



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

NPM No. 79-2013

20 September 2013

MR. GIL PEPITO B. PAQUERO

Regional Director

NATIONAL FOOD AUTHORITY (NFA) -CARAGA REGION

2nd Floor, Rudy Tiu VIII Bldg.,

J.C. Aquino Ave., Butuan City

Re: Certification Claiming Domestic Preference as Additional Eligibility Document

Dear Director Paquero:

This is in response to your letter dated 29 August 2013, seeking approval from the Government Procurement Policy Board (GPPB) to allow the inclusion of a Certificate of Domestic Preference issued by the Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC), or Cooperative Development Authority (CDA) in favor of a bidder claiming domestic preference as an additional eligibility requirement.

It is represented that NFA-CARAGA is about to commence the procurement of sacks of palay through public bidding, in line with its mandate to stabilize the price and supply of rice and palay in the CARAGA Region. Prior survey conducted by the Bids and Awards Committee (BAC) of NFA-CARAGA revealed that there are many prospective suppliers of sacks who source their goods from foreign manufacturers. Thus, NFA-CARAGA decided to allow the participation of foreign bidders in accordance with Instructions to Bidders (ITB) Clause 5.2 (c)¹ of the 4th Edition Philippine Bidding Documents (PBDs) for the Procurement of Goods.² This prompted NFA-CARAGA to require the application of the ITB Clauses 27.2 and 27.3 of the PBDs for the Procurement of Goods on Domestic Preference, specifically requiring the domestic bidder or entity to submit a Certificate from the DTI, SEC or CDA, as the case may be, when claiming domestic preference.

As previously opined³ by this office, Procuring Entities (PEs) are proscribed from requiring additional eligibility requirements. This is because the list of minimum eligibility requirements under the revised Implementing Rules and Regulations (IRR) of Republic Act

¹ Foreign Bidders may be eligible to participate when any of the following circumstances exist, as specified in the BDS:

xxx

(c) When the Goods sought to be procured are not available from local suppliers.

xxx

² GPPB Resolution No. 06-2010; Approved 17th December 2010.

³ NPM No. 21-2012 dated 16 February 2012.

(RA) No. 9184 have been streamlined such that only those eligibility requirements⁴ enumerated under the revised IRR of RA 9184 are necessary for the purpose of determining the bidders' eligibility. Such eligibility documents are to be included in the First Envelope of the bidder's bid, thereby forming part of the Technical Bid Envelope.⁵ A Certificate issued by the DTI, SEC or CDA supporting the claim by the entity or bidder that it could claim domestic preference is not among the eligibility requirements enumerated in the IRR. Stated otherwise, PEs cannot require a bidder to submit a Certificate claiming domestic preference as this is not an eligibility requirement and not among those expressly required and enumerated by the IRR.

Although Certification issued by the DTI, SEC, or CDA supporting the claim of domestic preference is not an eligibility requirement, it forms part of the Financial Component of the bid which the bidder should include in the Second Envelope in accordance with ITB Clause 13(b)⁶ of the PBDs for the Procurement of Goods. As such, if a bidder wishes to claim domestic preference, it should include said Certification as among the documents in the Second Envelope, forming part of the Financial Component of the bid. This is in accordance with ITB Clauses 27.2⁷ and 27.3,⁸ which provide that the Bidder *may* be granted preference either as a Domestic Bidder⁹ or Domestic Entity¹⁰ subject to the submission by the Domestic Bidder or Domestic Entity of a DTI, SEC or CDA Certification, as the case may be, claiming domestic preference. Corollarily, a bidder waives its right to claim preference as a Domestic Bidder or Domestic Entity if it does not include said Certification as among the documents to be included in the Second Envelope comprising the Financial Component of the bid.

In sum, we wish to clarify that a Certification by the bidder claiming preference as a Domestic Entity or Domestic Bidder cannot be required as an additional eligibility document as this is not among the eligibility documents enumerated under the IRR of RA 9184. Such Certification, however, is submitted as part of the Second Envelope (Financial Bid Envelope) if a bidder intends to claim preference as a Domestic Entity or Domestic Bidder.

We hope that our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not

⁴ Section 23.1 of the revised IRR of RA 9184.

⁵ Section 25.2 (a)(i); *Id.*

⁶ 13. Documents Comprising the Bid: Financial Component

13.1. Unless otherwise stated in the **BDS**, the financial component of the bid shall contain the following:

(a) xxx

(b) *If the Bidder claims preference as a Domestic Bidder or Domestic Entity, a certification from the DTI, SEC, or CDA issued in accordance with ITB Clause 27, unless otherwise provided in the **BDS**; and*

(c) xxx (Italics ours)

⁷ A Bidder *may* be granted preference as a Domestic Entity subject to the certification from the DTI (in case of sole proprietorships), SEC (in case of partnerships and corporations), or CDA (in case of cooperatives) that the (a) sole proprietor is a citizen of the Philippines or the partnership, corporation, cooperative, or association is duly organized under the laws of the Philippines with at least seventy five percent (75%) of its interest or outstanding capital stock belonging to citizens of the Philippines, (b) habitually established in business and habitually engaged in the manufacture or sale of the merchandise covered by his bid, and (c) the business has been in existence for at least five (5) consecutive years prior to the advertisement and/or posting of the Invitation to Bid for this Project. (Emphasis ours)

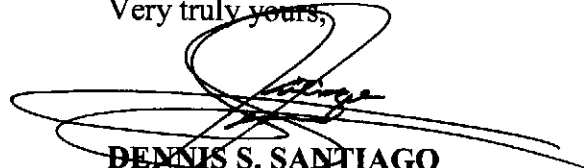
⁸ A Bidder *may* be granted preference as a Domestic Bidder subject to the certification from the DTI that the Bidder is offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured or to be manufactured in the Philippines, substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines. (Emphasis ours)

⁹ Revised IRR of RA 9184; Section 5 (j) **Domestic Bidder**. Refers to any person or entity offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured in the Philippines substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.

¹⁰ *Id.*; Section 5 (k) **Domestic Entity**. Refers to an individual or a sole proprietor who is a citizen of the Philippines or a partnership, corporation, cooperative, or association duly organized under the laws of the Philippines and of which at least seventy five percent (75%) of the interest or outstanding capital stock belongs to citizens of the Philippines, habitually established in business and habitually engaged in the manufacture or sale of the merchandise covered by his bid, and the business has been in existence for at least five (5) consecutive years prior to the advertisement and/or posting of the Invitation to Bid.

be applicable given a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III *AS*

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