

2006 Senate Bill

(The Proposed Consulting Services Board Act of 2006)

*based on the April 2006 Draft of Engr. Tony Mansueto, PhD, fspac (+)
and for refiling in 2008 c/o SPAC and COFILCO*

with February 2008 Anotations by PRBoA Chairman Armando N. Alli

THIRTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES)
Second Regular Session) S.S.

SENATE

S.B. No. _____

Introduced by Senator Ramon B. Magsaysay, Jr.

EXPLANATORY NOTE

The government is constitutionally mandated to sustained development and self-reliant and independent national economy. With these thrusts, they necessitate increased delivery of basic public services, rigorous construction of several infrastructure projects, effective project implementation and deployment of accredited and expert manpower.

There is **no law governing the practice of Consulting Services**, which in line with this sought mandate preponderantly calls for an organized regulatory body of government that will supervise, control and enhance the industry.

For construction there is **RA 4566** and the construction industry has such kind of organized administrative structure, which are, the Construction Industry Authority of the Philippines, the Domestic Construction Board, the Overseas Construction Board, the Philippine Construction Accreditation Board and the Construction Industry Arbitration Commission.

The Consulting Industry is wanting in this regard. It **needs a regulatory Body to complete the regulatory requirements of Consultation**. Since the **Construction Industry Authority of the Philippines (CIAP)** under DTI is already at the forefront of the Consulting Industry, it **must house** and oversee such consulting body. To achieve this aspiration, a **Consulting Services Board within** the Construction Industry Authority of the Philippines (**CIAP**) needs to be created.

Infrastructure and other government projects funded by international lending institutions and foreign grants-in-aid usually provide for the hiring of Consultants. At present,

guidelines in this regard are fragmented. Foreign-assisted projects are **governed** by guidelines of international lending institution **superseding** our local professional laws.

This Bill dwells more on **consulting services integrating professional practice** and can be **suppletory to RA 9184**: the Government Procurement Reform Act, as related to Consulting Services. This proposed law will create the **Consulting Services Board (CSB) within CIAP** with provisions that will exercise authority of **registration, accreditation, regulation and control** over local and foreign Consultants and Consulting firms.

The Professional Regulation Commission (PRC) confines its authority to register only and regulate **individual professionals**. PRC addressed only professional practice **not consultancy**. The Consulting Services Board (CSB) can attend to the **Consulting Services aspect** and takes care of the **accreditation and registration** of these **firms** leaving the **registration** of corporation and partnership to the Securities and Exchange Commission and/ or the Department of Trade and Industry.

There is **no basic law** for the practice of Consulting Services, yet there is RA 9184 and its IRR guidelines for the **hiring of consultants** for infrastructure and other government projects. Such guidelines are the outcrop of the Government Procurement Reform Act but does **not** focus on the practice of Consulting Services.

This bill seeks to fulfill that mandate by providing for a **Consulting Services Board Law** with Implementing Rules and Regulations in the conduct of Consultancy and in **regulating the practice of consultants for government infrastructure and other projects giving priority to Filipinos and/ or Philippine Consulting firms** thus make them globally competitive.

In view of the foregoing, approval of this measure is strongly recommended.

Feb 08 Anotation by PRBoA Chairman Alli:

While already circulated in April 2006 for comment, the contents of the bill has to be thoroughly scrutinized by Society of Philippine Accredited Consultants (SPAC) members and Confederation of Filipino Consulting Organization (COFILCO, at www.cofilco.org) members for updates with respect to the current (2008) versions of professional regulatory laws and their respective implementing rules and regulations (IRRs), derivative regulations, issuances by the PRC and other offices of the executive branch of government, procurement practices by the national and local governments, E.O. 278 (covering constructing and consulting service contracts for foreign-assisted projects, general jurisprudence specially Supreme Court (or lower court) orders/ decisions, laws passed in 2006-8, etc.

THIRTEENTH CONGRESS OF THE REPUBLIC)
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Introduced by Senator Ramon B. Magsaysay, Jr.

CREATING THE CONSULTING SERVICES BOARD, PRESCRIBING ITS POWERS, DUTIES AND FUNCTIONS, REGULATING THE PRACTICE OF CONSULTING SERVICES, PROVIDING FUNDS THEREFORE, AND FOR OTHER PURPOSES

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

Section 1. **Title of Act** - This Act shall be known as the "Consulting Services Law".

