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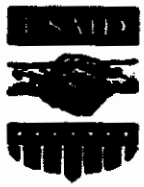
Policy Reform Monitoring Report



Issue No. 4 June 2002

PROCUREMENT REFORMS:
Necessary Reforms Needing to be Deepened and Expanded

I. Executive Summary

In April 2000, the Department of Budget and Management (DBM) convened an Inter-Agency Workshop (IAW) to formulate a set of basic principles to guide public procurement in the country. Based on these principles, it then pursued various measures to improve the procurement system. The measures have led to the amendment of the Implementing Rules and Regulations (IRRs) of Presidential Decree (PD) 1594 and the issuance of Executive Orders (EOs) 262 and 40, and their respective IRRs. The PD 1594 IRR amendments provide the administrative reforms in the procurement of infrastructure projects. EO 262 and its IRRs contain the guidelines for the procurement of goods and supplies. EO 40 and its IRRs, meanwhile, consolidate all guidelines contained the PD 1594 IRR amendments, and in EO 262 and its IRRs. They also provide for the establishment of a single, centralized electronic portal, the E-Procurement System, for all government procurement activities.

After two years of implementation, this initiative has already achieved successes, the most important of which is getting the support of the Philippine bureaucracy in the war against procurement corruption. Securing the bureaucracy's support represents a crucial and prerequisite paradigm shift from one of submission to the idea that corruption is ingrained in the system and almost impossible to remove, to the more positive and proactive recognition that corruption can be significantly mitigated.

Beyond these initial accomplishments, however, much more still needs to be done to mitigate procurement corruption. The war against procurement corruption needs to be brought to the next level, by completing the entire reform package.

The initiative has not yet touched heavily on pre-procurement and post-procurement reform. Although EOs 262 and 40 mandated pre-procurement reforms by requiring the formulation of the Agency Procurement Management Plan (APMP) and the conduct of the Pre-procurement Conference (PC), and post-procurement reforms by requiring Procurement Monitoring (PM), these provisions either remain procurement-oriented or are insufficient. Thus, the need to ensure

June 26, 2002

DR. JOSEPH RYAN
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Dear Dr. Ryan:

We are pleased to provide you with ten (10) copies of ***Issue No. 4 of the Policy Reform Monitoring Report*** - **Procurement Reforms:** *Necessary Reforms Needing to be Deepened and Expanded.* This report is prepared by Mr. Enrique ("Ricky") Lozari, our Policy Impact Monitoring Specialist. Ricky has now turned his attention to an analysis of the impact of Securities Regulation Code (SRC).

We hope that you will find this report on procurement reform interesting and useful. Please do not hesitate to contact me should you have any questions or comments.

Thank you and best regards.

Sincerely yours,

DAVID TARDIF-DOUGLIN
Managing Director

that items or services purchased at a lower price were needed in the first place, and that the evaluation criteria were developed fairly and transparently, remains urgent. So does the need to ascertain that the items purchased were actually delivered, and that the supplier religiously complied with the terms of the contract.

Procurement reforms have yet to completely isolate public procurement from human discretion. Certain steps in the methodology are still subject to discretion either by the members of the Bids and Awards Committee (BAC), the Technical Working Group (TWG) assigned to the project, or the Project Management Office (PMO). Although there are attempts to fully computerize the bidding process, the impact or effectiveness of such attempts has so far been unclear.

The BAC also remains easily accessible to the bidders outside of their respective offices. Although under the procurement reforms, contact between the bidders and the BAC, its staff and personnel, its secretariat and the TWG is prohibited, there are no provisions to ensure that such prohibition would be observed.

Moreover, bidders are still subject to external influences. It is not uncommon to hear of bidders complain about receiving pre-procurement harassment to make them withdraw from the bidding process. Neither is it uncommon to hear complaints from winning bidders about post-procurement harassment, either to punish the winning bidder for not having colluded in the bidding process, or simply for extortion purposes.

Transparency in the bidding process also still needs to be improved. Although certain steps in the procurement process are open to the public, the more essential stages, like the determination of the bid criteria, the evaluation of the bids, and the deliberations for the winning bid, are not. Anecdotal evidences of corruption done in these various stages of the bidding process show that the presence of impartial observers is insufficient to fully arrest corruption.

Finally, the procurement reforms undertaken since 2000 have retained the exemptions from the bidding rules, which have been provided for in previous procurement laws. These exemptions could open up opportunities for corruption, as they provide convenient channels for circumventing procurement reform measures.

