



GOVERNMENT PROCUREMENT POLICY BOARD

TECHNICAL SUPPORT OFFICE

NPM No. 118-2012

17 September 2012

MS. DELIA J. SILVANO

Liaison Officer

JODAAR COTTAGE INDUSTRIES

1576-1582 E. Remigio Street

Sta. Cruz, Manila

**Re: Domestic Preference and the Single Largest Completed Contract (SLCC)
Requirement for Goods**

Dear Ms. Silvano:

This is in response to your letter dated 18 June 2012, seeking our opinion on whether local suppliers offering foreign products are barred from participating in government procurement and whether the submission of a Purchase Order may be deemed sufficient compliance with the SLCC requirement for Goods.

It is represented that Jodaar Cottage Industries (Jodaar) is a local supplier that offers domestic products, and imported products on an intermittent basis. It is likewise represented that Jodaar participated in the procurement of the National Food Authority (NFA) Region 1 Office, wherein it offered imported sacks and submitted a Purchase Order issued by a private entity to comply with the SLCC requirement. Jodaar claims that it was disqualified by NFA due to preference for local products being offered by other local suppliers, in accordance with *Executive Order (EO) No. 227* and non-compliance with the SLCC requirement for having submitted a Purchase Order, instead of a supply contract, as mandated by Section 23.5.1. of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. It is in this context that you are seeking our opinion on whether local suppliers offering foreign products are barred from participating in government procurement and whether the submission of a Purchase Order may be deemed sufficient compliance with the SLCC requirement for Goods.

Domestic Preference

At the outset, we note that the proper basis for the rule on domestic preference invoked in your letter-request is *Administrative Order (AO) No. 227*¹, and not EO 227. Along with the Flag Law under Commonwealth Act (CA) 138², AO 227 speaks of domestic preference, in that, Procuring Entities (PEs) "shall give preference in the procurement of materials and supplies."

¹ 27 May 2008.

² *An Act to Give Native Products and Domestic Entities the Preference in the Purchase of Articles for the Government*, 7 November 1936.

produced, made, and manufactured in the Philippines that meet the specified or desired quality in accordance with the provisions of existing laws and treaties or international agreements”.³ Hence, **AO 227 does not entirely exclude foreign products.** In fact, Section 3 thereof allows procurement of imported goods if local products, materials, and supplies are not manufactured domestically in sufficient quantity, or comparable quality, and at reasonable prices.

The foregoing rules are already implemented and embodied under Section 43.1.1 of the revised IRR of RA 9184 which provides that in the interest of availability, efficiency and timely delivery of goods, the PE may give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality, in accordance with the provisions of CA 138. Thus, the PE shall give preference to Domestic Bidders/Entities, provided, among others, that his bid is not more that fifteen percent (15%) in excess of the lowest Foreign Bid.⁴ In all, it is clear that bidders offering foreign products **shall not be excluded outright** from public bidding.

SLCC for Goods

Our procurement rules require a statement of the prospective bidder of all its on-going and completed government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid, within the relevant period as provided in the Bidding Documents⁵, as part of Technical Documents for eligibility of a prospective bidder.

For purposes of determining compliance with the SLCC requirement, there is a present need of determining whether a Purchase Order is deemed a contract within the contemplation of the law. Hence, we refer to the definition of a contract, which is a “[m]eeting of the minds between two persons whereby one binds himself to give something or to render some service”⁶ to another for consideration. Further, there is no contract unless the following requisites⁷ concur: 1) Consent of the contracting parties; 2) Object certain which is the subject matter of the contract; and 3) Cause of the obligation which is established.⁸

The New Government Accounting System (NGAS) Manual⁹ defines Purchase Order as the *one used to support purchase of equipment, supplies and materials, etc.*¹⁰ It is an authorization by the issuing party for the recipient to provide materials or services for which the issuing party agrees to pay; it is an **offer to buy which becomes binding when those things ordered have been provided.**¹¹ The terms and conditions for the procurement of supplies, materials or equipment, in particular, are contained in a purchase order.¹² The tenor of a purchase order basically directs the supplier to deliver the articles enumerated and subject to the terms and conditions specified therein.¹³

³ Section 1, *Id.*

⁴ Foreign Bid - refers to any offer of articles, materials or supplies not manufactured or not 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; Section 5(n), revised IRR of RA 9184.