Article I DECLARATION OF POLICY

Section 2. **Declaration of Policy** - it is hereby declared the policy of the State to regulate the practice of Consultants and Consulting firms in the Philippines for all consulting projects, both government and private, and other related activities pursuant to Article XII of the Constitution of the Philippines which state that the practice of all professions in the Philippines shall be limited to Filipino citizens save in cases prescribed by law and attaining the Basic Objectives, to wit:

Feb 08 Anotation by PRBoA Chairman Alli:

Some professional regulatory laws e.g. accounting, architecture, environmental planning, etc. already regulate the practice of consulting firms. R.A. No. 9266 (The Architecture Act of 2004) also defines and regulates architectural consulting services. There is however definite need to regulate consulting services on an industry-wide basis.

Aside from the non-regulated consulting services, there is also need to consider legal and medical consulting services.

- (a) Achieve maximum efficiency and economy in the development and implementation of government and private consulting projects and related activities;
- (b) Bring out the transfer or introduction of new and necessary/ appropriate technology into the country;
- (c) Enhance the growth of the local consulting industry and optimize the use of local expertise, materials and other resources.

- (d) Promote transparency, fairness and equal access to information in all competitive selection processes.
- (e) Level the playing field to **allow small, legitimate Filipino Consultants to participate** in securing Consulting Assignments.
- (f) **Eliminate restrictions on legitimate Filipino Consultants** to participate in the open competitive selection process.
- (g) Promote the use of the services of legitimate Filipino Consultants for all projects and extend the **fair and equal treatment of Filipino Consultants in foreign-assisted government projects.**
- (h) To **regulate and control the consulting industry** by limiting the practice to accredited and registered Consultants and Consulting firms.

ARTICLE II DEFINITION OF TERMS

Section 3. **Definition of Terms** - As used in this Act, the following terms shall mean as follows:

- (a) **Consulting Service** means the rendering of **independent advice and assistance** of services/ activities requiring knowledge, training and experience, recognized competence, integrity and financial capability that shall be provided by the Consultant including facilities and equipment needed to undertake the projects, programs, studies and/ or activities in the services and activities classified and defined in this Act.
- (b) **Consultant** means either a natural or juridical person who is **qualified by appropriate education, skill and training**, with relevant experience qualified to render independent advice and assistance in his area of expertise.
- (c) **Filipino Consultant** means a Filipino citizen, who may be an individual, sole proprietorship or a partnership, **with specialized expertise acquired** in his years of actual experience, training and education and who **satisfies the definition of a consultant and duly accredited by the Consulting Services Board** and by the **Umbrella Organization of Filipino Consultants.**
- (d) **Foreign Consultant** means an individual, not a citizen of the Philippines who **satisfies the definition of a consultant qualified** to undertake the consulting services. The foreign consultant must **register and acquire a permit to work** and/ or do business in the Philippines in accordance with the rules and regulations that will be promulgated by the **Consulting Services Board**, the Department of Labor and Employment (**DOLE**), the Professional Regulatory Commission (**PRC**) Guidelines (Res. No. 98-547) for the Registration of Foreign Professionals allowed by law to practice the regulated professions in the Philippines, the Bureau of Immigration and Deportation and other pertinent laws. When the type and field of consulting services in which he/she wishes to engage involves a profession

regulated by law in the Philippines, he/she must be a registered professional in his own country as well and comply with other applicable laws relevant thereto.

Feb 08 Anotation by PRBoA Chairman Alli:

The protocols and effects of the Association of Southeast Asian Nations (ASEAN) Mutual Recognition Agreements (MRAs), signed for the state by the DTI (and therefore with binding effect), and covering regulated professions such as engineering and architecture must be factored in. Ditto with the Asia Pacific Economic Cooperation (APEC) Registries for engineers and architects.

