

The Government Procurement Law (RA 9184) And Its IRR: Flaws on the Compliance Based on the Observations in the Procurement Bidding Process by the Employees of the Philippine Center for Postharvest and Mechanization Development (PHilMech)

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Abstract— It has been stated repeatedly that delays in government spending in the past have been caused, in part, by problems with procurement. The PHilMech Budget has been citing procurement as an excuse for underspending for many years. The cumulative disbursement outcome for 2019 was lower than the programmed spending for the year by approximately Php 48 million, or about 23% of utilization in the Regular fund, and by approximately 9 million, or about 9% in the Rice Competitiveness Enhancement Fund. Although not all of the savings result from underspending (i.e., about 21% of the amount is attributable to a combination of greater interest payment savings and net lending, which reflects prudent debt management by the government), the majority is reflected as a decline in agency performance in disbursements and budget utilization. The problem of procurement management delays in PHilMech has been enormous. Its effects were so profound that it frequently slows down the execution of strategic planning. This essay examines the management and procurement law flaws that contributed to the delays in the PHilMech projects' implementation. The analysis's findings showed that poor management, ineffective planning and scheduling, and cash flow and financial difficulties faced by management were the major issues that contributed to delays. Several actions are suggested.

Keywords— *bidding process, budget utilization, delays, government spending, procurement*

I. INTRODUCTION

This study examines the issues which beset the implementation of the public procurement law RA9184 and its IRR in the Philippine Center for Postharvest and Development and Mechanization (PHilMech), especially in light of the recent concerns on delays in project implementation and underspending by government agencies like PHilMech.

The limited procurement professionals worked in committees on PHilMech on a basis and returned to their former position upon the completion of the project. It has many weaknesses and results in low performance of public procurement. The low performance of public procurement has a negative impact on the state losses which consist of fictitious Procurement of Goods and Services, partners do not complete work, goods and services do not meet

specifications, lack of work volume, price mark up and expenditures not in accordance.

It is necessary to improve the performance of public procurement. The development of procurement professionals is one of the key factors in public procurement that are more quality, timely, and effective. The objectives of procurement professionals' development of activities include increasing efficiency and saving public procurement; guaranteeing the availability of goods and services timely and providing public services as planned, through efficiency and savings will be obtained more and more quality goods and services to give a positive impact on economic growth.

Lack of knowledge skills of procurement personnel affects service quality and procurement efficiency. Procurement personnel must focus on maintaining professionalism. The Procurement unit needs to be changed into a structured organization to facilitate coordination. The role of Government in Public procurement policies is needed to improve long-term procurement efficiency. Inaccurate procurement of goods and services can lead to a case of

fictitious Procurement of Goods and Services, low-quality partnerships, unfinished prices and expenditures that are not in accordance with the provisions. Key lessons from experience are investigated through interviews with staff of procurement and end-user in the implementation and execution of the Philippine procurement process. The numerous key informant interviews greatly revealed the difficulties encountered and good practices implemented under the current legislative framework.

The Philippine Public Procurement Framework

The current legislative framework is contained in the Republic Act (RA) 9184 or the Government Procurement Reform Act of 2003. It was signed into law on January 10, 2003. The implementing rules and regulations (IRR) were revised several times: October 8, 2003; September 2, 2009; and, more recently August 25, 2016. The governing principles, as provided by Section 3 of RA 9184, are transparency, competitiveness, streamlined procurement process, accountability, and public monitoring. The following summarizes the reform interventions in the law that support these objectives:

Objectives	Reform Interventions
Transparency	Use of the Philippine Government Electronic Procurement System (PhilGEPS)
Competitiveness	Sec.10 of RA 9184 states that Public bidding shall be the default mode of procurement. Article XVI provides alternative methods of procurement
Harmonization of Inconsistent policies, rules and regulations	Creation of the Government Procurement Policy Board (which is an inter-agency body)
Accountability	RA 9184 includes penal and civil liabilities
Checks and balance	Civil society organization participation

Statement of Problem

The cited reasons by government agencies for the low disbursement outturn are various, but a recurring reason is “public procurement issues.” A major reason cited is “procurement difficulties due to problems in procurement scheduling, delays in bidding, and incorrect technical specifications and costing.” We are thus motivated to help accelerate public investments in high-priority programs and projects by studying what really constrains public procurement in actual practice and finding ways to address the public procurement constraints.