These problems mitigate the success of the government's procurement reform agenda and ought therefore to be rectified as soon as possible to complete the campaign against procurement corruption.

To strengthen and complete the procurement reform package, for example, it is essential that pre- and post-procurement reforms be undertaken in conjunction with bidding reforms. In the interim that this measure is still to be implemented, the EO 40 IRRs should be strengthened, to further promote transparency and public access in the formulation of the APMP. The same IRRs should be fortified to give post-procurement monitoring more significance. These recommendations

are given without prejudice to more elaborate reform packages that may be crafted by the government in the near future.

For the bidding process itself, it is recommended that as far as feasible, the BAC should be completely treated as a real jury. Its members should be randomly chosen from a pool of qualified candidates, including those from the private sector and the academe, and its deliberations conducted in seclusion. Moreover, for procurement not requiring specialized technical knowledge, the BAC members should be chosen from the pool of BAC members from other government agencies.

Finally, it is recommended that the conduct of a complete and thorough study be considered, in order to assess the feasibility of addressing the problems of harassment to contractors, that are committed during the pre-procurement and post procurement processes. It should be noted that the persistence of this problem would curtail the total success of procurement reforms, and render moot the sanctity of the bidding process.

II. Background and Assessment Objective

The DBM pursued procurement system reforms after its inter agency workshop in April, 2000. This initiative was undertaken to make government expenditure programs more efficient by bringing transparency, accountability, equity, effectiveness, efficiency and economy into the public procurement system. As a result of this undertaking, Malacañang issued EO 262 and its IRRs, and amended the IRRs of PD 1594. EO 262 replaces EO 302 and contains the new policies for the government procurement of goods, supplies and materials. The amendments to the PD1594 IRRs , meanwhile, seek to improve the procurement of civil works.

Finally, in an attempt to harmonize the various procurement guidelines and to improve on the reforms initiated in EO 262 and the amendments to the IRRs of PD 1594, the government issued EO 40 in October 2001 and its IRRs in February 2002.

In a nutshell, the reforms aim to:

1. Simplify the pre-qualification of bidders through the use of an eligibility check, and strengthen post-qualification procedures.

2. Shift the criterion for the awarding of bids to the Lowest Calculated Responsive Bid (LCRB) or the Highest Rated and Responsive Bid (HRRB), whichever is appropriate.

3. Remove bracketing in evaluating bid prices, and instead mandate the use of the approved budget for the contract, as ceiling on bid prices.

4. Use transparent, objective and non-discretionary criteria in undertaking the eligibility check, evaluating bids, and determining the winning bidder.

Specifically, the reforms are designed to rectify the following systemic problems:

1. Collusion among bidders, and between government agency and bidders.

2. Delays in the procurement process.

3. Lack of transparency.

4. Use of discretionary criteria.

5. Lack of competition.

After almost two years of implementation, an assessment of the impact of procurement reforms on corruption in public acquisition programs is in order. Such an assessment would provide an initial objective review of the effectiveness of the reform package, and determine possible areas that need to be refined or improved upon. On the part of AGILE and the USAID, which have actively supported public procurement reforms since 1999, this assessment would identify further support needed to push the procurement reform agenda.

III. Assessment of the Impact of Procurement Reforms

Experience in two agencies identified in the Social Weather Station (SWS) survey of April 2001 as the most corrupt – the Department of Public Works and Highways (DPWH) and the Department of Education Culture and Sports (DECS) - show that procurement reforms have resulted in significant successes over the past couple of years. The bidding process has become more competitive, the procurement duration has been shortened, transparency has improved, and the use of discretion has been reduced.

However, the persistence of procurement-related corruption implies that more extensive and comprehensive measures still need to be put in place to complete the country's procurement reform agenda. The provisions of EO 262 and EO 40, as well as the amendments to the PD 1594 IRRs need to be built upon.

1. **Impact on the degree of competition.** The simplification of the pre-qualification procedures significantly increased the number of bidders over the past couple of years. In the DPWH, for example, an infrastructure project worth only ₱ 2.8 million was able to attract 95 eligible bidders, up from the usual 5 or 10. In the DECS, the bidding for school building construction attracted 74 bidders, while the bidders for its textbook requirements increased to 17, from 5 to 10.

