IFLR
INTERNATIONAL FINANCIAL LAW REVIEW

INTERNATIONAL BRIEFINGS 2015

Philippines
SyCip Salazar Hernandez & Gatmaitan

Complaints mechanism concerns

Republic Act No 9184, or the Government Procurement Reform Act (GPRA), took effect on January 26 2003. The GPRA covers all stages of procurement of infrastructure projects, goods, and consulting services by all branches and instrumentalities of government.

The GPRA establishes a two-tier protest mechanism to challenge a public procurement tender before an award. In order to exhaust this internal protest procedure, a bidder must first file a request for reconsideration with the procuring entity's Bids and Awards Committee (BAC). The BAC's denial of the request may be protested in writing to the head of the procuring entity upon payment of a non-refundable fee. The decision of the head of the procuring entity is final, such that the bidder may only avail itself of judicial review upon completion of protests and only on the ground of grave abuse of discretion. Arguably, this legal framework does not provide an expedient system for independent complaints review. Meeting the timeframes provided under the law for protest resolution is a challenge for many procuring entities, and the absence of independent and expert review undermines, to a certain degree, the legitimacy and credibility of any protest resolution.

Further, while an effective recourse system is necessary to preserve the integrity of public procurement and ensure transparency, these interests must also be balanced with the need for a streamlined procurement process. Undoubtedly, bidders are not above abusing the complaints mechanism simply to harass competitors and delay the award of a contract.

Establishing an independent complaints body may improve efficiency, promote transparency, and reinforce the legitimacy and credibility of resolutions. There are now measures in Congress to amend the GPRA by empowering the Government Procurement Policy Board, which functions as a policy-making body, to act as an autonomous appeals body to resolve protests.

Anthony Dee and Patricia Paz

Anthony Dee
Email: awdee@syciplaw.com

Patricia Paz
Email: mpbpaz@syciplaw.com

Tel: +63 2 982-350

SyCipLaw Center
105 Paseo de Roxas, Makati City, Metro Manila, Philippines 1226
Web: www.syciplaw.com

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