- (e) **Consulting Firm** means a corporation, partnership or sole proprietorship **duly registered** with the Securities and Exchange Commission (**SEC**) or the Department of Trade and Industry (**DTI**) to perform consulting services, duly approved, accredited and registered with the Consulting Services Board.
- (f) **Association** means a **joint venture** among accredited Filipino Consultants and Consulting Firms **complying with the provision of existing law** or Foreign Consulting Firm(s), which complied with the provisions of this Act to undertake consulting services.
- (g) **Consulting Agreement** means an agreement entered into by a person, natural or juridical as defined in this Act with any client or government office in accordance with a contract to undertake a specific work, study or joint venture undertaking requiring special or technical skills and expertise consistent with existing professional laws to be accomplished within a period of time and requires that the specific work, study or undertaking be performed or accomplished with minimum direction and supervision from the hiring government office.
- (h) **Government Office** means **any** Philippine government department, office, agency, bureau, local government unit, government owned or controlled corporations or instrumentality.
- (i) **Head of Office** means the head of the department, agency or office of the Government or the governing board or head of the government-owned or controlled corporation, or board or council of the local government unit.
- (j) **Registration and Accreditation** shall mean the review and evaluation by the Consulting Services Board **in collaboration with** the Consultants' Umbrella Organization, giving **official recognition** to the individual consultant, sole, proprietorship, partnership, corporation or association to provide consulting services based on **defined standards** and affirming their credibility as to organization, competence, integrity, financial capability, facilities/ equipment for the types of services and fields of specialization as well as individual expertise.

- (k) **Board** means the Consulting Services Board (CSB) formed under this Act.
- (l) **Regulated Profession** means an occupation or vocation involving specialized learning, training, education and/ or experience of an individual, **regulated** by the Professional Regulation Commission through any of its regulatory boards, the Supreme Court, the DTI, HLURB and related agencies which prescribed the rules and regulations governing the practice and ethics thereof.
- (m) **Non-Regulated Professions** means an occupation or vocation involving specialized learning, training, and education as substantiated by valid certificates or college diploma and experience of an individual **not presently regulated** by the Professional Regulation Commission, the Supreme Court, the DTI, HLURB and related agencies.
- (n) **Government Project** means **any** infrastructure project **or** non-infrastructure project, programs or studies of the Government as classified in the Implementing Rules and Regulations.
- (o) **BAC** means Bid and Award Committee for Consulting Services of any Philippine government department, office, agency, bureau, local government unit, and government owned or controlled corporations or instrumentality.
- (p) **Professional Regulation Commission (PRC)** means the government agency and its Professional Regulatory Boards tasked to regulate and supervise all professionals except the profession of law.
- (q) **Umbrella Organization** means the Government's officially recognized Confederation of Filipino Consulting Organizations, Inc. (COFILCO), representing the different consulting Member Organizations (Mem-Os) composed of Consulting Member Firms (CMFs) or Individual Member Consultants (IMC), **in compliance with RA 9184** (Government Procurement reform Act of 2003 and its IRR).
- (r) **DTI** means the Department of Trade and Industry.
- (s) **GPPB** means Government Procurement Policy Board pursuant to RA 9184.

ARTICLE III ADMINISTRATION

Section 4. **Consulting Services Board** - There is hereby created a Consulting Services Board, hereinafter referred to as the Board, to be composed of a **Chair and four (4) members** to be appointed by the President of the Republic of the Philippines from a list of three (3) recommendees for each position, chosen, ranked in the order of preference and directly **nominated by the recognized Umbrella Organization**.

Section 5. **Term of Office** - The Chair and members of the Board shall hold office for a term of **three years after appointment** or until their successors shall have been reappointed for another three (3) year term. The first

member of the Board appointed under this Act shall hold office for the following terms: The Chair for three (3) years; two (2) members for two (2) years; and two (2) members for one (1) year. No member of the Board shall serve a consecutive term of **no** more than six (6) years. The Board shall be organized not later than three (3) months from the effectivity of this Act.

No member of the Board shall serve for more than two (2) regular terms. Any vacancy occurring within the term of a member due to resignation, conviction of any kind, disability, or death, shall be **filled by appointment** from a list of nominees as specified in Section 4, by the President of the Philippines; and such member appointed shall serve for the unexpired portion of the term vacated without prejudice to serve for a maximum of two (2) full terms. If the appointee comes from the incumbent Board, he shall serve the remaining vacated term in addition to the previous years he had already served and shall be qualified for reappointment in his new position: *Provided*, his aggregate number of years of service shall not exceed two (2) regular full terms.

Executive Officer - The **Chair** shall be the Executive Officer of the Board.