   Although the relevance of this observation *per se* may be distorted by the possible participation of nuisance bidders, the observed reduction in the bids does imply heightened competitive pressures. In fact, because of competition, the DECS was able to slash the unit book price from ₱ 80 to ₱ 23, enabling it to save ₱ 400 million and, as a consequence, procure 11.5 million more textbooks in 2001. The agency was also able to save ₱ 100 million from the efficient bidding for school furniture. This gave it the budget for 250,000 additional desks and armchairs. Finally,

improvements in bidding for school buildings translated to 850 additional new classrooms for the department, or three times more than the 274 accomplished in 1999 and 2000.

2. **Impact on procurement duration.** Based on anecdotal evidences, the public procurement process has accelerated since 2000. In the case of the DPWH, for example, delays in the procurement of civil works contracts have been cut down by as much as 5 months. Moreover, because of computerization, the eligibility screening of these bidders have taken only 12 minutes. The same is true for the DECS and other government agencies like the Department of Health (DoH), which have benefited from the shift from pre-qualification to eligibility check, and the streamlining of the bid evaluation process.

3. **Impact on transparency.** Based on the experiences of the Procurement Watch, Inc. (PWI), there is still relatively little transparency in the bidding process despite all the procurement reforms put in place and notwithstanding the presence of outside observers in the BAC. This problem persists because the very private sector representatives (media and civil society organizations or CSOs), who are supposed to provide external monitoring in the bidding process, are themselves facing various constraints that mitigate their participation.

- **They are subject to invitation.** Under Sec. 9 of EO 40, the BAC is only mandated to *invite* private sector observers to sit in and monitor the bidding proceedings. In practice, as in the case of the DPWH, the BAC invites such observers only during the bidding conference and opening of bids. Although this may not really be intentional, the fact that there is no explicit mandate to include observers in all activities of the BAC weakens the position and resolve of any BAC to allow the participation of private sector observers all throughout the bidding process.

- **They lack the technical expertise or project familiarity.** In the DPWH and the DECS, the lack of technical expertise or familiarity with the project of the BAC members themselves forces the agencies to delegate the evaluation task to their consultants or technical personnel. In this light, the agencies sometimes see it as equally justifiable to exclude outside observers in the evaluation process, thereby eroding the spirit of transparency.

- **They are vulnerable to neglect.** That they are non-voting members of the BAC, and therefore not integral to the decision process, makes observers vulnerable to neglect. A conflict of schedule between the voting and non-voting members of the BAC would be resolved in favor of

the former in the scheduling of bidding activities. This further compromises the transparency of the bidding process.

4. **Impact on the use of discretion.** Although procurement reform clearly aims for the elimination of discretion in the bidding process, such is not the case in practice. In fact, the lack of transparency in the process paves the way for the use of discretion. Stages in the bidding process that may be vulnerable to discretion include the following:

   - **Determination of the LCRB or HRRB.** Ideally, the determination of the LCRB or the HRRB should be done automatically. However, in practice, the LCRBs or HRRBs are still subject to post-qualification. These bids are subject to corrections for computational errors, discounts, and other modifications. That they are subject to such corrections by the BAC makes the selection process for the LCRB and HRRB susceptible to discretionary practices.

   - **Awarding of the winning bidder.** In some cases, after the TWG have evaluated the bids, the BAC still deliberates upon the TWG recommendation on the winning bid. At this stage, as in the case of the DECS, the BAC could exercise discretion in awarding how much of the particular contract it would award to the LCRB, based on the company's cash flow position, among other factors.

5. **Impact on collusion.** Based on the feedback from private sector representatives and even some government officials, procurement reforms have certainly not completely eliminated collusion. In fact, the Philippine Contractors' Association (PCA) claims that, in some cases, the payoff for civil work projects has gone up to 52% of gross contract price, from 48% during the Estrada regime, and from 15% to 20% during the Ramos administration. Of course, this increase could be a reflection of a heightened risk of being caught, caused by the tighter procurement procedures. However, the fact that payoffs or bribes remain implies that collusion between government employees and private enterprises persists.

   As experienced by the PCA, the presence of impartial observers in the BAC only partially deters collusion, as these private sector representatives are also sometimes corruptible. In fact, in one of the BACs in Mindanao, the move of the PCA to have itself represented by a local priest in order to assure that the bidding proceedings would be orderly was unsuccessful. After corrupt individuals donated a huge sum of money to his parish, the priest failed to report the anomalies that he observed in the bidding.

