

NPM No. 29-2009

8 June 2009

ENGR. JASMINE DL. IGNACIO
Chairperson
PEZA CEZ Bids and Awards Committee
PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA)
CAVITE ECONOMIC ZONE
4106 Rosario Cavite

Re : Domestic Preference

Dear Engr. Ignacio:

This pertains to your letter, dated 13 February 2009, requesting policy guidance relative to the issue raised by one of your bidders, Philippine Electric Corporation (Philec), more specifically the application of the "domestic preference" rule by the Cavite Economic Zone – Bids and Awards Committee (CEZ BAC) in the evaluation of bids for the project "Supply and Delivery of Various Equipment for the Power Distribution System at CEZ – Lot 1: Distribution Transformers".

The facts represented are as follows:

1. On 26 January 2009, Philec sent a letter to the CEZ BAC, addressed to Eng. Jasmine DL. Ignacio, seeking clarification on the interpretation of the domestic preference rule as mentioned in the Instructions to Bidders (ITB) and Bid Data Sheet (BDS) for the bidding of the above-mentioned project, claiming that Philec is a domestic manufacturer of the goods being bid out while the lowest complying and responsive bid carries an imported brand.
2. Engr. Ignacio replied on 27 January 2009, explaining that consistent with the provisions of Commonwealth Act No. 138, the Implementing Rules and Regulations Part-A (IRR-A) of Republic Act No. 9184 (R.A. 9184) and Republic Act No. 5183, "domestic preference" as mentioned in the ITB refers to "domestic entities" or citizens of the Philippines, corporate bodies, or commercial companies duly organized and registered under Philippine laws, whose 75% of capital is owned by the citizens of the Philippines, and who are habitually established in business and engaged in the manufacture or sale of merchandise covered by their bid.

3. Thereafter, Philec, in another letter, questioned the stance of the CEZ BAC in considering Delta Star, which is the foreign manufacturer of the local winning bidder's bid for oil immersed transformers, as a domestic entity qualified for domestic preference.

The basic issue for consideration is the manner of application of the domestic preference rule as embodied in CA 138.

The domestic preference rule under the present procurement law finds legal ground in Section 4.2 of the IRR-A, viz:

This IRR-A shall apply to the procurement of infrastructure projects, goods and consulting services by any procuring entity, **subject to the provisions of Commonwealth Act No. 138, otherwise known as the "Flag Law"**. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine Government is a signatory shall be observed. (Emphasis ours)

The Supreme Court also had the occasion of expounding on the concept of "domestic preference" under C.A. 138 in the case of *Asbestos Integrated Manufacturing Inc vs. the Honorable Elviro L. Peralta, Metropolitan Waterworks and Sewerage System (G.R. No. L-45515. October 29, 1987)* wherein it expressed the following pronouncement:

Under CA No. 138, preference is given (a) in favor of unmanufactured articles, materials or supplies of the growth or production of the Philippines, and manufactured articles, materials and supplies, produced, made and manufactured in the Philippines substantially from articles, materials, or supplies of the growth of the Philippines; and (b) in favor of domestic entities.

It is clear from the foregoing that the Flag Law recognizes two instances for the application of domestic preference, viz: (1) for unmanufactured and manufactured articles consisting of, or using, substantially, materials grown or produced in the Philippines, respectively; and (2) for domestic entities as defined under CA 138. Thus, it is posited that the procuring entity can opt to apply the domestic preference on the basis either of the nationality of the bidder or, of the country of origin and/or place of manufacture of the goods to be procured, as may be appropriate and/or warranted by the circumstances.

