
07 May 2024

Senator Juan Edgardo Angara

Chairperson

Senate Committee on Finance

Philippine Senate

**ECCP Healthcare Committee Position Paper on the Proposed Amendments to the
Government Procurement Reform Act or Republic Act No. 9184**

Dear Senator Angara:

The European Chamber of Commerce of the Philippines (ECCP) is a multilateral foreign chamber and a membership organisation with over 780 members among its ranks. The ECCP has been a steadfast partner of the government and other stakeholders within the business sector, civil society, and academe towards further strengthening growth prospects for the Philippines, thus its active engagement with stakeholders on economic issues, legislative measures, and administrative regulations, among others.

By the said token, the ECCP recognises the Philippine government and its current Congress' thrust to further improve policies and legislation that are aimed at improving processes and adapt to the evolving needs of the economy as well as specific sectors. Among these efforts include the proposed amendments to the Government Procurement Reform Act or Republic Act (RA) No. 9184, in which House Bill No. 9648 has been approved on third reading in December 2023, and various bills are undergoing Senate deliberations.

The Chamber acknowledges the intent of the proposed amendments to address concerns relating to procurement processes, as well as to adopt best practices on new procurement modes and strategies, including the introduction of provisions on most economically advantageous responsive bid or MEARB, direct acquisition, procurement schemes involving research and development, as well as its consideration to the whole life cycle of a procurement project, and capacity building initiatives for procurement officials.

Relative to the objective of developing an enhanced procurement system, the ECCP and its Healthcare Committee transmits its position paper on the proposed amendments to RA No. 9184, covering the following recommendations:

(1) Creation of sector-specific guidelines on procurement and promotion of value-based procurement

Under RA 9184, healthcare products, along with furniture and rental services, among others, are classified as ‘goods’,¹ to which apply the principle of lowest calculated price.² While we recognise that this concept drives competition and reduction of prices, we also underscore that lowest price bids may limit the access to quality and innovative healthcare products that help enhance patient outcomes.

For the healthcare sector, specific technical requirements are required to guarantee the quality, safety, and effectiveness of medical products. With this, we strongly believe that procedures for the healthcare sector should not be viewed under the same umbrella as other sectors.

In this context and highlighting the specialised and technical criteria that are considered in the procurement of healthcare commodities, the ECCP highly encourages that the proposed legislation incorporates provisions on the creation of sector-specific procurement rules or guidelines, to further support the objective of balancing price and quality of products.

Procurement processes for medicines, vaccines, and diagnostics may employ a mechanism that takes into account additional factors such as the quality of the medication, the reliability of the supplier, the impact of health technology, and the availability of supplementary services or programs, as exemplified in Malaysia.³ By integrating such aspects into the decision-making process, thorough and better-informed procurement and tender evaluations can be undertaken.

It is also worthy to note that there is a global movement towards value-based procurement, which emphasises how a product or solution, such as medicine, can successfully contribute to addressing health outcomes and needs, while managing the total cost of care and providing long-term benefits to all stakeholders in the healthcare sector. As an example, the European

¹ Government Procurement Policy Board (GPPB). (n.d.). Republic Act (RA) No. 9184, Article I, Section 5(h). Retrieved from <https://www.gppb.gov.ph/wp-content/uploads/2023/06/Republic-Act-No.-9184.pdf>.

² GPPB. (n.d.) RA No. 9184. Article IX, Section 32.

³ United Nations Office on Drugs and Crime. (n.d.). Malaysia’s Government Procurement Regime. Retrieved from https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2016-August-22-24/Contributions_NV/Malaysia_EN.pdf.

Union's Directive 2014/24/EU⁴ aims to modernise procurement and underscore the importance of balance between cost and quality, supporting a value-based procurement approach.

(2) Institutionalising the procurement of healthcare products that are not in the Philippine National Formulary (PNF) or are undergoing Health Technology Assessment (HTA) review

Executive Order No. 49, series of 1993⁵ states that only drugs included in the Philippine National Formulary (PNF) are eligible for government procurement. However, it is significant to note that, as of 2018, only 676, or 3.5%, of the 19,381 medications registered with the Food and Drug Administration (FDA) were covered in the PNF.⁶ The inability of end-users to purchase medications due to this limitation thereby creates a counterproductive impact on the country's healthcare system.

Given this scenario, we suggest amending RA No. 9184 to institutionalise the government procurement of non-PNF drugs as well as those under Health Technology Assessment (HTA) review, provided that end-users such as hospitals, healthcare professionals, and patients, demonstrate the need for such healthcare products. It is also encouraged to implement special access schemes that incorporate non-PNF medications through government partnerships and funding. To illustrate, Malaysia's Patient Access Scheme (PASc) was implemented with the objective to improve access to medicines, involving 'innovative pricing agreements to improve cost effectiveness and facilitate access to specific medicines'⁷.

In relation to this, we recommend the consideration of current policies that already provide for the procurement of non-PNF health commodities. Among the said policies is the Department of Health (DOH) Administrative Order 2016-0034, which allows for the procurement of non-PNF molecules,⁸ as well as RA No. 11215 or the National Integrated Cancer Control Act, which provides that cancer medicines that are not in the PNF, as well as those under review or

⁴ EUR-Lex. (2024). Consolidated text: Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Text with EEA relevance). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014L0024-20240101>.

⁵ Official Gazette. (1993). Executive Order No. 49 s. 1993. Retrieved from <https://www.officialgazette.gov.ph/1993/01/21/executive-order-no-49-s-1993/>.

⁶ WHO. (2018). How Pharmaceutical Systems are Organized in Asia and the Pacific. Retrieved from <https://iris.who.int/bitstream/handle/10665/260004/9789290618485-eng.pdf?sequence=1>.