IV. Challenged Provisions of RA 8762 and its IRRs

The procurement problems enumerated above stem from the following factors:

1. **Lack of pre-procurement and post-procurement reforms.** The entire procurement process can be divided into three major stages, i.e. pre-procurement, procurement and post-procurement. The first stage includes all activities leading to the government's actual purchase, such as the identification of projects, the computation of budgets, and the determination of the evaluation criteria to be used. Based on a research conducted by the Philippine Center for Investigative Journalism (PCIJ), leakage at this stage alone could reach as much as 50% of the total contract price.

   Corruption in the pre-procurement stage appears to take the form of giving bribes to:

   - Some lawmakers in order to include particular projects in the General Appropriations Act (GAA) as a Congress-initiated allocation.

   - Lawmakers for a share of the annual pork barrel, which for 2002 is carried under the Priority Development Assistance Fund (PDAF),

   - Members of the TWG or consultants in-charge of conducting the various feasibility studies, in order to bloat the costs of civil works construction and to skew the qualification or evaluation requirements in favor of some favored companies.

Post-procurement, on the other hand, involves all procedures undertaken following the award of the contract, from the release of the funds needed for procurement, to the disposal of the items purchased. The same PCIJ research report claims that at least 11% of the total contract price is paid off during this stage, through the following:

- Payment of about 1 to 2% of total project cost to corrupt DBM employees to expedite the release of the Special Allotment Release Order (SARO) and/or Notice of Cash Allocation (NCA), which are needed to release the check for the payment of contractors,

- For public works projects, payment of 7% of total project cost to the mayor, and 3% to the barangay captain, for the certification of the completeness of the projects, and

- In extreme cases, an undisclosed sum to a host of other bureaucrats, for the certification of receipt for "ghost projects".

Although EO 262 and EO 40 sought to address pre-procurement problems by mandating the APMP and the PC, such provisions are deemed insufficient.

The content of the APMP, for example, only covers information

that relate to the type of contract to be employed, size of contract, procurement methods to be adopted, time schedule for each procurement activity, and the budget allocated for each procurement. All of these information are still procurement related, and do not clearly provide the assumptions and computations that went into the data. Hence, problems of overestimation or prescribing the purchase of redundant items could easily occur.

Moreover, pre-procurement conferences, which are supposed to be good venues to flesh out the above-mentioned details, are not required for small purchases. Per Sec. 13.2 of the IRR of EO 40, the holding of a PC may not be required for small procurements, i.e., procurement of goods costing ₱2 million and below; procurement of works costing ₱5 million and below, and procurement of consulting services costing ₱1 million and below.

On the other hand, despite the fact that these are subject to the review of the Procurement Policy Board (PPB) and the National Economic Development Authority Committee on Infrastructure (NEDA-INFRACOM), the sheer size of data in the APMPs would obviously limit their efficacy. At best, the PPB and the NEDA-INFRACOM could only be expected to gloss over the APMPs or conduct random checks on the individual items.

As for post-procurement reforms, although it is provided for, Project Management is only undertaken for procurement activities costing ₱ 50 million and above for goods and civil works, and ₱ 5 million and above for consulting services. This leaves a gaping hole in the BAC's monitoring capability.

2. **Need to isolate further the procurement process from human intervention and discretion.** As much as feasible, the ideal scenario for the public procurement process is to computerize everything in order to eliminate human error, discretion and influence. The best case would be to receive all bids via electronic means, have the computer process all the data, and wait for the output (or in this case, the winning bid). This process will not only be swift and efficient, but also as accurate as the programmer would want it to be.

However, genuine constraints impede such scenario from happening. Although EO 40 provides for the establishment of a government Electronic Procurement System (EPS), the fact that its IRRs still allow the manual submission of bids implies that the government realizes the logistical problems associated with its implementation.

- **Lack of training.** On the part of government, the task of training all procurement officers in the EPS seems infeasible in the near term. The bureaucratic culture, and the procurement officials' age and knowledge and absorptive capacity in Information Technology (IT), hinder a

smooth transition to the EPS. This is made even more problematic by the fact that the government seems hard-pressed for resources to organize more complete and far-reaching EPS training.

- **Lack of infrastructure.** The country's low PC penetration and telephone density ratio speaks of the enormity of the problem in e-procurement. According to the PCA, only 1% of the construction industry is connected to the Internet. This lack of access to the Internet severely restricts the number of service providers who can participate in the competitive tender for goods and services.