To illustrate, the Supreme Court in the *Asbestos* case said:

The Flag Law may be invoked only against a bidder who is not a domestic entity, as defined in the law, *or* against a domestic entity who offers imported articles, materials or supplies, or those made or produced

¹ A "domestic entity" means any citizen of the Philippines, or any corporate body or commercial company duly organized and registered under the laws of the Philippines, 75% of whose capital is owned by citizens of the Philippines, *and* who are habitually established in business engaged in the manufacture or sale of the merchandise covered by their bid, Section 2(b), Commonwealth Act No. 138

in the Philippines from imported materials. But, where all the materials, goods or supplies offered in the bids submitted are produced, made and manufactured in the Philippines substantially from articles, materials or supplies of the growth of the Philippines, and the bidders are domestic entities, xxx the Flag Law finds no application." (*Emphasis ours.*)

Further, on the basis of CA 138, a domestic or foreign entity which offers un-manufactured articles, materials, or supplies of the growth or production of the Philippines, or manufactured articles, materials or supplies manufactured/to be manufactured substantially from articles, materials or supplies of the growth, production or manufacture of the Philippines, is deemed to have offered a "domestic bid". On the other hand, a domestic or foreign entity offering articles/materials or supplies not manufactured or to be manufactured in the Philippines, substantially from articles, materials, or supplies of the growth, production, or manufacture of the Philippines, is deemed to have offered a "foreign bid."

In view of the foregoing, it may be aptly deduced that the term "domestic preference" as understood under the Flag Law pertains to the premium given to (1) domestic entities; and, to (2) domestic bids, when they are competed against (1) foreign entities, and (2) foreign bids, respectively, assuming that all the participating bidders concerned passed the eligibility requirements under R.A. 9184.

Relatedly, we would like to inform you that the Government Procurement Policy Board is presently deliberating on the proposed revisions to the IRR of R.A. 9184. One of the issues noted is the application of C.A. 138 as it relates to Section 43 of R.A. 9184 and its IRR-A.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

Ruby U. Alvarez
for **RUBY U. ALVAREZ**
Executive Director III

SH Hycer
I've made revisions.
Pls. see filename:
PEZA, Domestic Preference
in my shared docs.

Kindly print it as an
NPM. I will sign for Dir. Hycer.

NPM No. _____

13 April 2009

ENGR. JASMINE DL. IGNACIO
Chairperson
PEZA CEZ Bids and Awards Committee
PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA)
CAVITE ECONOMIC ZONE
4106 Rosario Cavite

Re : Domestic Preference

Dear Engr. Ignacio:

This pertains to your letter, dated 13 February 2009, requesting policy guidance relative to the issue raised by one of your bidders, Philippine Electric Corporation (Philec), more specifically the application of the "domestic preference" rule by the Cavite Economic Zone – Bids and Awards Committee (CEZ BAC) in the evaluation of bids for the project "Supply and Delivery of Various Equipment for the Power Distribution System at CEZ – Lot 1: Distribution Transformers".

The facts represented are as follows:

1. On 26 January 2009, Philec sent a letter to the CEZ BAC, addressed to Eng. Jasmine DL. Ignacio, seeking clarification on the interpretation of the domestic preference rule as mentioned in the Instructions to Bidders (ITB) and Bid Data Sheet (BDS) for the bidding of the above-mentioned project, taking into consideration the fact that one of its competitors, Uptown Industrial Sales, Inc., allegedly carries imported brands from Korea.
2. Engr. Ignacio replied on 27 January 2009, explaining that consistent with the provisions of Commonwealth Act No. 138, the Implementing Rules and Regulations Part-A (IRR-A) of Republic Act No. 9184 (R.A. 9184) and Republic Act No. 5183, "domestic preference" as mentioned in the ITB refers to "domestic entities" or citizens of the Philippines, corporate bodies, or commercial companies duly organized and registered under the Philippine laws, whose 75% of capital is owned by the citizens of the Philippines, and who are habitually established in business and engaged in the manufacture or sale of merchandise covered by their bid.

3. Thereafter, Philec, in another letter, questioned the stance of the CEZ BAC in considering Delta Star as a domestic entity qualified for domestic preference. It alleges that Delta Star may not be deemed as habitually engaged in the manufacture of brand new oil immersed distribution transformers in the Philippines because of its questionable capacity to manufacture and test its products.