II. METHODOLOGY

The study will be conducted in PHilMech offices. The researcher used the descriptive survey type of research to

gather data which will describe the flaws and deviations in the procurement law RA 9184 and its IRR by the PHilMech employees. The opponents are ten (10) BAC members (with BAC Secretariat and Technical Working Group) of the PHilMech and Chief of Offices/ End Users.

The questionnaire will be the main data-gathering instrument. Secondly, sources were reviewed, and interviews were conducted to respond. The questionnaire is made up of observations of respondents on the provision of R.A. 9184 and its IRR.

Results of Procurement Data

One research topic of concern is the comparison of competitive procurement mode versus the alternative modes of procurement. To put the research topic in perspective, note that Competitive Procurement can take a long time and involve a lot of complex paperwork. Furthermore, not all

agencies will want to bid on the tender. To undercut competitors' prices, some companies may underbid or provide unreasonably inexpensive goods and services. The proposal is to authorize the adoption of alternative modes of procurement as the default mode in implementing projects aimed at delivering other goods and services to the final beneficiaries or end users. It is expected that some portion of the project budget will involve the procurement of supplies. Thus, we processed the data further to gather all competitive bidding records as one group and the rest or alternative modes as another group.

One shortcoming of the recording system in the PhilGEPs that is not favorable for our purpose is that there is no ID for the "repeat" procurement cases, or those projects which are already on their second or third round of procurement process because the procuring entity's previous tries were not completed or failed for some reason. Thus, we have no way of isolating those which are not on their first try and therefore have a higher probability of success or bidding process completion, that is, we have no way of isolating the reason that a certain record has a Notice-to-Proceed observation or successful procurement completion only because the project bidding is already on its nth try.

III. RESULTS AND DISCUSSION

Table 1. Profile of the Respondents – 7 of the respondents were female and 3 were male, 5 respondents were above 40 years old and 3 respondents have 3 years and above working experience as BAC/TWG and End-Users. It shows how the working experience of BAC/TWG answers the questions regarding the process of procurement law.

Sex of Respondents	Male	3
	Female	7
	Total	10
Age of Respondents	30 years old below	3
	30-40 years old	2
	40 and above	5
	Total	10
Working experience as BAC/TWG /End Users	Below 1 year	4
	1-3 years	3
	3 and above	3
	Total	10

Table 2. It shows the Seven (7) Factors that have an impact on the bidding process that respondents agreed.

Indicators	Strongly Agree	Agree	Neutral	Disagree	Strongly disagree
1. Awarding Contracts	6	2	2	0	0
2. Planning	6	2	2	0	0
3. Strength of BAC and TWG	8	1	1	0	0
4. Procurement law Competition	8	2	0	0	0
5. Context of Procurement Planning	6	3	1	0	0
6. Implementation and Execution of Procurement law	5	2	2	1	0
7. Integrity of Procurement	5	2	2	1	0

Figure 1. 10% of the respondents strongly agreed that Awarding of Contracts is one of the causes of delays, 98% for Procurement Planning, 98% that need of strengthening the BAC and TWG, 75% on the need to Encourage the Competition on Procurement law, and 11% of the Spending in the context of procurement planning (budget-planning), 9% that needs to improve the implementation and not but the list the principle of integrity 10%.