In the seeming absence of a feasible e-procurement process in the short term, the second best scenario is to isolate procurement procedures from human discretion to the optimal degree possible. As mentioned earlier, in practice, certain steps in the bidding methodology are still subject to discretion either by the members of the BACs, the TWGs, or the PMOs. This needs to be addressed urgently.

3. **Accessibility of the BAC.** Computerization could likewise remove the susceptibility of the BAC to outside influence. However, due to the absence of a developed e-procurement system, procurement reforms settled on prohibiting contact between the bidders and the BAC, its staff and personnel, its secretariat as well as the TWG, after the bids have been submitted.

Unfortunately, Sec. 23 of EO 40 is wanting of concrete provisions to ensure that such prohibition would be observed. Hence, as soon as the BAC members come out of their respective offices, they become subject to external influence or pressure, in one way or another.

4. **Transparency in the bidding process is not absolute.** Although the private sector and CSOs have gained representation in the BAC, certain steps in the procurement process are still beyond their access. Deliberation and evaluation of the bidders, for example, a crucial stage at which large payoffs are made, is still confined to members of the PMOs or TWGs,

The PCA said that in a past research it did using a simple lifestyle check, it discovered that the anomaly in procurement is more likely done in the TWG/PMO rather than in the BAC. This implies that the members of the TWG/PMO likely receive the leakage equivalent to 10% of the total project cost, which according to the PCIJ, is lost at this stage.

Unfortunately, procurement reforms are focused more on reforming the bidding process and the BAC, sparing the TWG and the PMO from scrutiny. As such, some sectors are worried that the presence of the CSOs, like the PWI and the media, in select stages in the bidding process, only legitimizes the corrupt practices done in the other stages.

5. **Existence of exemptions to the applicability of the bidding rules.** The procurement reform measures undertaken by the DBM have retained the alternative modes of procurement incorporated in previous laws. Such alternative methods take the following forms:

   - Limited Source Bidding (Selective Bidding).
   - Direct Contracting or Single Source Procurement.
   - Repeat Order.
   - Shopping.
   - Negotiated Procurement.

   These exemptions to the bidding rules open up occasions for corruption, as they provide convenient channels for circumventing procurement laws. For example, it is common for requesting agencies to require branded or patented equipment, despite the fact that these are more expensive than equally good alternatives. Such items could range from patented nightsticks for the local police to a slightly altered, and patented fire trucks for the fire department.

V. Conclusion and Recommendation

The government's procurement reform measures have already achieved significant successes. In a sense, these have laid down the prerequisite elements needed for the staging of a full-scale war against procurement corruption, mainly the winning of the proactive support of the entire bureaucracy. Moreover, the measures have shifted the paradigm from one of acceptance to the impregnability of the problem, to one of recognition that the problem can be mitigated.

However, notable as these may seem, the successes are overshadowed by the nagging persistence of corruption, which needs to be addressed. Subject to the constraints of the legal and political environments, therefore, the government needs to undertake a more complete and thorough reform package. And while legislative measures are ideal to pursue this goal, the long gestation period of legislation makes amendments to the IRRs of EO 40 more palatable in the near term:

1. **In Sec. 4, measures should be included to provide transparency and public access in the formulation of the APMP.** In so doing, computations and assumptions used to arrive at the APMP estimates would be subject to public scrutiny. Moreover, transparency in the determination of the qualifications of the required suppliers would minimize the practice of tailor-making qualifications to pre-selected establishments.

2. **In Sec. 42, post-procurement monitoring should be transparent and applied to all projects, regardless of the amount.** This would minimize the possibility of some quarters evading the monitoring team, by dividing the item requirements to smaller pieces.

For the bidding process itself, it is recommended that as far as feasible,

the BAC be completely treated as a real jury:

1. **The BAC members should be randomly chosen from a pool of qualified candidates.** The candidate pool should include individuals outside of government like those in the private sector, the academe and civil society. The randomness of the selection process would strengthen the credibility of the BAC.

2. **Random BAC-member swapping should be implemented.** For non-technical items, the BAC members could be randomly chosen from the pool of BAC members from other government agencies. This would render established corruption networks in various agencies in effective.

3. **BAC deliberation should be accomplished in seclusion.** As with a real jury, the BAC members should deliberate on a bid in isolation to spare the BAC from external influence. This would limit the possibility of bidders approaching BAC members for corruption purposes.