Hence, the basic issue for consideration is whether the nationality of the bidder corporation derived from the majority stock ownership, or the country of origin of the goods to be procured, shall be the deciding factor in applying the "domestic preference" rule.

The domestic preference rule under the present procurement law finds legal ground in Section 4.2 of the IRR-A:

This IRR-A shall apply to the procurement of infrastructure projects, goods and consulting services by any procuring entity, **subject to the provisions of Commonwealth Act No. 138, otherwise known as the "Flag Law"**. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine Government is a signatory shall be observed. (Emphasis ours)

The Supreme Court had the occasion of adequately expounding on the concept of "domestic preference" under C.A. 138 in the case of *Asbestos Integrated Manufacturing Inc vs. the Honorable Elviro L. Peralta, Metropolitan Waterworks and Sewerage System* (G.R. No. L-45515. October 29, 1987) wherein it expressed the following pronouncement:

*cited portion of the opinion of Sec. of Justice
O.A. 85.162*

The Flag Law establishes two types of preference:

(1) One in favor of unmanufactured articles, materials or supplies of the growth or production of the Philippines, and of manufactured articles, materials and supplies produced, made and manufactured in the Philippines substantially from articles, materials or supplies of the growth, production or manufacture of the Philippines [Secs. 1; 2(c) and (d); and (3)];

(2) The other, in favor of domestic entities, that is, citizens of the Philippines or corporate bodies or commercial companies, duly organized and registered under the laws of the Philippines, 75% of whose capital is owned by citizens of the Philippines, and who are habitually established in business engaged in the manufacture or sale of the merchandise covered by their bid [Secs. 1; 2(b); and (4)].

It is clear under the above-quoted jurisprudence that the Flag Law gives preference to those articles which are, ~~both~~ ^{either} unmanufactured ~~and~~ ^{or} manufactured, but using raw materials grown or produced within the country.

"Domestic Preference" ~~also includes those products produced~~ by domestic entities or corporations organized under the laws of the Philippines or having capital stocks, seventy five per cent (75%) of which are owned by Filipino citizens. The Flag Law requires that to be a domestic entity, the bidder must not only be a Filipino entity, but also

habitually established in business and engaged in the sale of the commodity covered by his bid.

manufacture *

Additionally, it is also important to consider in determining whether a bid is considered as a domestic or foreign bid, the materials used in its production. Meaning, if a foreign manufacturer uses raw materials from the Philippines, then such entity is deemed to have tendered a domestic bid, which must be accorded domestic preference during bid evaluation. On the other hand, any domestic entity/manufacturer that produces and sells goods from imported raw materials shall not be given domestic preference.

too sweeping

In view of the foregoing, it may be aptly deduced that the term "domestic preference" as understood under the Flag Law pertains to the premium given to domestic or foreign entities using locally-produced goods from local raw materials when they are competed against domestic entities or foreign suppliers using imported raw materials assuming that all the participating bidders concerned passed the eligibility requirements under R.A. 9184.

We would like to inform you that the possible amendments to the IRR-A of R.A. 9184 may include the application of the domestic preference rule in government procurement. Please be guided accordingly.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

*Atty. Alyce
Re. draft reply.*

6310133

*TY.
2/20/09*



PEZA

13 February 2009

PHILIPPINE ECONOMIC ZONE AUTHORITY

Cavite Economic Zone - 4106 Rosano Cavite
Tel. Direct Line/Fax: (046) 437-6344 • (046) 437-6090 • 437-6146 • 437-6876
E-mail: cez@pldtdsl.net

Handwritten notes and signatures in a shaded box.