Section 6. **Qualification of Board Members** - Each member of the Board shall at the time of his appointment, possess the following qualifications:

- (a) Be a **natural born citizen** of the Philippines;
- (b) Must be at least forty (**40**) years of age;
- (c) A **registered and/ or accredited professional consultant** with no less than **ten (10) years of consulting service experience**, and has served **at least one full term as President, Officer, or Director of the Umbrella Organization as President or of its member-organizations**; provided that he/she shall be **nominated by the Umbrella Organization** prior to his/her appointment by the President of the Philippines.
- (d) Must **not** be an Officer or Director of the Umbrella Organization nor any of its Member-Organizations (Mem-Os) **during** his/her tenure of office with the Board;
- (e) Has never been convicted of any offense involving **moral turpitude**.

Each member of the Board shall take his/her **oath** of office prior to the official performance of his/her duties.

Section 7. **Removal of Board Members** - The President may **remove** any member of the Board, **upon the recommendation** of the **Secretary of Trade and Industry** on the following grounds:

- (a) Neglect of duty or incompetence;
- (b) Violation or tolerance of the violation of this Act, Corrupt Practices Act or the Code of Ethical Conduct for Government Employees (RA **6713**), the administrative Code (**EO 262**) and other applicable laws;

(c) Final judgment of a crime involving moral turpitude.

The Board Member shall be **given due notice** to a hearing where he/she can exercise his/her right to be heard and to defend him/herself, **assisted by counsel** in a **proper administrative investigation**. The **recommendations of the Secretary of Trade and Industry may be appealed within fifteen (15) days from written notice**, to the President, whose decision shall be final and executory.

Section 8. Compensation and Allowances of the Board Members

- The Chair and members of the Board shall receive compensation and allowances comparable to those being received by the Chair and members of the Professional Regulation Commission and as may be provided for in the General Appropriations Act.

Section 9. Supervision of the Board, Custodian of its records, Secretariat and Support Services

- The Board shall be under the **general supervision of the Secretary of DTI**. All records of the Board, including applications for registration, accreditation, minutes of deliberation, administrative cases, and other investigative cases involving **any** consultant or consulting firm, whether domestic or foreign shall be kept by the DTI.

Section 10. Duties, Powers and Functions of the Board - The Board shall exercise the following specific powers, functions, duties and responsibilities:

- (a) To promulgate and adopt the **rules and regulations** necessary for carrying out the provisions of this Act;
- (b) To formulate **strategies, programs and systems to enhance the growth of the domestic consulting industry**, both in the Philippines and abroad;
- (c) To **register and accredit** individual consultants, sole proprietorships, partnerships, corporations and joint venture associations, and **issue the Certificates of Registration and Accreditation** in accordance with the set of rules embodied in the Implementing Rules and Regulation including fees thereof, which shall be used by the Board to augment its administrative, operational, and investigative requirements;
- (d) To formulate and adopt the **Code of Ethical Conduct and Professional Standards for all consultants** to observe and follow;
- (e) To level the playing field in the selection of consultants to **allow small Filipino consultants to participate** in securing consulting assignments;
- (f) To provide better and equal access to timely information and data on consulting projects available both locally and from abroad, specially in the government sector;
- (g) To encourage and extend fair and equal treatment of Filipino consultants in any domestic consulting service project;
- (h) To promote total transparency in all phases of the

competitive selection process, specially in **all** government projects, in all its departments, agencies, bureaus, government owned or controlled corporations, local government units, and other government-assisted institutions;

- (i) To **assist Filipino consultants** and consulting firms **to secure overseas consulting projects;**
- (j) To **regulate and control the participation of foreign consultants** in the delivery of consulting services in the Philippines to see to it that they fulfill their duties and obligations while performing their works in the country;
- (k) To hear, try, and investigate **administrative** cases involving violations of this Act, its Implementing Rules and Regulations, the Code of Ethical Conduct for Consultants, and issue *subpoena duces testificandum* and *subpoena duces tecum* to secure appearances of witnesses and the production of documents in connection therewith;
- (l) To issue, suspend, cancel and/ or revoke, after due process the Certificate of Registration and Accreditation of individual consultants, sole proprietorship, partnerships, corporations and joint venture associations, for causes provided by law;
- (m) To ensure, in coordination with the Professional Regulation Commission, the Department of Trade and Industry, the Department of Public Works and Highways, the Department of Energy, the Department of Transportation and Communication, and the Department of Interior and Local Government **and other** implementing agencies full compliance with this Act and with the strategies and policies enunciated herein;
- (n) To **furnish the BAC** (for Consulting Services) in various government Departments, Agencies, government owned and controlled corporations, local government units and instrumentalities of the government, a **list of registered and accredited individual Consultants** and consulting firms including those whose registration have been revoked. The Board shall **compile the list of consultants and consulting firms that have committed infractions** and whose registration/ accreditation has been revoked or suspended;
- (o) To **refer to the Ombudsman**, the Department of Justice and other government prosecutorial agencies for further investigation and prosecution, any adverse findings of graft and corruption by **any government employee and officials and their accomplices;**
- (p) Discharge such other duties and functions as may be deemed necessary for the enhancement of the consulting industry and the upgrading, development and growth of domestic consulting services in the Philippines;
- (q) To adopt an official seal of the Board.

