

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SEVENTEENTH CONGRESS
First Regular Session

3420

House Bill no. _____

HOUSE OF REPRESENTATIVES

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Introduced by Representative Jorge "Bolet" Banal

EXPLANATORY NOTE

Article II, Section 9 of the Constitution states:

"The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."

In the past years, there has been a growing global movement to change the manner of consumption from a consumeristic mindset to sustainable framework. This new mindset came about with the realization that resources in our country, and in the world, are finite and would eventually run out. For every industrialized town or city, an equal amount of resources are spent with no way of replenishing what we consume. Thus, there is a need to change this thinking to a more sustainable development mindset.

According to the United Nations paper entitled, Our Common Future, "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." There is a need to look beyond the here and now in all aspects of government policy to ensure that those who will come after our time will still have resources.

This bill aims to change the perspective of the national government to a more forward looking perspective in terms of procurement. This proposed measure aims to institutionalize the three pillars of sustainable development as a consideration in procurement process. It will require an assignment of value to economic progress, environmental protection, and social development.


The first pillar, Economic Progress, considers the following when acquiring goods and services: generation of income, reduction of costs, facilitation of the transfer of skills and technology, stimulation of competition, and creating markets for appropriate technology among others. After all, good governance is good economics.

The second pillar, Environmental Protection, assesses the acquisition's impact to the environment. It takes into account if the goods or services to be procured positively impact our surroundings such as when they minimize energy consumption; reduce greenhouse gas emissions; diminish soil, water, and air pollution; promote the use of biodegradable or renewable materials; protect habitats and biodiversity; and prevent the use of toxic chemicals.

The third pillar is Social Development. This aims to include criteria which promote societal progress, namely, prioritizing solutions that encourage the participation of the community through community contracting, uphold principles of fairness and equality, reduce poverty or unemployment, promote working conditions, empower the marginalized sectors of society, and fosters inclusive growth.

Institutionalization of these pillars will ensure that government agencies and offices do not just consider the prices in procurement but its overall contribution to development. Through this policy, the national government will be enabled to do their share in guaranteeing that future generations will still have means for self-development.

In view of the foregoing, passage of this bill is urgently sought.



Jorge "Bolet" Banal
Third District of Quezon City

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14 **AN ACT PROMOTING SUSTAINABILITY IN THE PUBLIC PROCUREMENT**
15 **PROCESS BY INCORPORATING POLICY IN PROCUREMENT AND CONSIDERING**
16 **ENVIRONMENTAL, SOCIAL AND ECONOMIC FACTORS AS ADDITIONAL**
17 **CRITERIA FOR BIDDING AND FOR OTHER PURPOSES**

18 Section 1. *Short Title.* This Act shall be known as "The Sustainable Public Procurement
19 Act of 2016".

20 Section 2. *Declaration of Principles and Policies.* The Constitution mandates the State
21 to promote a just and dynamic social order that will ensure the prosperity and
22 independence of the nation and free the people from poverty through policies that
23 provide adequate social services, promote full employment, a rising standard of living,
24 and an improved quality of life for all. It is further declared that the State shall promote
25 social justice in all phases of national development.

26 Consistent with these constitutional precepts, this Act shall be governed by the same
27 principles of transparency, competitiveness, streamlined procurement process, system
28 of accountability, and public monitoring, under Republic Act No. 9184, or the
29 Procurement Law.

30 Section 3. *General Objectives.* This Act seeks to:

31 (a) Institutionalize the inclusion of the three (3) pillars of sustainable
32 development, namely Economic Aspect, Environmental Aspect and Social
33 Aspect, in public procurement;

34 (b) Optimize the use of government funds in the acquisition of goods and
35 services;

36 (c) Shift to a public procurement system that recognizes the core principles of
37 sustainable development and social responsibility;

(d) Use public procurement as a vehicle to achieve socio-economic and development objectives, promote fundamental human rights, social justice, gender equality, labor rights, and protect the environment;

(e) Encourage the active participation and involvement of the private sector in the procurement process.

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

Section 5. *Definition of Terms.* For the purpose of this Act, the following terms shall be defined as follows:

(a) Community Contracting - refers to the term used to describe a wide variety of modalities of participation of the beneficiary community in the procurement process, where the community group may act as a contractor, or engage in the implementation of the works, or perform other similar acts.

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

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

(d) Economic Progress - refers to the criteria in public procurement that takes economic consequences into consideration, preferring solutions that are innovative and sustainable, that generate income, reduce costs, support the transfer of skills and technology, stimulates competition, or create markets for appropriate technology.