MS. RUBY U. ALVAREZ
Board Secretary, Government Procurement Policy Board
Executive Director, GPPB-Technical Support Office
Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City

Dear Ms. Alvarez:

We would like to respectfully seek the opinion of the GPPB regarding case of Philippine Electric Corporation (Philec), one of the bidders for the project "Supply and Delivery of Various Equipment for the Power Distribution System at CEZ - Lot 1: Distribution Transformers," which contests the application of the CEZ BAC on "domestic preference" in the evaluation of bids

On 26 January 2009, Philec sent a letter (Attachment A) to the CEZ BAC to seek clarification regarding the application of "domestic preference" after citing that Philec is a domestic manufacturer of the goods that has been bid out while the bidder rated to have the lowest calculated and responsive bid was carrying an imported brand.

In response to their concern, the CEZ BAC replied on 27 January 2009 (Attachment B) to explain that the basis used in applying the "domestic preference" to recommend the award of the above-cited project is the definition stated in Section 33.1(a) of the Instructions to Bidders (ITB) to mean the "domestic entity" which are citizens of the Philippines or corporate bodies or commercial companies duly organized and registered under the Philippine laws, whose 75% of capital is owned by the citizens of the Philippines, and who are habitually established in business and engaged in the manufacture or sale of merchandise covered by their bid. It was also mentioned that the above cited definition is consistent with the provisions of Commonwealth Act No. 138, the Implementing Rules and Regulations-A of R.A. 9184, and R.A. 5183.

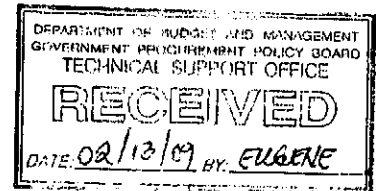
On 12 February 2009, Philec again sent its reply letter (Attachment C) contesting the above-cited definition of "domestic preference" by insisting that "Delta Star is not habitually engaged in the manufacture of brand new oil immersed transformers in the Philippines." However, Delta Star is not the winning bidder for the project but its authorized local distributor.

In view of the persistent position of Philec to refuse the manner that the CEZ BAC applied "domestic preference" in the evaluation of bids, we are looking forward to the reply of GPPB on how we can appropriately resolve this matter.

Very truly yours,

Jasmine D.L. Ignacio
ENGR. JASMINE D.L. IGNACIO
Chairperson, PEZA CEZ Bids and Awards Committee

cc: DDG J. Porfirio LL. Yusingco, Finance and Administration
DDG Jesus S. Sirios, Policy & Planning
ZA Tereso O. Panga, CEZ



"The heart of Kabuhayan sa Barot toyo"
President, Gloria Macapagal Arroyo

**PHILIPPINE ECONOMIC ZONE AUTHORITY**

Cavite Economic Zone - 4106 Rosario Cavite
Tel. Direct Line/Fax: (046) 437-6344 • (046) 437-6090 • 437-6146 • 437-6876
E-mail: cez@pctcdsl.net

PEZA

27 January 2009

Attachment B

MR. LIBERATO A. MARTIN, JR.
Senior Sales Engineer
Philippine Electric Corporation
2/F Benpres Building
Meralco Avenue, Pasig City


Dear Mr. Martin:

This refers to the letter we received from Philippine Electric Corporation (Philec) on 26 January 2009, which seeks clarification regarding the application of "domestic preference" for the project "Supply and Delivery of Various Equipment for the Power Distribution System at CEZ - Lot 1: Distribution Transformers."

We would like to inform you that the term "domestic preference" stated in Section 33.1(a) of the Instructions to Bidders (ITB) refers to the "domestic entity" which is also defined in the subsequent sentence therein to mean the citizens of the Philippines or corporate bodies or commercial companies duly organized and registered under the Philippine laws, whose 75% of capital is owned by the citizens of the Philippines, and who are habitually established in business and engaged in the manufacture or sale of merchandise covered by their bid. The above cited definition is consistent with the provisions of Commonwealth Act No. 138, the Implementing Rules and Regulations-A of R.A. 9184, and R.A. 5183. These are the basis used by the CEZ Bids and Awards Committee in applying the "domestic preference" to recommend the award of the above-cited project to the bidder, a domestic entity, that submitted the lowest calculated and responsive bid (LCRB)

We hope that we have addressed your concern and we look forward to your participation in our future projects.

