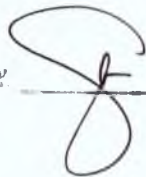




NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

23 JAN 30 P 3:39

RECEIVED BY 

SENATE

S. No. 1803

Introduced by Senator Francis "Tol" N. Tolentino

**AN ACT
AMENDING SECTION 23 OF REPUBLIC ACT NO. 9184, OTHERWISE KNOWN
AS THE GOVERNMENT PROCUREMENT REFORM ACT, PROVIDING FOR
ELIGIBILITY OF BIDDERS IN THE PROCUREMENT OF GOODS AND
INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES**

EXPLANATORY NOTE

"The legal concept of a joint venture is of common law origin. It has no precise legal definition but it has been generally understood to mean an organization formed for some temporary purpose" (As explained by the Supreme Court in *Aurbach, et. al. vs. Sanitary Wares Manufacturing Corporation* citing the case *Gates v. Megargel*, 266 Fed. 811 [1920])

In the case of *Kilosbayan v. Guingona*, 232 SCRA 110 (1994), the Philippine Supreme Court described a joint venture as an "association of persons or companies jointly undertaking some commercial enterprise; generally, all contribute assets and share risks which requires a community of interest in the performance of the subject matter, a right to direct and govern the policy in connection therewith, and a duty, which may be altered by agreement to share both in profit and losses."

While allowed to join procurement projects, the present law does not provide specific requirements for the qualification of a joint venture as a bidder, other than the requirement under the implementing rules and regulations (IRR) that the members of the joint venture must be governed by a Joint Venture Agreement (JVA).

This gap in the law has opened doors for corporations and entities whose primary purpose is not related to the procurement project to join biddings as long as they partner with bigger companies that have the financial capacity and previous project experience to enter into the project.

Thus was the case in the laptop procurement project conducted by the Procurement Service - Department of Budget and Management (PS-DBM) for the Department of Education (DepEd) which was flagged by the Commission on Audit (COA) for being overpriced.

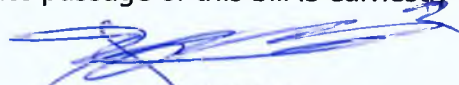
The winning bidder in the said project was a joint venture, one member of which was engaged in a business not at all related to the procurement project. While possessing the financial capacity to enter into the project, the said company did not have the expertise required for the project as it was engaged in general construction and other allied businesses, including the construction, enlarging, repairing, removing, developing or otherwise engaging in any work upon buildings, roads, highways, manufacturing plants, bridges, airfields, pier, docks, mines, shafts, waterworks, railroads, railways, structures, all iron, steel, wood, masonry, and earth construction.

Aside from being found "too pricey for an entry-level type laptop", initial feedback gathered from the auditors in NRC and CAR also found the delivered laptops to be too slow because of the outdated Intel Celeron processor.

The issues found in this procurement project highlighted the problem in the temporary nature of the existence of a Joint Venture. Thus, this legislative measure aims to provide in the law clear requirements as to the eligibility of a joint venture to join procurement projects, primary of which is the requirement that the primary purpose of every member must be similar and related to the requirement of the project to be bidded out to ensure that each member of the joint venture is really competent to comply with the requirements of the project.

This Bill further requires that the joint venture must be registered with the Securities and Exchange Commission (SEC) and specifies that the liability of each of the members shall be joint and several with the Joint Venture itself.

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



FRANCIS "TOL" N. TOLENTINO



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ELIGIBILITY OF BIDDERS IN THE PROCUREMENT OF GOODS AND
INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 **Section 1.** Section 23 of Republic Act No. 9184, otherwise known as the
2 "Government Procurement Reform Act" is hereby amended to read as follows:

3
4 "Section 23. Eligibility Requirements for the Procurement of Goods and
5 Infrastructure Projects. – The BAC or, under special circumstances specified in the
6 IRR, its duly designated organic office shall determine the eligibility of prospective
7 bidders for the procurement of Goods and Infrastructure Projects, based on the
8 bidders' compliance with the eligibility requirements within the period set forth in the
9 Invitation to Bid.

