties or international or executive agreements entered into by the government prior to its enactment shall be exempt from its coverage.
SBN 1794 (by Sen. Mar Roxas)	Amends RA 8182 (ODA Law); Proposes that if an ODA project does not go through competitive bidding pursuant to RA 9184, then it must be ratified by two-thirds of the Senate.
HBN 2203 (by Rep. Abaya)	Amends Sec. 4 of RA 9184; Proposes that only treaties, international and executive agreements before passage of RA 9184 shall be observed.
HBN 2201 (by Rep. Mandanas)	Amends Sec. 43, RA 9184; Proposes that when international treaties and agreements, require that suppliers come from the funding country, these suppliers shall be subject to principles and pertinent provisions of RA 9184

The lenders' insistence on exempting foreign-assisted projects from caps on bids reflects their view that the price of government projects, like everything else, should be set by free and competitive markets rather than by government bureaucrats. However, the estimated cost calculated by third-party consultants is often considerably higher than government's estimates. Consequently, borrowers such as the Philippines must raise higher local counterpart funding and are thus, encumbered more. In contrast, the situation benefits contractors awarded the lucrative contracts with no or restricted bidding among companies from the lending country.

The lack of official guidelines concerning government-to-government procurement transaction leaves the Philippines tied to the conditions given by a donor country. For example, in an infrastructure project, the lending institution without calling for a competitive bidding, can readily assign a contractor it prefers to undertake the project just like what happened with the NBN-ZTE deal. Although Section 4 of the ODA Law of 1996 RA 8182 as amended by RA 8555 provides safeguards in accepting ODA⁵, the absence of implementing rules allows the Executive branch to negotiate and strike a deal with donors, sans contract price caps and bidding.

Also, Section 11-A of the ODA Law states: "In the contracting of any loan, credit or indebtedness under this Act or any law, the President of the Philippines may, when necessary, agree to waive or modify the application of any provision of law granting preferences in connection with, or imposing restrictions on, the procurement of goods or services... xxx." The said provision gives immense power to the President when it comes to negotiating loans from donor countries, sometimes even at the expense of the nation's standing laws.

Following the scandals involving public procurement, bills that seek to address the issues that hound the procurement process have been filed in both houses of Congress. In addition, at the recently concluded 2008 Philippine Development Forum, DBM Secretary Rodolfo Andaya stressed the government's commitment to further improve the country's procurement system and assured that the GPPB together with the Joint Congressional Oversight Committee on the GPRA and development partners are bent on completing IRR-B of the GPRA, which is the key to efficient and effective procurement using foreign assistance, within one year. It is important to note that the government is already drafting IRR-B as early as 2005.

⁵ "xxx ... NEDA shall ensure that the ODA obtained shall be for previously identified national priority projects which are urgent or necessary. ODA shall not be accepted or utilized solely because of its availability, convenience, or accessibility."

C. Procurement and the BOT law

The BOT scheme has been employed by government to finance critical facilities in power, road and rail transport among others, in the face of severe government budget constraints.

The weaknesses in the BOT Law, however, make the procurement system prone to corruption and scams. Most of the procured infrastructure projects that were marred with controversies in the Philippines were “unsolicited proposals.”

Under the BOT law, unsolicited proposals are subject to Swiss challenge, a method used to ensure that the government gets the best possible deal. Under the scheme, the government invites competitors to improve on the deal offered by the original proponent. The original proponent would then get the right to win the deal by merely matching any better terms offered by his competitors -- a right he holds by virtue of having proposed a project that the government had not thought of by itself.

Some big-ticket projects that have undergone a Swiss challenge included the Argentine firm IMPSA’s Caliraya-Botocan-Kalayaan power plant, the Philippine International Air, Terminal Company’s. (PIATCo) NAIA Terminal 3 and the Universal MRT Corporation’s MRT-7 line.

In the case of the NBN project, however, Amsterdam Holdings Inc. (AHI) owned by Jose de Venecia III, which claimed to be the original proponent of the project, never even got to the Swiss challenge phase. In early 2007, AHI officials complained to the Department of Transportation and Communications (DOTC) that its proposal for a build-operate-own (BOO) project -- a subtype of the BOT scheme -- had been ignored while it awarded the very same project to China's ZTE Corporation shortly after. ZTE's proposal was to be funded by a US\$329-million government-to-government loan, which did not go through a competitive selection process, with both the supplier and creditor having been chosen by the Chinese government.