Very truly yours,


ENGR. JASMINE D.L. IGNACIO
Chairperson, CEZ Bids and Awards Committee

cc: DDG J. Porfirio LL. Yusingco, Finance and Administration
ZA Tereso O. Panga, CEZ

"Trabaho ng trabuhayan sa bayad ng"
President Gloria Macapagal-Arroyo

**Philippine Electric Corporation**ISO 9001
CERTIFIED

Our Ref.: LAM-09-02

January 26, 2009

Attachment A**CAVITE ECONOMIC ZONE**Philippine Economic Zone Authority (PEZA)
Rosario, CaviteAttention: **ENGR. JASMINE DL. IGNACIO**
*Chairperson, CEZ-BAC*Subject: Supply and Delivery of Various Equipment for the Power Distribution
System of CEZ (PEZA-CEZ-08-0005)

Dear Madame,

This is just to inquire about the status of your bid conducted last November 5, 2008 pertaining to the subject captioned above.

May we also inquire about your application of the domestic preference as mentioned in Section II (33) of your Instruction to Bidders entitled "Domestic Preference" and ITB Clause 33.1 of your Bid data sheet?

Considering that Philec is a domestic manufacturer and eligible under the provisions of the earlier mentioned above and considering that our competitor, Uptown Industrial Sales, Inc., is a trader presumably carrying an imported brand, How would you apply the "Domestic Preference" provision in this case?

Thank you very much for your usual prompt and kind attention.

Very truly yours,

LIBERATO A. MARTIN, JR.
Senior Sales Engineer
Philippine Electric Corporation (PHILEC)c.c.: **Mr. J. Porfirio LL. Yusingco**
BAC Chairman / PEZA Main Office

**Philippine Electric Corporation**ISO 9001
CERTIFIED

Our Ref.: LAM-09-05

Attachment C

February 12, 2009

CAVITE ECONOMIC ZONE
Philippine Economic Zone Authority (PEZA)
Rosario, CaviteAttention: **ENGR. JASMINE DL. IGNACIO**
*Chairperson, CEZ-BAC*Subject: Supply and Delivery of Various Equipment for the Power Distribution
System of CEZ (PEZA-CEZ-08-0005)

Dear Madame,

This is to acknowledge receipt of your letter dated 1/27/09 regarding our query on how your good office applies the domestic preference as prescribed by R.A 9184.

Though we agree that the first qualification is capital ownership of the bidder (75% Filipino owned), we beg to disagree with your interpretation of the second qualification.

It is well known in the industry that the only recognized local manufacturers of brand new oil immersed distribution transformers in the Philippines are Philippine Electric Corp., carrying Philec brand and Super Manufacturing, Inc., carrying the Wagner brand. It is also well known in the industry that Delta Star carries the Korean brand, Dong A.

In this regard, may we therefore contest your position that Delta Star falls under purview of R.A. 9184 as a domestic entity qualified for domestic preference. May we also bring out the fact that a manufacturer's capability to produce also involves their ability to test the products they produce, if such complies on the minimum to their customers' requirements and standards and the Philippine National Standards and/or International Standards i.e. ANSI and IEC. It is therefore our position that Delta Star is not habitually engaged in the manufacture of brand new oil immersed distribution transformers in the Philippines, since their manufacturing capabilities is questionable and they have no known capacity to test their manufactured products.



Philippine Electric Corporation



Thank you very much for your usual prompt and kind attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Liberato A. Martin, Jr.", written over a horizontal line.

LIBERATO A. MARTIN, JR.