⁵ Section 23.1(a)(iii), revised IRR of RA 9184.

⁶ Article 1305, New Civil Code of the Philippines.

⁷ Article 1318, *Ibid.*

⁸ *Jasmin Soler vs. Court of Appeals*, G.R. No. 123892, 21 May 2001, citing *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 301 SCRA 572, 592 1999.

⁹ Commission on Audit Circular 2002-002, 18 June 2002.

¹⁰ Section 37, Chapter 2, Volume II - The Accounting Books, Records, Forms and Reports. NGAS Manual.

¹¹ *Atienza vs. Villarosa*, G.R. No. 161081, 10 May 2005, citing *Smyth Worldwide Movers, Inc. v. Little Rock Packing Co.*, 361 S.W.2d 534.

¹² *Ibid.*, citing Annex 29, NGAS Manual for LGUs

¹³ *Ibid.*

Thus, as one offers to buy in a purchase order, this binds him to pay upon delivery by the other of the items agreed upon. The purchase order, which is the contract between the parties, embodies the terms and conditions of their transaction.

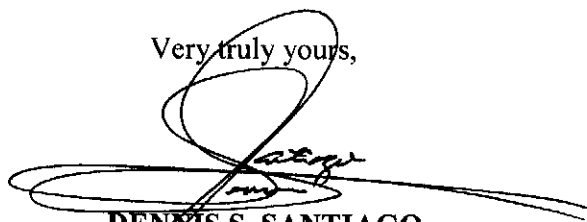
However, we wish to emphasize that the statement of the contract alone does not in itself constitute full compliance with the SLCC requirement. The law further provides that the aforesaid statement shall include all information required in the Philippine Bidding Documents (PBDs) prescribed by the GPPB¹⁴. Accordingly, the PBDs require, among others, an **end-user's acceptance or official receipt(s)** issued for the contract¹⁵, as proof of the completed contract.

Prospective bidders have the responsibility to strictly comply with the requirements prescribed by the PE pursuant to RA 9184 and its IRR, specifically, in complying with the requirement on single largest similar contract.¹⁶ This eligibility criterion cannot be dispensed with or waived by the PE as this is one of the minimum requirements that a prospective bidder has to satisfy to establish its track record and capacity to perform contractual obligations.¹⁷ Hence, should the prospective proponent fail to satisfy any of the requirements prescribed under the said provision, it will have to be declared ineligible to participate in the ensuing public bidding.¹⁸


In sum, Jodaar may not be excluded outright from participating in government procurement due merely to the fact that there are suppliers offering local products. The domestic preference contemplated under AO227 is not intended to exclude, but only to prefer domestic products over foreign products, within the limits prescribed therein. Likewise, it may not be disqualified for mere submission of a Purchase Order as the same is deemed a contract in all respects. However, it must be shown that there was full compliance with the requirements of the law in the statement of ongoing and completed contracts, otherwise, the bidder will be declared ineligible to participate, as the requisites constituting the eligibility criteria for the procurement of goods should not be taken in the alternative but should altogether be complied with.¹⁹

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

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¹⁴ *Id.*

¹⁵ Clause 12.1(a)(iii.6), Instructions to Bidders, Philippine Bidding Documents, Fourth Edition, December 2010.

¹⁶ NPM 068-2012 dated 31 May 2012.

¹⁷ NPM 008-2005 dated 26 January 2005.

¹⁸ *Id.*

¹⁹ *Id.*