Finally, it is recommended that the conduct of a complete study be considered in order to assess the feasibility of addressing the problems of harassment of contractors. Pre-procurement harassment should be mitigated to ensure a perfect market and avoid the breeding of monopolies or oligopolies in the bidding process. On the other hand, the winning bidders should be spared from post-procurement harassment, to preserve the sanctity of the bidding process.

Appendix 1: Legal Framework for General Procurement Laws

Type of Documents	Type of Issuance	#	Issuance Date	Contents
Republic Act	Legislation	9162	1-Jan-02	(GAA FY 2002): The EPS shall be used as the primary source of information on government procurement of commonly-used supplies, goods and equipment
Executive Order	PD/EO	322	22-Nov-01	Government agencies and GOCCs are mandated to participate in the EPS
Executive Order	PD/EO	40	8-Oct-01	Procurement rules and regulations for goods, civil works and consulting services are consolidated. The use of the EPS as the single and centralized electronic portal for all procurement is required.
DPWH Department Order	Circulars	144	22-Aug-01	Contractors who are not yet registered in the DPWH Registry and with capabilities only for the prosecution of projects costing P15M and below may be allowed to submit their registration documents with the district engineering office (DEO) who shall forward the same to the Central Office BAC TWG (COBACTWG) for inclusion in the DPWH National Registry. For DEOs that have jurisdiction over projects costing P15M and below, the BAC of the offices shall continue to undertake the usual bidding process.
Administra-tive Order	AO	7	23-Mar-01	All contracts requiring the approval by the President, pursuant to existing laws, E.O. No. 380, and Memorandum Order No. 266, are transmitted to the NEDA, which shall act on it within a period of thirty (30) days. All contacts P50M and above shall be submitted to the NEDA for information purposes within 7 days from the date of signing by the head of the department or agency
DPWH Department Order	Circulars	2	3-Jan-01	The DPWH, through its BAC-TWG, has installed a computerized National Registry of Contractors for Civil Work Contracts.
Republic Act	Legislation	8795	7-Nov-00	The issuance of temporary restraining orders, preliminary injunctions, and preliminary mandatory injunctions against national government infrastructure projects.
Executive Order	PD/EO	262	5-Jul-00	Policies, guidelines, rules and regulations for the procurement of goods and supplies for the National Government are provided for.
NCC Memoran-dum Circular	Circulars	99-01	29-Nov-99	Guidelines for Information Systems Planning in Government are prescribed. The submission of a 5-year Information System Strategic Plan (ISSP) and an annual report of the Information System Development Plan is required.

Timeline: Involvement of AGILE in Procurement Reform				
Memorandum from the President	MO		10-Feb-99	The review of all contracts P50M and above by the Legal Office of the Presidential Management Staff is mandated.
Memorandum from the President	MO		25-Jan-99	Jurisdiction over all contracts above P50Mls transferred from the different offices, departments, agencies, GOCCs and their subsidiaries, and LGUs, to the Legal Office of the Presidential Management Staff.
Republic Act	Legislation	7898	23-Feb-95	The modernization of the AFP and other purposes are provided for.
Republic Act	Legislation	7160	1-Jan-91	Local Government Code of 1991 (Title VI): The rules and procedure for property and supply management and supply procurement and disposal in LGUs are provided for. The creation of BACs in LGUs is mandated.
Executive Order	PD/EO	380	27-Nov-89	Ceilings for bidded infrastructure contracts are removed and ceilings for negotiated infrastructure contracts listed in E.O. 164, S. of 1987 are revised. Prior authority from the President is required for negotiated contracts exceeding P100M, for the DOTC and DPWH and P50M for other departments and government corporations.
Executive Order	PD/EO	359	2-Jun-89	The Procurement Policy Board is established. The guidelines for the implementation of EO 285 regarding the operation of a government-wide PS for common use goods, supplies, and materials are prescribed.
Timeline: Convening of Congress after the 1987 Constitution				
Executive Order	semi-legislation	301	26-Jul-87	Standards or guidelines for lease contracts of buildings and spaces are mandated. For negotiated procurement of goods, supplies and related services, no Presidential approval is required.
Executive Order	semi-legislation	292	25-Jul-87	Administrative Code of 1987, Book VI, Chap 7, sec 78: All appropriations for the purchase of equipment, supplies and materials authorized in the GAA shall be available only for locally manufactured equipment; parts, accessories, medicines and drugs, supplies and materials, except when none is available in the market or when the price of the locally manufactured article exceed those determined by the Flag Law.
Executive Order	semi-legislation	285	25-Jul-87	The Procurement Council and the General Services Administration are abolished.
Executive Order	semi-legislation	164	5-May-87	Guidelines for the processing and approval of contracts of the national government are mandated. Ceilings for the approval by the President of infrastructure contracts, whether bidded or negotiated, are established.