Senior Sales Engineer

Philippine Electric Corporation (PHILEC)

c.c.: **Mr. J. Porfirio LL. Yusingco**
Deputy Director General – Finance & Administration

Mr. Jesus Sirios
Deputy Director General – Policy & Planning

Mr. Tereso O. Panga
Zone Administrator – Cavite Export Zone

Engr. Rustico Nero
Transco-Cavite

COMMONWEALTH ACT NO. 138 - AN ACT TO GIVE NATIVE PRODUCTS AND DOMESTIC ENTITIES THE PREFERENCE IN THE PURCHASE OF ARTICLES FOR THE GOVERNMENT

Section 1. The Purchase and Equipment Division (now Supply Coordination Office) of the Government of the Philippines and other officers and employees of the municipal and provincial governments and the Government of the Philippines and of chartered cities, boards, commissions, bureaus, departments, offices, agencies, branches, and bodies of any description, including government-owned companies, authorized to requisition, purchase, or contract or make disbursements for articles, materials, and supplies for public use, public biddings, or public works, shall give preference to materials and supplies produced, made, and manufactured in the Philippines or in the United States, and to domestic entities, subject to the conditions herein-below specified.

Section 2. For the purposes of this Act, the terms hereunder are hereby defined as follows:

- (a) The term "United States" includes the United States of America, the District of Columbia, and any State or territory of the North American Union;
- (b) The term "domestic entity" means any citizen of the Philippines or of the United States habitually established in business and engaged in the manufacture or sale of the merchandise covered by his bid, or any corporate body or commercial company duly organized and registered under the laws of the Philippines of whose capital 75 per centum is owned by citizens of the Philippines or of the United States, or both;
- (c) The term "domestic bidder" means any person or entity offering un-manufactured articles, materials, or supplies of the growth or production of the Philippines or of the United States, or manufactured articles, materials or supplies manufactured or to be manufactured in the Philippines or in the United States, substantially from articles, materials or supplies of the growth, production or manufacture, as the case may be, of the Philippines or of the United States;
- (d) The term "foreign bid" means any offer of articles, materials or supplies not manufactured or to be manufactured in the Philippines or in the United States, substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines or of the United States.

Section 3. Only un-manufactured articles, materials, or supplies of the growth or production of the Philippines or the United States, and only such manufactured articles, materials, or supplies as have been manufactured in the Philippines or in the United States, substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines or of the United States, shall be purchased for public use and, in case of bidding, subject to the following:

- (a) When the lowest foreign bid, including customs duties, does not exceed two pesos, the award shall be made to the lowest domestic bidder, provided his bid is not more than one hundred per centum in excess of the foreign bid;
- (b) When the lowest foreign bid, including customs duties, exceeds two pesos but does not exceed twenty pesos, the award shall be made to the lowest domestic bidder, provided his bid is not more than fifty per centum in excess of the lowest foreign bid;
- (c) When the lowest foreign bid, including customs duties, exceeds twenty pesos but does not exceed two hundred pesos, the award shall be made to the lowest domestic bidder, provided his bid is not more than twenty-five per centum in excess of the lowest foreign bid;
- (d) When the lowest foreign bid, including customs duties, exceeds two hundred pesos but does not exceed two thousand pesos, the award shall be made to the lowest domestic bidder, provided his bid is not more than twenty per centum in excess of the lowest foreign bid;
- (e) When the lowest foreign bid, including customs duties, exceeds two thousand pesos, the award shall be made to the lowest domestic bidder, provided his bid is not more than fifteen per centum in excess of the lowest foreign bid.

Section4. Whenever several bidders shall participate in the bidding for supplying articles, materials, and equipment for any dependencies mentioned in section one of this Act for public use, public buildings, or public works, the award shall be made to the domestic entity making the lowest bid, provided it is not more than fifteen per centum in excess of the lowest bid made by a bidder other than a domestic entity, as the term "domestic entity" is defined in section two of this Act.