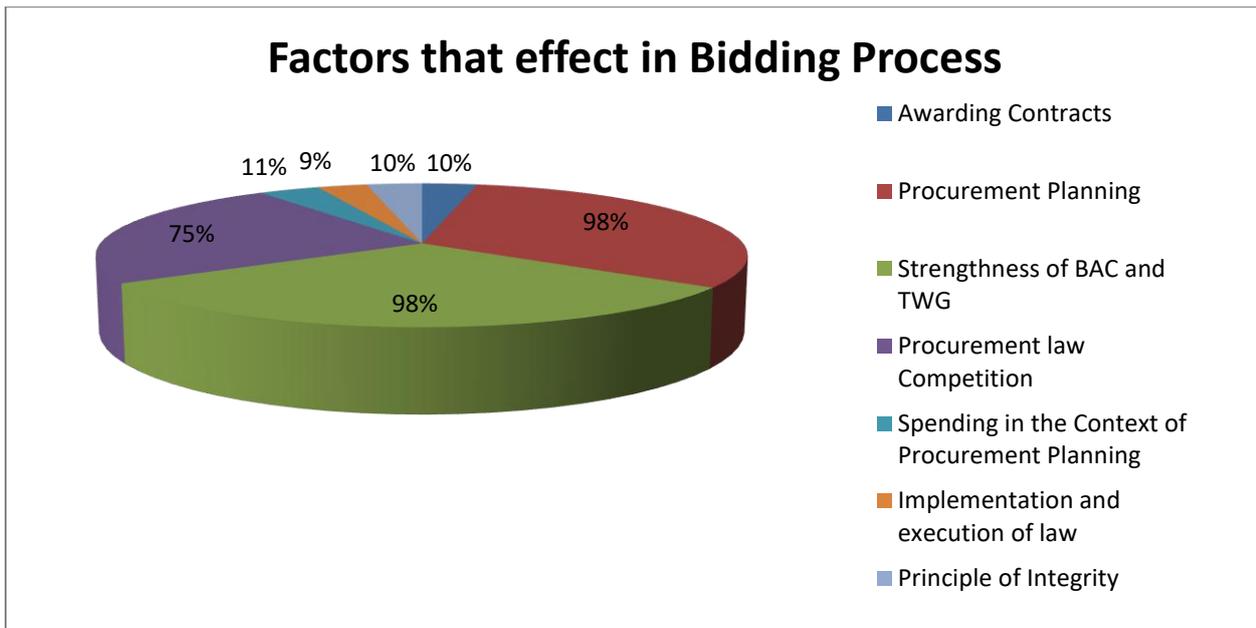


Fig.1. Factors Effects in the Bidding Process

Results of Key Informant Interviews

Highlights of Discussion

1. **The principle in Awarding Contracts.** The key informant clarified the rule when it comes to awarding the contracts. The phrase ‘most responsive bid’, according to him, is vague and does not capture shades of quality. As an example, one respondent cited that projects are awarded based on quality at the most reasonable price. The end-user states that agencies should not be constrained to consider the price only.
 - a. GPPB stated that the guidelines state ‘lowest’ and ‘most responsive bid. Responsiveness in this context refers to the compliance of the bid to the technical specifications set by the procuring entities. Therefore, it is the duty of the procuring entity to ensure that the technical specifications are properly crafted.
2. **Planning as a cause of Procurement Delays.** The point of PHilMechs' Bids and Awards Committee above highlights the most common cause of procurement delays. The body agrees that most of the delays in the procurement system stem from flawed planning. One of the issues discussed is the capacity of government agencies to properly identify the “Approved Budget for the Contract” (ABC). An incorrect ABC would restart the overall procurement process, thus delaying the disbursement of funds.
 - a. In detail, the ABC serves as the price ceiling for the contract. Thus, a low ABC would not receive any bids from suppliers. No bids would result in a failure of bidding. The Bids and the Awards Committee (BAC) and the Technical Working Group (TWG) would now restart the whole procurement process (including realigning the budget, revising the Annual Procurement Plans (APPs), redesigning the technical specifications, etc.) before it can be posted again for advertisement. Should the bidding fail again, then the procuring entity can change the mode of procurement from Bidding to Negotiated Procurement. Negotiated Procurement will also have a different process.
 - b. As an example, the Procurement Team cited an experience of procuring Tractors. The initial ABC specified only the price of the equipment, but not the import duties and taxes. Therefore, failure of bidding was declared when no supplier signified interest based on the ABC. In this case, poor planning can be traced to the TWG and BAC.
3. **Strengthening the BAC and the TWG.** Related to the poor planning is the lack of capacity of the BAC and TWG in implementing the rules and regulations set by RA 9184.
 - a. For one, stated that the TWG is 'ad hoc' in nature. It is usually composed of the end-users who may not have the know-how to properly identify the technical specifications nor the appropriate budget for the good or service needed.