10
11 A. PROCUREMENT OF GOODS - THE FOLLOWING SHALL BE ELIGIBLE TO
12 PARTICIPATE IN THE BIDDING FOR THE SUPPLY OF GOODS:

13 i. DULY LICENSED FILIPINO CITIZENS / SOLE
14 PROPRIETORSHIPS;

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- ii. PARTNERSHIPS DULY ORGANIZED UNDER THE LAWS OF THE PHILIPPINES AND OF WHICH AT LEAST SIXTY PERCENT (60%) OF THE INTEREST BELONGS TO CITIZENS OF THE PHILIPPINES;

- iii. CORPORATIONS DULY ORGANIZED UNDER THE LAWS OF THE PHILIPPINES, AND OF WHICH AT LEAST SIXTY PERCENT (60%) OF THE OUTSTANDING CAPITAL STOCK BELONGS TO CITIZENS OF THE PHILIPPINES;

- iv. COOPERATIVES DULY ORGANIZED UNDER THE LAWS OF THE PHILIPPINES; OR

- v. CORPORATE JOINT VENTURES LICENSED BY THE SECURITIES AND EXCHANGE COMMISSION (SEC) AND REGISTERED WITH THE BUREAU OF INTERNAL REVENUE (BIR) AND THE LOCAL GOVERNMENT WHERE IT HAS ITS PRINCIPAL OFFICE: PROVIDED, HOWEVER, THAT FILIPINO OWNERSHIP OR INTEREST OF THE JOINT VENTURE CONCERNED SHALL BE AT LEAST SIXTY PERCENT (60%). FOR THIS PURPOSE, FILIPINO OWNERSHIP OR INTEREST SHALL BE BASED ON THE CONTRIBUTIONS OF EACH OF THE MEMBERS OF THE JOINT VENTURE AS SPECIFIED IN THEIR JOINT VENTURE AGREEMENT. ALL DOCUMENTS SUBMITTED BY THE JOINT VENTURE IN SATISFACTION OF THE ELIGIBILITY REQUIREMENTS SHALL BE THOSE PERTAINING TO THE CORPORATE JOINT VENTURE, AND NOT OF THE CONSTITUENT MEMBERS THEREOF, PROVIDED, FURTHER, THAT THE PRIMARY PURPOSE OF EACH MEMBER OF THE JOINT VENTURE MUST BE SIMILAR OR RELATED TO THE REQUIREMENT OF THE PROJECT TO BE BIDDED OUT; PROVIDED, FINALLY,

1 THAT WHEN A SUPPLIER IS A JOINT
2 VENTURE, EACH MEMBER OF THE JOINT
3 VENTURE SHALL BE JOINTLY AND
4 SEVERALLY LIABLE TO THE PROCURING
5 ENTITY IN CASES OF BREACH OR FAILURE
6 TO COMPLY WITH THE REQUIREMENTS OF
7 THE PROJECT.
8

9 FOREIGN BIDDERS MAY BE ELIGIBLE TO PARTICIPATE UNDER ANY OF
10 THE FOLLOWING CIRCUMSTANCES IN ACCORDANCE WITH THE GUIDELINES
11 ISSUED BY THE GPPB:

12 (A) WHEN PROVIDED FOR UNDER ANY TREATY OR
13 INTERNATIONAL OR EXECUTIVE AGREEMENT
14 AS PROVIDED IN SECTION 4 OF THIS ACT;

15 (B) WHEN THE FOREIGN SUPPLIER IS A CITIZEN,
16 CORPORATION OR ASSOCIATION OF A
17 COUNTRY, THE LAWS OR REGULATIONS OF
18 WHICH GRANT RECIPROCAL RIGHTS OR
19 PRIVILEGES TO CITIZENS, CORPORATIONS OR
20 ASSOCIATIONS OF THE PHILIPPINES;

21 (C) WHEN THE GOODS SOUGHT TO BE PROCURED
22 ARE NOT AVAILABLE FROM LOCAL SUPPLIERS;
23 OR

24 (D) WHEN THERE IS A NEED TO PREVENT
25 SITUATIONS THAT DEFEAT COMPETITION OR
26 RESTRAIN TRADE.
27

28 B. PROCUREMENT OF INFRASTRUCTURE PROJECTS - THE FOLLOWING
29 PERSONS / ENTITIES SHALL BE ALLOWED TO PARTICIPATE IN THE
30 BIDDING FOR INFRASTRUCTURE PROJECTS:

31 i. DULY LICENSED FILIPINO CITIZENS / SOLE
32 PROPRIETORSHIPS;