Section 11. **Personnel of the Consulting Services Board**

- (a) The Consulting Services Board shall recruit, hire,

fire and supervise its **administrative and operational personnel** to carry out its mandate under this Act pursuant to a *plantilla* and salary structure approved by the Secretary of DTI, and such salary or other administrative or operational expenses shall be a proper charge on its income or appropriation thereof.

(b) The Board in the exercise of its powers and performance of its functions shall appoint all officers and personnel as are necessary in a regular office, whose duties and responsibilities shall be determined by the Board.

Section 12. **Annual Report** - The Board, at the end of each fiscal year, shall submit to the DTI a detailed report of its activities and proceedings during the period covered by the fiscal year ended.

ARTICLE IV REGISTRATION AND ACCREDITATION OF INDIVIDUAL CONSULTANTS AND FIRMS

Section 13. **Umbrella Organization of Consultants** - The umbrella organization of **all** Filipino consulting organizations **recognized by the GPPB** shall interface with the Consulting Services Board on all matters affecting the practice of consultants and consulting firms. The umbrella organization shall **assist** the Board in the general registration and accreditation of individual consultants and consulting firms in the preparation of the list of fields of expertise where Filipino consultants are already qualified and capable and therefore do **not** require any foreign consultants. The GPPB recognized umbrella organization of Filipino consultants shall deal and consult with the Government, through the Board on matters relating to the practice of consultants. The umbrella organization shall have a Code of Ethics and be given **self-regulatory status** to police its own ranks.

Section 14. **Registration and Accreditation of Consultants** - With the **assistance** of the umbrella organization of Filipino consultants, the Board shall be responsible for the **evaluation, registration and accreditation** of Filipino consultants and consulting firms. The umbrella organization shall submit the **Class A documents** of the Consultants in the prescribed forms with its appropriate recommendation(s) for eligibility purposes and shall pay the required application fee as determined by the Board.

(a) The Board shall **evaluate the application for accreditation and registration** to do business in the Philippines including the relevant required requisite documents submitted by foreign consultants prior to doing business in the Philippines and submits its recommendation for approval or disapproval of its application to the Professional Regulation Commission, Department of Labor and Employment, Bureau of Immigration, Commission on Higher Education (CHED),

Securities and Exchange Commission and other government agencies to allow the **foreign consulting firm or consultant** to register and be licensed to do business in the Philippines.

The Professional Regulation Commission, Department of Labor and Employment, Bureau of Immigration, Securities and Exchange Commission and other government agencies shall **not** register, issue any permit or license to **any** foreign consulting organization/ individual consultant **without the required positive recommendation** of the Consulting Services Board.

(b) Only individual consultants and consulting firms registered in the **computerized database** of Consultants of the Board and bearing a **Consultant Code Number (CCN)** shall be eligible to offer and undertake consulting services **without the required positive recommendation** of the Consulting Services Board.

(c) With the assistance of the Umbrella Organization, the Board shall **annually prepare the Registry of Accredited Consultants (RAC)** showing the list of professions, expertise, types of services and the list/s of fields and sectors of specialization of Filipino consultants and consulting firms who have acquired the experience, training, skill and competency to undertake consulting services. Such a list shall also be used as the mandatory guide to government negotiators of foreign loans, aids and grants to ensure that any consulting service that will be included in such loan, aids or grant will embrace the consulting practice of Filipino consultants and firms. Accreditation shall be renewed annually.