- b. In addition, BAC members have a one-year term, renewable at the discretion of the Head of the Procuring Entity (HOPE). Usually, when a new HOPE is designated, the BAC members are also replaced.
- c. One respondent stated capacity building continues to be one of their main tasks. They are continually training new members to become BAC members. Although, it must be noted there are currently plans for the professionalization of the procurement officers. Only those who undergo a course on government procurement shall be eligible to be members of the BAC.
- d. Another suggested that procuring entities may hire procurement specialists or transaction advisers to aid in streamlining and fast-tracking the procurement process. Further, it would be best if procuring units will be institutionalized in government agencies.
 - i. This can be done under the existing rules. It is up to the procuring entities to decide if they choose to hire such consultants. In the law, GPPB-TSO also states that procuring entities can seek the advice of other government agencies with specific expertise.
 - ii. Approval as this would require additional plantilla positions. Currently, there are no career service employees for procurement at the strategic level.
- e. The procuring entities can also hire procuring agents, as provided by the IRR of RA 9184. But one stated that agencies should also learn the procurement process themselves. They add that most of the agencies are not familiar with transaction advisers, thus it is not even being considered.

4. Procurement Law should Encourage Competition.

Another respondent from the Bids and Awards Committee stated that the law should be able to encourage competition. Currently, the existing laws do not inspire small firms to grow bigger since they find a segment of government procurement that is essentially only for them.

For example, Small B (up to Php 10 million in contract price) projects only invite contractors that are licensed as C or D. He asks if they could require an AAA-licensed contractor, even for a Small B project.

- a. In reality, AAA-licensed contractors can compete in Small B projects. There is no provision in the procurement law that limits competition. However, the AAA contractors are usually not interested in those small projects.
- b. Further, License Law is applicable in this case, which also provides for specific guidelines that need to be followed.
- c. In a related point, highlighted the fact that the competition aspect has been regulated by other various legislations since time immemorial. It must be remembered that even if bidders are part of delays, they are not incentivized to grow since the market is governed by laws that promote domestic preference.

5. Under spending in the Context of Procurement Planning.

One respondent from the BAC stated that factors in under-spending experience include the following: a) the poor planning brought about by uncertainty in the budget that government agencies will receive, and; b) lack of absorptive capacity.

- a. In the current process of government budgeting, the government agencies prepare their estimated budget based on their annual implementation plans and then submit the same. Congress is the power of the purse to approve, increase, or decrease the proposed budget of the PHilMech. According to her, what is traditionally done by different divisions is to overstate their needs and fill their annual plans with indicative projects. This is because divisions are expecting to only approve a certain amount for their proposed plans. Thus, even after some budget cuts, the divisions will still have an ample amount of resources to pursue their annual implementation plans.
- b. However, this uncertainty in the planning-budget programming linkage became a problem as early as when the national government had enough money to allocate. Thus, the overstated annual plans were approved, while others were granted more than what they requested. PHilMech lacks the absorptive capacity to effectively implement the projects they listed in their proposed plans. This was also the cause of the Disbursement Acceleration Program, as implemented by the current administration.

For example, on average, each division was given around 1.5 million pesos annually. Then, there was a year that it was increased to more than 5 million pesos, which caused difficulties in its implementation.

6. Despite this, PHilMech mentioned that there still is a need for improved implementation and execution of the law. Most of the problems in procurement are considered 'human-borne difficulties'. Further, there are hesitations from the side of the procuring entities since they are getting mixed signals from COA and the Ombudsman. GPPB is the policy-making body, but the investigations and enforcement of fines are with COA and the Ombudsman.
7. **Principle of Integrity in Procurement.** The BAC member also mentioned that a significant component in procurement is the principle of integrity. PHilMech asks whether there are mechanisms in place to prevent collusion between agencies and suppliers.
 - a. Stated that there are certain provisions in the law that prosecutes those who will be caught colluding. However, he reminded the body that it is by practice in law that those who allege must be the ones to prove. The evidence against an act of collusion must be beyond circumstantial.
 - b. Also if accreditation of private bidders is being done. A scheme such as an integrity pledge may be implemented and included as part of the technical specifications.

It was also discussed that good practice in public procurement would be 'whitelisting'. Government agencies should not only blacklist but actively keep a record of compliant and responsive bidders. PHilMech stated that this is currently being practiced by several, but is not adopted consistently.