DOTC officials explained that owing to the sensitivity of the government information the project would handle, they decided to do it on a Government to Government transaction as against the initial plan of a BOT scheme. Furthermore, the project cost went up from US\$262 million to US\$329 million because its coverage was expanded from only the 1st to 3rd class municipalities to that including the 6th class municipalities.

D. Other points of contention

- 1. Rebidding and delays in the process.** The World Bank report also cited that even with the PhilGEPS and the participation in the BAC of a representative from NGOs, transparency is not sufficient. Many factors that jeopardize the efficiency and integrity of the process remain, including high rates of re-bidding, especially at the LGU level, and price negotiations before the awarding of contract. Delays still characterize public procurement and sometimes, bid activities are extended on a regular basis.

Failed bidding as a result of wrong price estimation would require not only a re-bidding but also the adjustment of prices which more often than not, increases the ceiling price

The GPPB explained that one of the reasons for the bidding failure is the wrong price estimations of the approved budget contract by the BAC. This often occurs when the BAC fails to factor in items like inflation, taxes, and warranties; and sets the ABC equal to the direct price. Failed bidding as a result of wrong price estimation would require not only a re-bidding but price adjustments, which, more often than not, increases the ceiling price. Sections 31 and 41 of the GPRA authorize said actions.

Table 2. Departments With Projects Incurring Cost Overruns

Dept./ Agency	Number of projects	Cost over run (in bn PhP)	% to total
DPWH	13	P12.82	42
DOTC	4	P6.689	22
NIA	4	P4.42	15
LRTA	1	P4.10	14
others	3	P2.28	7
Total	25	P30.33	100

Source: 15th ODA Portfolio Review, NEDA

Another cause of bidding failure is the bidders' negligence. Some of them bid without meticulously studying the requisites of the project and then submit incomplete and unacceptable proposals.

The GPPB recognizes the actions of the members of BACs and bidders, which cause bidding failure as "honest mistakes." The Board insists that the system is still relatively new and that bidders and even the procuring agencies/personnel are still familiarizing themselves with the new procedures.

In the 2006 ODA Portfolio Review, NEDA reported that 25 projects or nearly a fifth of the 123 ongoing foreign-assisted projects it reviewed that year incurred cost overruns or cost increases amounting PhP30.338 billion, raising the total costs for these projects by more than of a third (Table 2). The DPWH accounted for the bulk of the increase at 42 percent followed by DOTC, 22 percent; NIA, 15 percent, and LRTA, 14 percent.

The common reasons for cost increases cited by the implementing agencies are: (a) additional civil works (changes in scope/ variation orders/supplemental agreements); (b) increase in right-of-way/ land acquisition/resettlement costs; (c) increase in unit cost of labor, materials and equipment; (d) high bids (bids above Approved Budget for the Contract/Approved Agency Estimate); (e) currency exchange rate movement; (f) increase in consultancy services; (g) increase in administrative cost; and (h) claims for price escalation. In nine out of the 25 projects, bids in excess of the approved costs were cited as a reason for the cost escalation.

2. Subcontracting. The IRR of the GPRA allows subcontracting up to 50-percent of the value of the infrastructure project, both locally-funded and foreign-assisted. For public works projects, the DPWH explained that as an industry practice, subcontracting allows for better quality of work, especially when work requires specialization.

The 2005 monitoring report by the Ateneo School of Government's G-watch Project raised concern on subcontracting in many public works projects.

According to G-Watch, subcontracting generally gives room for circumvention of accountability by the principal contractor. The circumvention of such accountability happens in view of the bidding procedure.

During bidding, the principal contractor submits Eligibility Documents, Technical Proposal, and Financial Proposal. The technical proposal contains the following information:

- List of contractor's personnel with their complete qualification and experience data;
- List of contractor's equipment units which are owned, leased, and/or under purchase agreements, supported by certification of availability of equipment from the equipment lessor/vendor for the duration of the project;
- Construction safety and health program of the contractor; and
- Certificate from the bidder under oath of its compliance with existing labor laws and standards.

GPPB expects PhilGEPS to complete and make the e-GPS fully functional by 2010, seven years after GPRA's enactment into law.

These form part of the commitment of the principal contractor in implementing the project. By subcontracting, this step in the bidding procedure is undermined because the principal contractor's initial commitment as embodied in the technical proposal is effectively passed on to the subcontractor through assignment.

Also, subcontracting entails another eligibility check on the part of the DPWH-BAC. This process is an add-on burden and increases government transaction costs, such as expenses incurred by the BAC in: (a) doing investigative or verification work on the documents submitted by the subcontractor; and (b) the monthly honorarium of the BAC members in performing the additional work load.