1987 Constitution	Constitution	Art. XII, Sec 12	2-Feb-87	The preferential use of Filipino labor, domestic materials and locally produced goods is promoted.
Presidential Decree	semi-legislation	1764	11-Jan-81	Compliance with competitive bidding regulations and the adoption of uniform general terms and conditions in case of certain govt. and private contracts is required.
Letter of Instruction	PD/EO	1043	16-Jul-80	The production and procurement of books by the EDPTAF is mandated. The preparation and submission to the President of an annual textbook program is required.
Letter of Instruction	PD/EO	755	18-Oct-78	The Procurement Council is created. The Procurement Service that is attached to the DBM for administrative supervision, and that reports to the Procurement Council, is also created.
Presidential Decree	semi-legislation	1445	11-Jun-78	Government Auditing Code, Sec 10 (4): The development and administration of a system for monitoring the prices of materials, supplies, and equipment purchased by the government is provided for.
Presidential Decree	semi-legislation	1594	11-Jun-78	Guidelines, rules and regulations for government infrastructure contracts are provided for.
Presidential Decree	semi-legislation	1177	30-Jul-77	Sec 85: All Appropriations for the purchase of equipment, supplies and materials authorized in the GAA shall be available only for locally manufactured equipment, parts, accessories, medicines and drugs, supplies and materials, except when none is available in the market or when the price of the locally manufactured article exceed those determined by the Flag Law.
Presidential Decree	semi-legislation	1177	30-Jul-77	Sec 84: Subject to exceptions and otherwise provided in the GAA, stock on hand of supplies, materials and equipment spare parts acquired through ordinary purchase shall not exceed the normal three (3) month requirements and in no case shall these standards exceed more than one (1) year supply, unless otherwise approved by the President.
Presidential Decree	semi-legislation	415	19-Mar-74	Sec 3: Subject to conditions, the President is authorized to contract loans, credits or indebtedness with any local or foreign source or lender , as well as agree to waive or modify the application of any law granting preference or imposing restrictions on international public bidding, when necessary.

Presidential Decree	semi-legislation	415	19-Mar-74	The Secretary of National Defense is authorized to enter into contracts with any natural or juridical person, with or without public bidding, for the manufacture or procurement of supplies, equipment or components needed for national defense and covered by the Self-Reliant Defense Program approved by the President.
Republic Act	Legislation	5183	8-Sep-67	Citizenship requirement in award of supply contract is provided for.
Commonwealth Act	Legislation	138	7-Nov-36	Preference for native products and domestic entities for the purchase of articles, materials or supplies in government is established.