ARTICLE V CONSULTING SERVICES

Section 15. **Scope of Consulting Services** - may be based but not limited to the following major classification of projects, programs or studies involving any of the fields of engineering, naval architecture, architecture, landscape architecture and interior design, environmental planning, finance, accounting, economics, marketing, environmental management, transportation, management, sociology, psychology, computer engineering, information technology, geodetic surveying, geology, and allied professional fields, to wit:

15.1 **TECHNICAL ASSISTANCE**

(a) Advisory and Review Services

(b) Pre-Investment, Feasibility Studies or Sectoral Studies

(c) Special Studies like Environmental Impact Studies (EIS), Soils Investigation, Environmental Management System, Geodetic Engineering or Surveying, Environmental Auditing, Environmental Safety and Health.

15.2 **DETAILED DESIGN**

(a) Pre-Design Phase

- (b) Basic Design Phase
- (c) Support Services During Construction

15.3 **PROJECT IMPLEMENTATION**

- (a) Construction Supervision/ Management, Quantity Surveying, and Inspection
- (b) Other Technical Services and Special Studies such as, Foundation Studies, Land Survey and Photogrammetry, Appraisals, studies involving engineering principles and knowledge.

15.4 **MANAGEMENT AND RELATED SERVICES**

- (a) Information Technology, but not limited to Computer Systems, Computer Software, Design, Policies and Procedures and Training;
- (b) Economic, Financial and Investment Studies, Corporate Valuation;
- (c) Management Studies such as organization systems, administrative, planning, policies, Utilities Rate Studies, accounting, manpower resources, training requirements, etc.;
- (d) Management Surveys such as Salaries, Motivation, etc.;
- (e) Management and Orderly Dissolution of Distressed Corporations;
- (f) Sectoral Policies, Governmental and Regional Development Policies;
- (g) Production Management, Inventory Control, Quality and Productivity Studies;
- (h) Planning, Feasibility, Market, Economic, Financial, Technical, Operational and Sociological Studies;
- (i) Institutional Strengthening, Organizational Development, Manpower Studies and Recruitment, Training and Transfer of Technology.
- (j) General Management Consultancy;
- (k) Space Planning and Management; and
- (l) Environmental Management Consulting Services.

The Details and Descriptions of each Scope of Services shall be incorporated in the Implementing Rules and Regulations

Feb 08 Anotation by PRBoA Chairman Alli:

The list has to encompass consulting services under the medical and legal professions to be truly a national consulting service law.

Section 16. **Participation of Consultants and Consulting Firms in Consulting Projects** - The procurement of Consulting Services for **all** consulting projects and other activities shall be **limited to the Board's registered and accredited individual consultants**, consulting firms, consulting partnerships, corporations and association only as defined in this Act.

Section 17. **Procurement of Consulting Services in Government-Funded Projects** - Republic Act 9184 and this Act shall govern the procurement of consulting services

by all government departments, offices, bureaus, agencies and instrumentality including local government units, government owned and controlled corporations, and colleges and universities.

The consulting services for any Government project, program, study or related activities to be procured through the Open Competitive Selection Process set forth by the Government Procurement Policy Board (GPPB) shall be only for accredited Individual Consultants, Sole Proprietorships, Partnerships, Corporations or Associations as defined in this Act. Uniform and standard prequalification document forms shall be used as prescribed by the (GPPB).

Section 18. **Selection of Consultants** - The procurement of consulting services for Government projects, programs, studies and other related activities shall always be disseminated first through the timely advertisement for consulting services in **any** of the four (4) national newspapers with the **highest circulation** (local and regional newspapers are not allowed) through the open competitive selection process and/or quality cost-based or quality-based system prescribed under the Implementing Rule and Regulations (IRR) of Republic Act 9184, in an operating web page of the government office requiring the consulting services, and in the **electronic board** of the procuring entity and the office of the recognized Umbrella Organization.

The Government Office shall only utilize **Board-accredited consultants and firms** who expressed interest to participate in the competitive selection process and who submit the required prequalification documents for short listing and invitation in response to a current newspaper advertisement and/ or webpage/ e-mail notice. For foreign-assisted projects requiring international competitive selection, the foreign consultant/ firm shall be evaluated and selected **separately** from domestic consultants and the first-ranked of each group shall tie-up with the domestic consultant who/which shall serve as prime consultant except when the project is highly technical and **beyond** the capability of the domestic consultant and requiring greater skill and experience as shall be determined by the Government.