- 3. Delays in bidding system upgrade.** The law provides for the upgrading to electronic of the bidding system. However, electronic bid submission and electronic payment are yet to be implemented fully. The GPPB explains that the delay is caused by the lack of manpower at the PhilGEPS. PhilGEPS is in charge of the ongoing installation and improvements of the e-GPS and is concurrently responsible for conducting training to accustom both bidders and BACs alike with the electronic bidding system. GPPB expects PhilGEPS to complete and make the e-GPS fully functional by 2010, seven years after GPRA's enactment into law.

Table 3. Status of Training Completion of Agencies, as of April 30, 2008

	Total No. of Government Agencies	Agencies Registered with PhilGEPS	Agencies Trained in PhilGEPS
National Government Agencies	1,828	1600	87.5%
Department Level	22	22	100%
Regional/Bureau/ Attached Agencies/ Executive Offices	1806	1578	87.4%
GOCCs	1,041	698	67.1%
NCR	78	78	100%
Regional/Branches/ District Offices	963	620	64.4%
SUCs	190	189	99.5%
NCR	16	16	100%
Regional	111	110	99.1%
Other campus/schools	63	63	100%
LGUs	43,692	3,674	8.41
Provincial	79	72	91.1%
City Government	117	113	96.6%
Municipal	1,501	873	58.2%
Barangay	41,995	2,616	6.2%

Note: GOCC-Government Owned and Controlled Corporation; SUCs-State College and University; and LGU-Local Government Unit

IV. Conclusion and Recommendations

In 2007, procurement spending accounted for over 16 percent of government expenditure and about 2.8 percent of GDP⁶.

Despite the reforms in procurement, many Filipinos believe that a significant portion of grand corruption occur during the procurement process. By one estimate, an average of 20 percent to 30 percent of every contract is lost to corruption or inefficiency. In the 2006-2007 Global Competitiveness Report, the Philippines ranked 112 out of the 125 in the list of countries where irregular payments are required for public contracts.

The NBN-ZTE controversy left a trail of questions and challenges on how to further improve the public procurement system in the country to prevent anomalous deals from happening. In October last year, the President ordered the cancellation of the NBN-ZTE contract and issued EO 662-A, which aims to enhance the transparency measures of the GPRRA and to create the

⁶ World Bank estimates, as indicated in page 44 of its report at the 2008 Philippine Development Forum on Accelerating Inclusive Growth and Deepening Fiscal Stability.

⁷ OECD DAC, "Harmonising Donor Practices for Effective Aid Delivery. Volume 3 – Strengthening Procurement Practices in Developing Countries," Paris, 2005.

Bearing in mind the rising food and fuel prices, the global economic crunch and the revenue constraints, it is imperative that the government utilize public funds more efficiently and effectively.

Procurement Transparency Group (PTG). Headed by the GPPB, the PTG shall monitor and evaluate proposed and awarded contracts entered into by government agencies and instrumentalities amounting to PhP100 million or more. The PTG is composed of the Presidential Anti-Graft Commission (PAGC), NEDA, Department of Justice (DOJ), DBM, Department of Interior and Local Government (DILG), Bishops-Businessmen Conference for Human Development, Transparency and Accountability Network, Volunteers Against Crime and Corruption (VACC), and two other NGOs involved in training procurement observers and/or procurement reforms.

The World Bank identified the combination of weak budget allocation process, intricate and non-transparent budget execution and the predominance of patron-client relationships in politics and the bureaucracy as factors that facilitate corruption in public procurement. Given the problems that continue to plague the Philippine procurement system, a mere cancellation of the anomalous contract and issuing an executive order leave much to be desired.

Though ODA loans have steadily decreased in the past seven years, the passage of IRR-B of the GPRA should still be prioritized. ODA-funded projects remain prone to irregularity due to the absence of governing rules. It should also be underscored that efficient and effective procurement using foreign funds is a responsibility not just of the government but of the creditor community as well.

With Section 74 of RA 9184 providing the creation of a joint oversight congressional committee on the GPRA, Congress is called on to oversee the implementation of the said law. Pending legislation amending the GPRA and the ODA law should also be acted upon by Congress.

Individuals and companies who are known to have defrauded the government can be perpetually disqualified from securing government contracts. Stricter due diligence should be required of procurement officers to ensure that bids are made by legitimate companies that have the right to tender public services. In addition, coordination needs to be improved between the several anti-corruption bodies responsible for enforcing the law and penalizing violators.