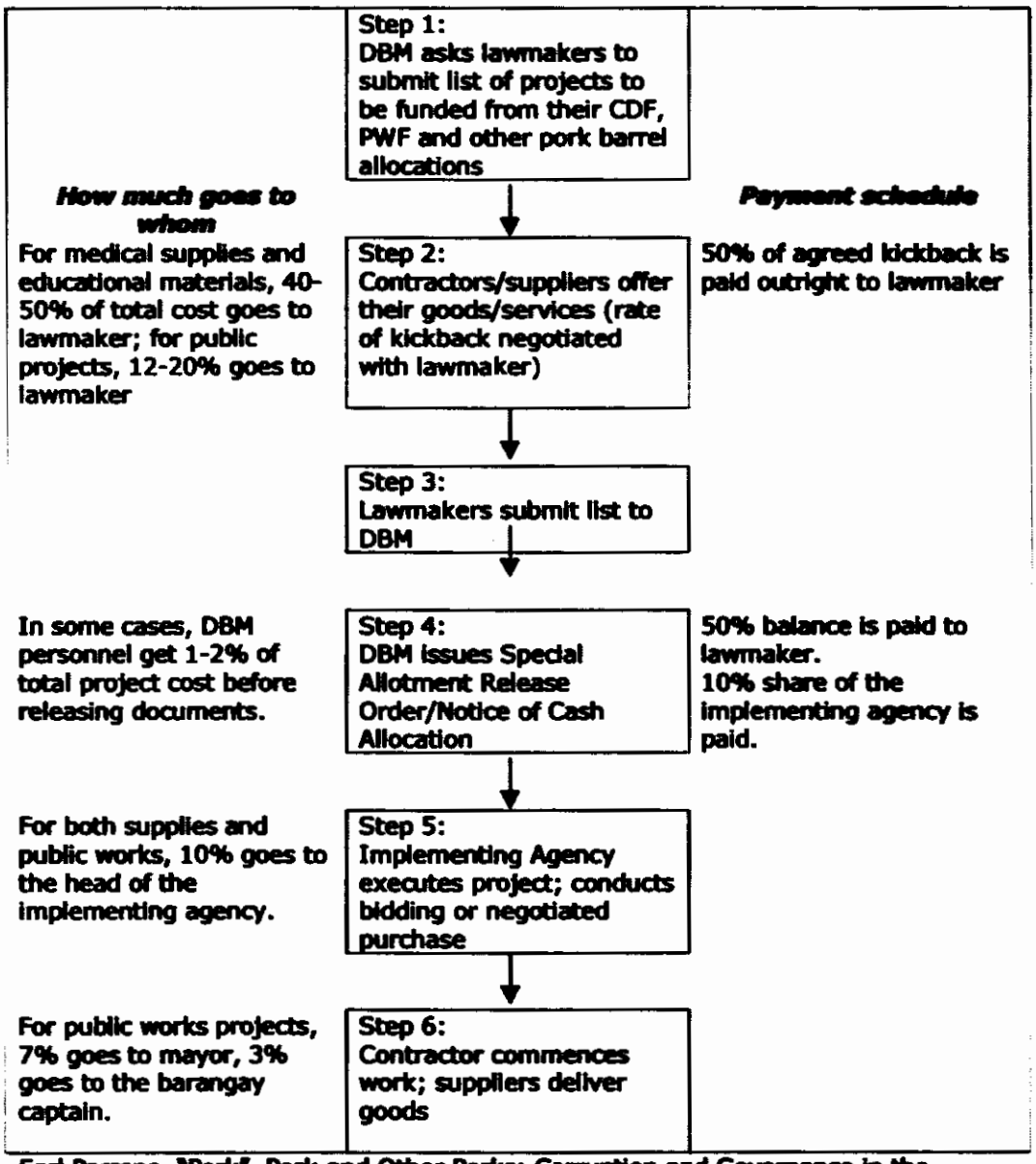
Appendix 2: Procurement Reforms Introduced by Various Administrations

Major Provisions	Past Administrations	Estrada Admin.	PGMA Admin.
Scope	Nat. Gov. (NG)	NG/GOCCs	LGUs included
Procurement Process			
• Shortened and streamlined process	Validation is conducted during pre-qualification process	Eligibility check is conducted and post-qualification is strengthened	Eligibility check is conducted and post-qualification is strengthened
• Enhanced transparency	Closed BAC membership	BAC to include NGO participation as observer	BAC to include NGO participation as observer
• Minimized discretion	Discretion in pre-qualification	Pass/Fail criteria are introduced in eligibility check	Pass/Fail criteria are used in eligibility check
• Increased accountability of BAC members		BAC on jury-duty basis/ Provide incentives and sanctions to BAC	BAC is on jury-duty basis/ Provide incentives and sanctions to BAC are provided for
Sanctions	Administrative sanctions	Administrative sanctions	Civil and Criminal Sanctions. Sanctions also supply to private sector (e.g. supplier).
Electronic Procurement System (EPS)	-	All agencies to participate in the EPS for commonly-used goods	DBM-PS to operate/ manage EPS/ Agencies to link with DBM-PS/ EPS covers goods, civil works, and consulting services

Implementing Mechanisms of the Reforms:

Scope of Reforms	Past Administrations	Estrada Admin.	PGMA Admin.
Goods, supplies and materials	EO 302	EO 262 (Did not repeal EO 302)	Bill/ EO 40 (will supercede EO 262)
Civil works	PD 1594	Amend IRR of PD 1594	Bill/ EO 40
Consulting Services	EO 164	-	Bill/EO 40
E-procurement	-	EO 322	Bill/ EO 40 (will supercede EO 322)

Appendix 3: The Flow of Pork



Earl Parreno, "Pork", Pork and Other Perks: Corruption and Governance in the Philippines, 1998.