The PHilMech also would like to shift to a more 'principle'-based implementation of the law, rather than 'rule'-based implementation. Rule-based implementation has caused several confusions and clarifications from agencies addressed to the GPPB. Each procurement activity is unique, and sometimes the existing rules will not allow even the most efficient procurement method. PHilMech admitted that this is how the rules are made as it was crafted with anti-corruption as one of its objectives.

- c. Principle-based implementation will be governed by the following principles:
 - i. Public Monitoring
 - ii. Accountability

- iii. Competitiveness
- iv. Transparency
- v. Streamlined Process

IV. CONCLUSIONS

Findings from this study provide conclusive evidence that the Procurement law and its IRR have an impact on the Procurement process – that causes delays in the implementation of bidding. More respondents agreed that there is a strong effect in the seven (7) indicators. All stakeholders, the procuring entity, evaluation panel, approving authority, requesting entity, etc. involved in the bidding, evaluation and selection phase are responsible for making every effort to avoid delays in the procurement process. It has to be a collaborative effort.

On the other hand, training for procurement professionals also contains understanding skills in organizational development. Institutional mentoring did by way of the assistance of Human Resources through GPPB training. Thus, a more effective procurement organization can be achieved. With the achievement of professional procurement personnel and supported by effective procurement organizations, it is expected that more quality and production processes will be created. Furthermore, establishing good procurement according to procurement law and its IRR RA9184.

V. RECOMMENDATIONS

1. Pursue deliberate investments in and have a political will for systems change and organizational culture change. The PHilMech under the helm of the Department of Agriculture Secretary is an example of this. When the government was severely criticized by many stakeholders for the delays in the implementation of agricultural machinery projects or any goods and services. The DA Secretary vowed to institute an agency transformation program which will reduce corruption, improve efficiency, optimize resources and realize an overall organizational culture change. To implement the right projects at the right cost and with the right quality, and for these to be delivered right on time and carried out by the right people.

For example, in the procurement process, the agency removed the requirement for contractors to submit a Mayor's permit, Registration Tax, and DTI. etc., so as to prevent collusion. It also simplified the bidding process by requiring only Updated PhilGEPS. Submitting documents in the past provided a lot of room for discretion and opportunities for

disqualification in order to favor a bidder. The PHilMech also implemented the "clustering of projects", that is, related projects are joined and packaged into bigger contract packages in order to attract competent contractors. In the area of project management, the agency also established standard cost estimation manuals for agricultural types of machinery. It also gathered, disseminated and updated price data on goods/machines nationwide.

The PHilMech is one of the attached agencies of the Department of Agriculture, outsourced some project inspection and quality assurance services. The agency also set up a web-based communications system for receiving, replying to, and taking action on any complaint, query, or suggestion. It also conducted selective and purposive auditing by concentrating on the most vulnerable areas and giving sanctions to officials with major lapses. As a matter of policy, it also encouraged whistleblowing and internal reporting of bad behavior. It is also currently running an Organizational Culture Change Project, which includes interpersonal and personal skills development related to core public services values such as integrity, excellence, professionalism and teamwork.

2. Greater investment in planning and other preparatory activities before the actual procurement

There should be deliberate budgeting for updating project development studies and procurement plans. The investment plans and programs must be communicated very early. Ensure also that expert procurement units are acquired. Tested good practices from implementation must also be upscaled.

3. Innovation orientation in public procurement

This is part of strategic procurement or catalytic procurement. The strategies are to come from the demand side, which often has an innovation orientation.

Examples are:

- when large-scale use of an innovation is needed, achieving the critical mass of purchase through bundling
- when the government needs to meet a normative policy goal such as sustainability or energy efficiency, ask for leading-edge products and services
- meeting normative policy goal:
- monitoring app

4. Value-for-money procurement

A thorough consideration of value for money begins with officials clearly understanding and expressing the goals and purpose of the procurement.

When a business requirement arises, officials should consider whether a procurement will deliver the best value for money. In this approach, we need to consider the relevant financial and non-financial costs and benefits of each submission including, but not limited to:

- a. the quality of the goods and services;
- b. fitness for purpose of the proposal;
- c. the potential supplier's relevant experience and performance history; whole-of-life costs.
- d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement); and
- e. environmental sustainability of the proposed goods and services (such as energy efficiency and environmental impact)

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