Effective and efficient public procurement system is vital to the achievement of the Millennium Development Goals (MDGs) and the promotion of sustainable development. Public procurement system is at the center of the way public money is spent since budgets get translated into services largely through the government's purchase of goods, works and services.

Furthermore, the impact of foreign aid is especially affected by procurement performance given the significant amount of ODA that is delivered through the public contracting process. Unfortunately, the procurement system in many developing countries such as the Philippines appears dysfunctional and prone to squander scarce domestic and foreign resources. Strengthening procurement capacity must be a vital component of efforts to improve social and economic well-being and a necessary feature of programmes designed to meet the international commitment to reducing poverty.

References:

- 12th Congress of the Philippines. (various months 2002). Transcripts of Session Proceeding on the Government Procurement Reform Act.
- Andaya, Rolando Jr. (2008). Harmonized Rules for Foreign Funded Procurement. *Presentation on the Occasion of the Philippine Development Forum 2008*.
- Angara, Edgardo. (Oct. 24, 2002). Sponsorship Speech on the Government Procurement Reform Act.
- Asian Development Bank/Organisation for Economic Co-operation Development. (2005). Anti-Corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement, *Philippines Self Assessment Report*.
- Ateneo School of Government' Government Watch Project. (2004). Monitoring Report on the Department of Public Works and Highways' Various Infrastructure Projects.
- Dumlao, Doris. (April 1, 2008). Special Report: World Bank lists sources of corruption in the Philippines. *Philippine Daily Inquirer*.
- Dumlao, Doris. (April 2, 2008). Special Report: Sealing the loopholes in procurement law. *Philippine Daily Inquirer*.
- Fabella, Raul & De Dios, Emmanuel. (2007). Lacking a backbone. The Controversy over the National Broadband Network and the Cyber Education Projects. *University of the Philippines School of Economics*.
- Government Procurement Policy Board-Technical Support Office (GPPB-TSO). (2004). Generic Procurement Manuals. _____ (2008). Phone interviews with the GPPB-TSO Staff on between April 2008 and May 2008.
- Government Procurement Reform Act (GPRA) of 2003 or Republic Act No. 9184 (2002).
- Implementing Rules and Regulations of GPRA (2002).
- Habito, Cielito. (May 13, 2007). No Free Lunch: What slows BOT projects down? *Philippine Daily Inquirer*.
- Landingin, Roel. (Feb. 2008). The Perils and Pitfalls of Aid. *Philippine Center for Investigative Journalism*.
- MTPIP 2006-2010, presented by Dir. Gen. Romulo Neri, August 22, 2006. Comprehensive and Integrated Infrastructure Program (CIIP) 2007-2010. *Presentation by the NEDA Board to the Cabinet*.
- National Economic and Development Authority. (2004). Medium-Term Philippine Development Plan (MTPDP), 2004-2010. _____ (various years). Medium-Term Philippine Investment Plan (MTPIP). _____ (2007). 2006 Outcome of the 15th ODA Portfolio Review.
- Neri, Romulo. (2007). Comprehensive and Integrated Infrastructure Program (CIIP) 2007-2010. Presented by the NEDA Board to the Cabinet.
- Organisation for Economic Co-operation Development-Development Assistance Committee. (2005). Harmonising Donor Practices for Effective Aid Delivery. Volume 3 –Strengthening Procurement Practices in Developing Countries. *Paris*.
- Payumo, Felicitio. (Sept. 28, 2007). Commentary: BOT, BOO, BT, BLT, ROT, ROO, etc. *Philippine Daily Inquirer*.
- Thornton, Nigel. (September 2006). What is required to deliver external assistance through country systems? Procurement reforms in the Philippines.
- World Bank. (2007). Accelerating Inclusive Growth and Deepening Fiscal Stability. _____ (2007). Philippine Country Procurement Assessment Report.

This Policy Brief was principally prepared by **G.H. Ambat and Renard Kayne Ycasiano** under the supervision of Directors Maria Cristina Rubio-Pardalis and Merwin H. Salazar, and the overall guidance of Officer-in-Charge, Executive Director Ronald Golding.

The views and opinions expressed herein are those of the SEPO and do not necessarily reflect those of the Senate, of its leadership, or of its individual members.



The Senate Economic Planning Office



joins the nation in celebrating the

6th **DPRM** Development Policy Research Month

Managing the DEVELOPMENT IMPACT
of INTERNATIONAL MIGRATION

September 1-30, 2008