



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 75-2012

22 June 2012

ATTY. LUIS MARTIN S. CLEMENTE

Partner

POBLADOR BAUTISTA & REYES

5th Floor, SEDCCO I Building,
120 Rada corner Legaspi Streets,
Legaspi Village, Makati City

Re: Eligibility to Bid of a Foreign Bidder based on Reciprocity

Dear Atty. Clemente:

We respond to your letter dated 15 May 2012 requesting confirmation that GlaxoSmithKline (GSK) Philippines, Inc., a domestic corporation with ninety nine percent (99%) British equity, may be declared eligible to participate in the competitive bidding activities for the supply of goods to the Philippine Government, including the Department of Health (DOH) or its attached agencies, pursuant to Section 23.5.1.2 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

We wish to inform you that in addition to Section 23.5.1.2(b) of the IRR of RA 9184, provisions on reciprocal rights or privileges can be found in Section 7.2 of the Government Procurement Policy Board (GPPB) Resolution No. 018-2005¹ or the Guidelines in the Determination of Eligibility of Foreign Suppliers, Contractors, and Consultants to Participate in Government Procurement Projects (Guidelines). Based on the Guidelines, following are two ways to determine the applicability of reciprocity in the case of foreign bidders:

- 1) The procuring entity shall confirm from the list of countries, provided in Annex "I" of the IRR 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; and
- 2) Pending the issuance of the list or in case the foreign bidder's country is not in said list, the bidder claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos shall submit a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item/product.

¹ Dated 12 September 2005, as amended by GPPB Resolution 03-2011 dated 28 January 2011.

For your guidance, the GPPB is still in the process of formulating Annex "I" of the IRR. Meantime, the submission of a certification will suffice so long as it states that Filipinos are allowed to participate in the foreign government's procurement activities for the same item/product, and the entity issuing such certification is the appropriate and authorized relevant foreign government agency or office.²

At this point, we note that although the Certification³ issued by the British Embassy in Manila, a copy of which was attached to your letter, contained a statement that the Government of the United Kingdom of Great Britain and Northern Ireland allows Filipino citizens, corporations, and associations to participate in the UK government public procurements without restrictions, it also specified that it was being issued to enable GSK to participate in the DOH's tender process for the Procurement of Live Attenuated Rotavirus under IB No. 2012-018. Thus, the applicability of this certification should be limited only to the indicated procurement activity.

It bears stressing that one of the powers granted to the Bids and Awards Committee (BAC) under Section 12 of RA 9184 and its IRR is to determine the eligibility of prospective bidders. Accordingly, the GPPB cannot dictate upon, or interfere with the functions of the BAC since these solely fall within their authority as sanctioned by law for as long as the BAC observes its concomitant responsibility to perform such functions with judiciousness, adhering to the principles of transparency, accountability, equity, efficiency, and economy in the procurement process that it carries out for the procuring entity.⁴

Based on the foregoing, the determination of compliance with the requirements is an authority that properly belongs to the procuring entity. The GPPB is not in a position to confirm that GSK is eligible to participate in the competitive bidding activities for the supply of goods to the Philippine Government, including the DOH or its attached agencies, since the validation of said certification aptly falls within the authority of DOH.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented. Should you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

//LSD3

² NPM No. 38-2012 dated 19 April 2012.

³ *Supra* note 1.

⁴ NPM No. 072-2012 dated 8 June 2012.