
GUIDELINES IN THE DETERMINATION OF ELIGIBILITY OF FOREIGN SUPPLIERS, CONTRACTORS, AND CONSULTANTS TO PARTICIPATE IN GOVERNMENT PROCUREMENT PROJECTS

1. GENERAL POLICY

In line with the economic policies enunciated in the Constitution, particularly on the promotion of Filipino labor, domestic materials, and locally produced goods, Republic Act No. 9184, in consonance with Republic Act No. 5183, adopts as general principle the preference for Filipino nationals in the award of Government’s procurement contracts.

However, in light of the principles of economic exchange and expansion of trade and exports with other countries on the basis of equality and reciprocity, with due regard to the government’s initiatives in the prohibition and/or regulation of monopolies and other situations that restrain trade and fair competition, qualified foreign nationals may be eligible to participate in the public procurement of goods, infrastructure projects and consultancy services; provided, however, that provisions on domestic preference, Most-Favored Nation (MFN) status and non-discrimination treatments under applicable laws and treaties are complied with.

2. SCOPE, APPLICATION AND PURPOSE

These guidelines shall govern procurement of goods, infrastructure projects, and consulting services by all Departments, Bureaus, Offices and Agencies of the National Government, Government-Owned and/or Controlled Corporations, Government Financing Institutions, State Universities and Colleges, and Local Government Units and are formulated to clarify procurement policy on the eligibility of foreign bidders to participate in domestically-funded public procurement opportunities, within the framework of national and international economic and trade policies.

3. DEFINITION OF TERMS

For purposes of these guidelines, the following terms or words and phrases shall be defined as follows:

- 3.1. **Foreign Consultant** refers to an individual, sole proprietorship, partnership, corporation or joint venture as defined in Section 24.1(2) of the IRR-A of R.A. 9184.
- 3.2. **Foreign Contractor** refers to a citizen of a foreign country or an entity where Filipino ownership or interest is less than seventy five percent (75%) offering infrastructure related services other than consulting services.
- 3.3. **Foreign Supplier** refers to a citizen of a foreign country or an entity where Filipino ownership or interest is less than sixty percent (60%) who is engaged in the manufacture or sale of the merchandise or performance of the general services covered by his bid.
- 3.4. **Local Consultant** refers to an individual, sole proprietorship, partnership, corporation or joint venture satisfying the definition of a consultant under the IRR-A of R.A. 9184 and complying with the relevant requirements therein.
- 3.5. **Local Contractor** refers to a Filipino citizen or sole proprietorship; or partnership duly organized under the laws of the Philippines and of which at least seventy-five percent (75%) of the interest belongs to the citizens of the Philippines; or a corporation duly organized under the laws of the Philippines, and of which at least seventy-five percent (75%) of the outstanding capital stock belongs to citizens of the Philippines, duly licensed under Philippine laws to undertake infrastructure activities in the Philippines.
- 3.6. **Local Supplier** refers to any citizen of the Philippines, or any corporate body or commercial company duly organized and registered under the laws of the Philippines where Filipino ownership or interest is at least sixty percent (60%), habitually established in business and engaged in the manufacture or sale of the merchandise or performance of the general services covered by his bid.

4. FOREIGN SUPPLIERS, CONTRACTORS, AND CONSULTANTS ELIGIBLE TO PARTICIPATE

- 4.1. In the procurement of goods, regardless of the procurement method used, foreign bidders may be eligible to participate under any of the following circumstances:
- 4.1.1. When the goods sought to be procured are not available from local suppliers, subject to Item 5 herein; or
 - 4.1.2. When there is a need to prevent situations that defeat competition or restrain trade, subject to Item 6 herein; or
 - 4.1.3. When the foreign supplier, manufacturer and/or distributor is a citizen, corporation or association of a country the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines, irrespective of the availability of goods from local suppliers; or
 - 4.1.4. When provided for under any treaty or international or executive agreement.
- 4.2. In the procurement of infrastructure projects, foreign contractors may be eligible to participate in the bidding if they form a joint venture with local contractors; provided that their interest in or ownership of the joint venture shall not exceed twenty-five percent (25%). However, where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity which meets the seventy-five percent (75%) under Section 23.11.2 of the IRR-A, they may be eligible to participate in the bidding.
- 4.3. In the procurement of consulting services, foreign consultants may be hired if local consultants do not have the sufficient expertise, capability, and capacity to render the services required under the project, as determined by the head of the procuring entity.