Section 19. **Cost of Consulting Services** - As a general rule, the consulting cost or fee shall be determined on the basis of total cost to the consultant of actual services to be rendered plus a **reasonable level of profit, management fee** depending, among others, on the complexity, magnitude and scope of work of the project, prevailing market conditions, including indirect expenses, interest cost, indirect labor, fringe benefits, bond expenses, insurance, etc. In a foreign-assisted project where the award of contract is based on international competitive selection, Filipino consultants shall receive

remuneration/ fees that **equal international rates and fees**. The Government shall **not** discriminate against local consultants who wish to participate in competitive selection processes and shall secure international consulting rates (salaries) in projects that are foreign-funded or whenever foreign companies participate in the competitive selection process.

Section 20. **Remuneration of Consultants** - The remuneration, salary schedule or billing rate of consultants, professional, technical and other support staff shall be based on **comparable and appropriate private sector consulting industry practices and standards**. Annually, but not longer than every two (2) years, the Board with the assistance of the Umbrella Organization shall conduct a **salary survey** of the leading industrial, commercial, financial, and business companies of the Philippines to secure the prevailing salary rates for comparable positions with consulting firms. The Board shall disseminate these fair and just prevailing salary schedules for comparable positions of the consulting firms to various Government offices, Government-owned or controlled corporation and local government units (LGUs) as well as service-wide agencies like the Department of Public Works and Highways (DPWH), Department of Budget and Management (DBM), Department of Transportation and Communication (DOTC), Bases Conversion Agencies, the Commission on Audit and other agencies which engage consultants as a **guide to determine the fairness of the billing rates**.

Section 21. **Approval of Consulting Agreement** - The consulting agreement shall be approved by the Head of the Office concerned in accordance with existing laws and applicable COA rules and regulations.

Section 22. **Submission of Agreement to the Consulting Services Board (CSB)** - The Board shall be furnished by the Government Offices concerned with copies of **all** consulting agreements complete with attachments, including the evaluation and other documents leading to the award of this contract, in one (1) compact binder, for reference in case of complaints and for purposes of monitoring compliance with the provisions of this Act and its Implementing Rules and Regulations (IRR).

ARTICLE VI IMPLEMENTING RULES AND REGULATIONS

Section 23. **Implementing Rules and Regulations (IRR)** - Subject to the provision of this Act, the existing Implementing Rules and Regulations on the Procurement of Consulting Services for Government Projects formulated by the GPPB in accordance with the provisions of RA 9184, shall be accorded due cognizance. Similarly, the Board shall **prepare the IRR of this Act** in conformity with existing professional laws and their respective

IRRs.

The Board in collaboration and cooperation with the Department of Trade and Industry (DTI), Department of Public Works and Highways (DPWH), the concerned major Government Offices regularly utilizing consultants and the Umbrella Organization shall **formulate the IRR within six (6) months immediately after the approval of this Act**. The IRR shall take effect after its publication in a newspaper of general circulation on three (3) instances within a period of three (3) consecutive weeks.

Section 24. **Applicability of Coverage** - The provisions of this Act including its IRR shall apply to **all domestic-funded, foreign-funded and foreign-assisted consulting service contracts for Government projects, programs, studies and other related activities of any Government Office**.

Feb 08 Anotation by PRBoA Chairman Alli:

Provisions for this future law's applicability to private sector projects must be included as well. Note however that market forces rather than regulatory mechanisms are the ones that are better recognized by the private sector, which incidentally are under the DTI and the SEC, such that some degree of pressure on consulting service regulation compliance can still be exerted.

ARTICLE VII DISCIPLINARY AND PENAL PROVISIONS

Section 25. **Causes for Disciplinary Action** - The following shall constitute cause for disciplinary action:

- (a) Willful and deliberate abandonment without lawful and/ or just excuse of **any** consulting project or study engaged in and undertaken by the consultant or consulting firm;
- (b) Willful material and substantial departure from or disregard of plans, specifications or parameters of the consulting services agreement in **any** material project, and prejudice without the consent of the client to the extent that unnecessary delays are experienced in the completion of the consulting service or the project;
- (c) Willful misrepresentation of a material and substantial fact by an **applicant** in securing consultant accreditation and registration;
- (d) **Aiding and abetting** an unregistered and/ or non-accredited individual consultant or consulting firm, partnership, association, or corporation to evade the provisions of this Act, or knowingly combining or conspiring with a non-accredited or non-registered consultant or consulting firm, or allowing one's accreditation and registration to be used by another consultant or consulting firm with intent to **evade** the