⁷ Ministry of Health, Malaysia. (2018). Guidelines on Proposal Submission for Patient Access Scheme (PASc) Implementation in Ministry of Health. Retrieved from https://pharmacy.moh.gov.my/sites/default/files/document-upload/25.8.2020-guidelines-proposal-submission-patient-access-scheme-2018-dengan-no.-siri-kelulusan_0.pdf.

⁸ Department of Health (DOH) Administrative Order No. 2016-0034, General Guidelines, item L. Retrieved from <https://www.scribd.com/document/386088255/DOH-AO-2016-0034>.

not approved by the HTA may be accessed through special schemes in the private sector, among other mechanisms.⁹

Finally, to help ensure continuous access to innovative treatments notwithstanding their inclusion in the PNF, we emphasise that the amendments to GPRA should provide for adaptivity to emerging health technologies, towards the promotion of health equity through promoting access to innovative and advanced treatments.

(3) Implementation of pooled procurement and multi-year contracts, as well as introduction of new procurement modalities

The ECCP strongly supports the implementation of pooled procurement and multi-year contracts, as these can reduce costs significantly by consolidating demand for healthcare commodities. Pooled procurement entails consolidating the purchasing power of several entities to meet their aggregate demand. This strategy generates significant market influence, encouraging suppliers to decrease their prices due to high demand. This not only improves cost-effectiveness, but also allows for more strategic negotiation of favourable terms and conditions.

As we recognise the diversity of pooled procurement mechanisms, we make reference to and put forward the below procurement procedure utilised by jurisdictions with universal healthcare programs¹⁰:

1. Government collects health data on the incidence of different diseases and illness to calculate the volume of medicines they will require.
2. The Health Department uses the data to negotiate with medicine manufacturers to achieve the best possible price based on the country's longer-term needs for bulk procurement of their requirements.
3. Government can gain optimal prices by pooling procurement of the medicines while ensuring supply availability, buying for the country's needs as a whole.
4. Make medicines available to patients through the UHC system either for free or for a low-cost flat rated prescription charge.
5. Patients access their medicines by getting their prescriptions.

⁹ DOH. (2019). RA No. 11215 Implementing Rules and Regulations, Rule VI, Section 23. Retrieved from <https://app.doh.gov.ph:1024/Rest/GetFile?id=641312>.

¹⁰ Walsh, G. (2021). The Health of Nations: Informing universal health care policy implementation in the Philippines through examining best practice approaches. Retrieved from https://www.eccp.com/storage/app/media/committees/ECCP%20The%20Health%20of%20Nations_2021.pdf.

Furthermore, the concept of multi-year contracts, with adequate timeframes, supports the pooled procurement strategy, as it promotes stability and predictability in procuring products. Entities can maintain stable pricing and supply by entering long-term contracts, reducing the influence of market changes. This encourages long-term partnership between suppliers and procurers, resulting in competitive pricing. Pooled procurement and multi-year contracts may also promote quality controls, shortened delivery lead times, streamlined procurement processes, as well as multi-sectoral collaboration.

In addition to the above mechanisms, proposed further improvements to the procurement process include negotiated supplier agreements and managed entry agreements. Enabling negotiated supplier agreements during the procurement process would increase flexibility and efficiency in accessing essential medicines, as negotiations on exclusive agreements between buyers and suppliers are enabled.

Moreover, it is critical for procurement entities to have the flexibility to explore financing methods. Through financing or managed entry agreements, the payment for medical products is tied with the value that it provides to patients. These agreements should be structured to reimburse based on proven patient outcomes, alter payments based on how well a medicine is used, and include other forms of risk-sharing.

Finally, to align on the definition of applicable terminologies, we propose inclusion of the following changes to Senate Bill 2593, subject to proper form and style:

- Addition of a new section under Section 5 (Definition of Terms), Article I (General Provisions):

(v) Pooled Procurement – refers to cooperative combination of the financial and other resources to improve efficiency and greater purchasing power for the Procuring Entity to attain a sustainable, predictable and timely use of government funds.

- Amendment of Section 16, Article II (Strategic Procurement Planning):

Sec. 16. Use of Framework Agreement. - Procuring Entities may use a framework agreement as a procurement strategy, including but not limited to pooled procurement, to expand the pool of prospective bidders, take advantage of economies of scale, minimize the administrative burden of conducting separate procurement activities, and generate time and money savings.

(4) Strengthening procurement processes through digital technology, capacity building, and advancing multi-sectoral collaboration

In response to the continuously evolving technological trends and procurement needs, the ECCP welcomes the recognition of digitalisation and capacity building in the proposed GPRA amendments. To this point, we acknowledge that the use of digital procedures will improve efficiency of procurement processes, as well as support efforts to address red tape, streamline requirements, as well as provide access to procurement information and activities, thereby enhancing transparency in the procurement system. While we recognise the benefits of a transparent and digitalised procurement system, we likewise underscore that there should be safeguards to ensure the protection of sensitive and confidential data, to further build trust among procuring parties.

Moreover, the ECCP supports the goal to advance capacity building for public procurement professionals, through the development of a competency and certification frameworks, code of conduct, as well as rollout of capacity development programs. In relation to this, and to foster inclusive development, we highly suggest that capacity building initiatives and procurement methods are applied at both national and local government levels, owing to the devolution process that has been identified by the government as one of its priorities.¹¹

Sincerely,



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ECCP Executive Director

¹¹ Philippine Information Agency. (2023). DBM to aid LGUs achieve full, effective devolution. Retrieved from <https://mirror.pia.gov.ph/news/2023/02/14/dbm-to-aid-lgus-achieve-full-effective-devolution>.