5. GOODS ARE NOT AVAILABLE FROM LOCAL SUPPLIERS

- 5.1. In the procurement of goods not available from Local Suppliers, the procuring entity may invite foreign suppliers, manufacturers and/or distributors to participate in the procurement process.
- 5.2. For purposes of these guidelines, goods are not available from Local Suppliers when, at any time before advertisement for their procurement, it is determined that no Local Supplier is capable to supply the required goods to the Government, in which case, foreign suppliers, manufacturers and/or distributors may be invited to participate in the bidding. Therefore, the head of the procuring entity or his duly authorized representative shall certify that, after diligent market research conducted by the procuring entity, the goods sought to be procured are not available from Local Suppliers. In addition, when applicable, the procuring entity shall secure a certification from the appropriate Government regulatory body, such as, but not limited to, the Bureau of Product Standards of the Department of Trade and Industry (DTI) for electrical products, mechanical/building & construction materials, chemicals, foods and other consumer products, and the Bureau of Food and Drugs of the Department of Health (DOH) for drugs, medicine, and other related medical devices, that based on its available records, the goods sought to be procured are not available from Local Suppliers.
- 5.3. If despite the availability of the goods sought to be procured, no local supplier is interested to participate in the procurement process, the head of the procuring entity shall certify that it has advertised the same for public bidding and shall make a statement that no local supplier participated in the bidding and that the same is due to reasons not attributable to the procuring entity.
- 5.4. In the case mentioned in Item 5.3, for purposes of inviting foreign suppliers, the bidding requirements and conditions, as advertised, shall not be modified or changed. Otherwise, modifications and/or changes in the requirements and conditions of the bidding shall disallow the procuring entity to resort to invitation of foreign bidders.
- 5.5. The procurement of unavailable goods must be through competitive or public bidding unless conditions prescribed under R.A. 9184 and its IRR-A warrant resort to alternative methods of procurement.

6. THERE IS NEED TO PREVENT SITUATIONS THAT DEFEAT COMPETITION OR RESTRAIN TRADE

- 6.1. In cases where the procuring entity intends to procure goods from an exclusive local manufacturer, supplier, distributor, or dealer through direct contracting under Section 50 (c) of the IRR-A, when said method is recommended by the BAC and approved by the Head of the Procuring Entity, and reflected in the approved Annual Procurement Plan, it shall, before commencing any negotiations with a local supplier, post through the website of the procuring entity, if any, and in the Philippine Government Electronic Procurement System (PhilGEPS), an invitation to foreign manufacturers to submit a manifestation of its intention to participate. Should any foreign manufacturer submit such manifestation within the period prescribed in the invitation, the procuring entity shall commence the conduct of public bidding. If no foreign manufacturer submits such manifestation within the said period, the procuring entity may proceed with the intended procurement through direct contracting with the said exclusive local manufacturer, supplier, distributor, or dealer.

7. RECIPROCITY RULE IN THE PROCUREMENT OF GOODS

- 7.1. In the procurement of goods, a supplier, manufacturer and/or distributor who is a citizen, corporation or association of a country whose laws or regulations grant reciprocal rights or privileges allowing Filipino nationals to participate in public procurement in their country, are allowed to participate in government procurement projects.
- 7.2. The procuring entity shall confirm from the list of countries, maintained by the Department of Foreign Affairs (DFA) and as shown in the GPPB website, with which the Philippines enjoys reciprocal rights on matters of eligibility of its nationals in public procurement abroad. If the country of the prospective foreign bidder is not in the list, the procuring entity shall require from the said bidder the submission of a sworn statement that the country of which he is a citizen or in which the corporation or partnership is organized and registered grants reciprocal rights or privileges to Filipino citizens, corporations or associations, citing its country's relevant laws.
- 7.3. The sworn statements mentioned above shall be validated during post-qualification of bidders.



8. EFFECTIVITY

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.