- provisions of this Act;
- (e) Failure to comply with any of the provisions of this Act, its IRR and the Code of Ethical Conduct;
 - (f) The consummation or performance of any **willful or fraudulent act by the registered consultant or consulting firm**, as a consequence of which another is injured or damaged;
 - (g) The participation of a registered and accredited consultant or consulting firm in the performance by any partnership, corporation, firm or association for which he is the responsible managing partner, executive officer or other responsible officer, of any act or omission constituting a cause for disciplinary action under this Act; and
 - (h) The willful participation by consultants or consulting firms in the commission of acts by **any** officer, government official or executive officer of the government department, agency, local government unit, whereby such acts are prohibited by this Act, its IRR, the Code of Ethical Conduct or other applicable laws.

Section 26. **Enforcement by Officers of the Law** - It shall be the duty of **all** duly constituted law enforcement Officers of the national, provincial, city and municipal government or any political subdivision thereof, to cooperate with the Board in the enforcement of the provisions of this Act and to report violations of the same to the Board.

Section 27. **Enforcement by the Board** - Should **any** consultant or consulting firm, whether domestic or foreign not accredited nor registered by the Board engage or attempt to engage in the business of consulting or offer consulting services of any kind, the Board shall have the right to institute the proper **court action motu proprio** and secure a writ of injunction **without** posting a bond to fully restrain the said consultant or consulting firm and/ or government official from committing acts violative of this Act, its IRR and the Code of Ethical Conduct. Based on *prima facie* evidence or a complaint to be filed with the Board, the Umbrella Organization shall make the appropriate recommendation for the prosecution of the concerned entity, consultant, consulting firm or government official.

Section 28. **Penalties** - Any person or firm who enters into a consulting agreement with **any** government or private entity through misrepresentation with respect to any information made/ furnished by him/her or his/her firm in the sworn prequalification statements, technical proposal or documentation and other factual data submitted to the Bid and Award Committee (BAC) or its equivalent, shall upon conviction be issued sanctions or suffer the **penalty of imprisonment of no less than six (6) months and a fine of not more than P2,000,000.00**. **Any** public Officer and/ or employee who, connives, assists, facilitates or helps to facilitate approval of

a consulting agreement, hide or withhold information or data during the selection process, discriminate or favor any of the consultants or firms, or violates any provisions of existing Professional Laws, shall suffer the same penalty herein provided, including temporary or permanent disqualification to hold public office or government employment. The provision of this Section shall be without prejudice to prosecution under the Anti-Graft and Corrupt Practices Act (RA 3019) or any other existing applicable law and liability for damages to the disadvantaged consultants and consulting firms.

ARTICLE VIII FEES

Section 29. **Fee** - The Board shall charge **uniform fees for the annual accreditation and registration of consultants and consulting firms** and for such other services that it shall offer.

ARTICLE IX CONCLUDING PROVISIONS

Section 30. **Appropriation** - The Secretary of the Department of Budget and Management (DBM) shall release ten million pesos (P 10,000,000.00) from any applicable appropriation item under the General Appropriations Act of 2001 for the organizational and operational expenses for a period of one (1) year after the effectivity of this Act. Thereafter, the amount necessary for the annual budgetary requirements for the purpose shall be included in the General Appropriation Act.

Section 31. **Separability Clause** - If any section or portion of this Act shall be declared unconstitutional or invalid, the same shall not invalidate all other sections or portions not affected thereby.

Section 32. **Repealing Clause** - All laws, orders, issuances, rules and regulations or parts thereof, particularly Sec. 24, RA 544; Sec. 00, RA 9266; Sec. 35, RA 7920; Sec. 24, RA 8560; Sec. 36, RA 8495; Sec. 27, RA 8534, Sec. 2(b), RA 5734; Sec. 20, PD 1308; Sec 30, RA 1364, and **all** other laws, parts of laws, other ordinances, or regulations relative to the procurement of consulting services and which are inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.

Section 33. **Effectivity Clause** - This shall take effect fifteen (15) days following its publication in the Official Gazette or in one (1) major daily newspaper out of the four (4) leading general circulation national newspapers in the Philippines, whichever is earlier.

Approved:

Nothing follows.