33
34 ii. PARTNERSHIPS DULY ORGANIZED UNDER
35 THE LAWS OF THE PHILIPPINES AND OF
36 WHICH AT LEAST SIXTY PERCENT (60%) OF

1 THE INTEREST BELONGS TO CITIZENS OF
2 THE PHILIPPINES;

3
4 iii. CORPORATIONS DULY ORGANIZED UNDER
5 THE LAWS OF THE PHILIPPINES, AND OF
6 WHICH AT LEAST SIXTY PERCENT (60%) OF
7 THE OUTSTANDING CAPITAL STOCK
8 BELONGS TO CITIZENS OF THE
9 PHILIPPINES;

10 iv. COOPERATIVES DULY ORGANIZED UNDER
11 THE LAWS OF THE PHILIPPINES; OR

12 v. CORPORATE JOINT VENTURES LICENSED BY
13 THE SECURITIES AND EXCHANGE
14 COMMISSION (SEC) AND REGISTERED
15 WITH THE BUREAU OF INTERNAL REVENUE
16 (BIR) AND THE LOCAL GOVERNMENT
17 WHERE IT HAS ITS PRINCIPAL OFFICE:
18 PROVIDED, HOWEVER, THAT FILIPINO
19 OWNERSHIP OR INTEREST OF THE JOINT
20 VENTURE CONCERNED SHALL BE AT LEAST
21 SIXTY PERCENT (60%). FOR THIS
22 PURPOSE, FILIPINO OWNERSHIP OR
23 INTEREST SHALL BE BASED ON THE
24 CONTRIBUTIONS OF EACH OF THE
25 MEMBERS OF THE JOINT VENTURE AS
26 SPECIFIED IN THEIR JOINT VENTURE
27 AGREEMENT. ALL DOCUMENTS SUBMITTED
28 BY THE JOINT VENTURE IN SATISFACTION
29 OF THE ELIGIBILITY REQUIREMENTS SHALL
30 BE THOSE PERTAINING TO THE
31 CORPORATE JOINT VENTURE, AND NOT OF
32 THE CONSTITUENT MEMBERS THEREOF,
33 PROVIDED, FURTHER, THAT THE PRIMARY
34 PURPOSE OF EACH MEMBER OF THE JOINT
35 VENTURE MUST BE SIMILAR OR RELATED
36 TO THE REQUIREMENT OF THE PROJECT TO
37 BE BIDDED OUT; PROVIDED, FINALLY,
38 THAT WHEN A SUPPLIER IS A JOINT
39 VENTURE, EACH MEMBER OF THE JOINT
40 VENTURE SHALL BE JOINTLY AND

1 SEVERALLY LIABLE TO THE PROCURING
2 ENTITY IN CASES OF BREACH OR FAILURE
3 TO COMPLY WITH THE REQUIREMENTS OF
4 THE PROJECT.
5

6 FOREIGN BIDDERS MAY BE ELIGIBLE TO PARTICIPATE IN THE
7 PROCUREMENT OF INFRASTRUCTURE PROJECTS WHEN PROVIDED FOR UNDER
8 ANY TREATY OR INTERNATIONAL OR EXECUTIVE AGREEMENT AS PROVIDED IN
9 SECTION 4 OF THIS ACT.
10

11 The eligibility requirements shall provide for fair and equal access to all prospective
12 bidders. The documents submitted in satisfaction of the eligibility requirements shall
13 be made under oath by the prospective bidder or by his duly authorized representative
14 certifying to the correctness of the statements made and the completeness and
15 authenticity of the documents submitted.
16

17 A prospective bidder may be allowed to submit his eligibility requirements
18 electronically. However, said bidder shall later on certify under oath as to the
19 correctness of the statements made and the completeness and authenticity of the
20 documents submitted.”
21

22 **Section 2. *Separability Clause*** – If any part or portion of this Act shall be
23 declared unconstitutional or invalid, such parts or portions not otherwise affected shall
24 remain in full force and effect.
25

26 **Section 3. *Repealing Clause*** – All laws, orders, rules and regulations, other
27 issuances, or parts thereof, inconsistent with any provision of this Act, are hereby
28 repealed or modified accordingly.
29

30 **Section 4. *Effectivity***. – This Act shall take effect after fifteen (15) days
31 following its publication in the Official Gazette or in two (2) newspapers of general
32 circulation.
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35 Approved,
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