1 (e) Environmental Progress – refers to the criteria in public procurement
2 which gives preference to solutions that are environmentally sound, taking into
3 consideration the “footprint” or impact of public procurement in the ecosystem,
4 such as, but not limited to, giving priority to those options that help minimize
5 energy consumption, reduce greenhouse gas emissions, and soil, water and air
6 pollution, promote the use of biodegradable or renewable materials, protect
7 habitats and biodiversity, and prevent the use of toxic chemicals.

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

17 (g) Infrastructure Projects - include the construction, improvement,
18 rehabilitation, demolition, repair, restoration or maintenance of roads and
19 bridges, railways, airports, seaports, communication facilities, civil works
20 components of information technology projects, irrigation, flood control and
21 drainage, water supply, sanitation, sewerage and solid waste management
22 systems, shore protection, energy/power and electrification facilities, national
23 buildings, school buildings, hospital buildings, and other related construction
24 projects of the government. For purposes of, and throughout this IRR, the term
25 “Infrastructure Projects” shall have the same meaning as, and shall be used
26 interchangeably with, “civil works” or “works”.

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

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

(j) Social Aspect – refers to the criteria in public procurement that highlights socially responsible purchasing, by prioritizing solutions that encourage the participation of the community through community contracting, uphold principles of fairness and equality, reduce poverty or unemployment, promote working conditions, or empower the marginalized sectors of society.

(k) Sustainable Development - refers to development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

(l) Sustainable Procurement – is a process whereby organizations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organization, but also to society and the economy, while minimizing damage to the environment.

(m) Value for Money - is the optimum combination of quality, performance and price that produces an outcome that is environmentally, socially or economically beneficial to society.

Section 6. *Sustainable Procurement Structure*. The sustainable procurement process shall involve the following government units, agencies, offices and entities:

- (a) Government Procurement and Policy Board. The GPPB shall be the principal body responsible for sustainable procurement policy formulation and the implementation and monitoring of effective public procurement reform. In line with this Act, the GPPB shall have the following additional duties and responsibilities:
- (1) Undergo consultations with the private sector through their District Development Council, the procuring entities and other stakeholders;
 - (2) Develop a procurement strategy that institutionalizes sustainability as a determining factor in public procurement;
 - (3) Set the criteria to be considered in the selection of the winning bidder;
 - (4) Incorporate this Act's provisions in the training program for Government procurement officers and employees; and
 - (5) Provide assistance to Procuring Entities to facilitate a smooth transition into sustainable procurement.
- (b) Procuring Entity. In accordance with the provisions of this Act, the Procuring Entity shall be tasked to:
- (1) Require its procurement officers to undergo regular trainings;

- (2) Comply with their unit or agency's Policy and Action Plan, and incorporate the Three Pillars of Sustainable Procurement in listing the Invitation to Bid, and in the evaluation and awarding of bids;
- (3) Encourage the participation of community contractors in the procurement process;
- (4) Submit recommendations to the GPPB the proportion of the applicability of the three (3) pillars of sustainable procurement, considering the product or service that needs to be sourced; and
- (5) Declare a Failure of Bidding when the only available bids are not economically sound, are detrimental to the health and well-being of the affected community, or will vastly contribute to the degradation of the environment through the destruction of habitats or ecosystems, or massive pollution.

Section 7. Policy Determination, Procurement Planning and Preparation. All procurement should be within the approved budget of the Procuring Entity and should be meticulously and judiciously planned by the Procuring Entity concerned.

The Procuring Entity shall consult with the GPPB, the District Development Council and other stakeholders, in the production of a basic Policy and Action Plan, which will incorporate all the guidelines to be followed in the evaluation and awarding of bids. This shall be an ongoing process, consistently evolving based on the changes in policy and the community's needs.

Section 8. Implementation and Assessment. The rules and guidelines for the implementation and assessment of contracts awarded pursuant to the provisions of this Act shall be prescribed in the IRR.

Section 9. Implementing Rules and Regulations. Within one hundred twenty (120) days from the effectivity of this Act, the Government Procurement Policy Board shall meet with sectors in order to determine opportunities for sustainable public procurement, and structure a policy and action plan in accordance with globally-accepted guidelines of SPP.

Section 10. Separability Clause. If any provision of this Act is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

Section 11. Repealing Clause. All laws, presidential decrees, executive orders, proclamations and/or administrative regulations, which are inconsistent with the provisions of this Act are hereby amended, modified, superseded or repealed accordingly.

1 Section 12. *Effectivity Clause*. This Act shall take effect fifteen (15) days after its
2 publication on the Official Gazette or in at least two (2) newspapers of general
3 circulation.

4 Approved,