Section5. This Act shall take effect on its approval.

Approved: November 7, 1936

November 22, 1977

LETTER OF INSTRUCTIONS NO. 630

TO: *All heads of departments, bureaus, agencies, and offices including government-owned or controlled corporations and local governments*

In order to encourage and promote the development of the domestic construction industry, the following instructions shall be strictly observed:

1. Unless specifically authorized by the President of the Philippines in exceptional cases, bidding award or negotiations of primarily civil works contracts shall be limited to Filipino individuals and to corporations, partnership, or associations seventy-five per cent (75%) of the capital of which is owned by citizens of the Philippines; and
2. The contracting government entity shall at all times ensure that no individual, corporation, partnership or association shall enter into any contract, agreement, tie-up, or joint venture arrangement with any non-Filipino entity that would circumvent the provisions of the Anti-Dummy laws.

Nothing in this Letter of Instructions shall negate existing and future commitments with respect to the bidding and award of contracts financed partly or wholly with funds from international lending institutions like the Asian Development Bank and World Bank, as well as from bilateral and other similar sources.

This instructions shall take effect immediately.

Done in the City of Manila, Philippines, this 22nd day of November, in the year of Our Lord, nineteen hundred and seventy-seven.

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 227

DIRECTING ALL HEADS OF DEPARTMENTS, BUREAUS, OFFICES AND AGENCIES OF THE NATIONAL GOVERNMENT, INCLUDING LOCAL GOVERNMENT UNITS (LGUs); GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS (GOCCs), GOVERNMENT FINANCIAL INSTITUTIONS (GFIs), STATE UNIVERSITIES AND COLLEGES AND MILITARY AND POLICE UNITS TO GIVE PREFERENCE IN THE PROCUREMENT OF MATERIALS AND SUPPLIES, PRODUCED, MADE AND MANUFACTURED IN THE PHILIPPINES

WHEREAS, Section 12, Article XII of the Constitution provides that the State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive;

WHEREAS, that Republic Act No. 138, as amended, also known as the "Flag Law", mandates the Government to give preference to the procurement of local products materials and supplies;

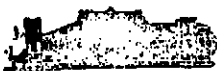
WHEREAS, the Administration's Ten (10) Points agenda on alleviating poverty through the generation of six to eight million jobs for the Filipinos can be achieved by boosting the country's local industries;

WHEREAS, the Philippine industries produce or manufacture world class products, materials and supplies which are at par, if not even better, quality than imported products;

WHEREAS, local Industries can provide and deliver readily available products, materials and supplies that are sufficient in quantity;

WHEREAS, credit lines and better after sales services, which are essential factors considered by the buyer in the procurement process, are provided by local industries;

WHEREAS, patronizing and buying locally produced or manufactured products, materials and supplies maintain, retain and provide additional employment in all vital Philippines industry sectors;



WHEREAS, buying locally produces or manufactures products, materials and supplies will help conserve our foreign exchange reserves;

WHEREAS, preference to locally produced or manufactured products, materials and supplies is justifiable for the reason that taxes generated by the Government come from taxable income of Philippine industries, thereby maintaining a mutually beneficial economic relationship;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

Sec. 1. Coverage – All Heads of Departments, Bureaus, Offices and Agencies of the National Government, including Local Government Units (LGUs); Government-Owned and/or Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), State Universities and Colleges, and Military and Police Units shall give preference in the procurement of materials and supplies, 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.

Sec. 2. Local Products, Materials and Supplies Defined. – Local products, materials and supplies refers to: (a) unmanufactured articles, materials and supplies of the growth or production of the Philippines; and (b) manufactured articles, materials and supplies of the growth or production in the Philippines substantially from articles, materials and supplies of the growth, production or manufacture of the Philippines.

Sec. 3. Procurement of Imported Goods. - The procurement of imported goods may be allowed if local products, materials, and supplies are not manufactured domestically in sufficient quantity, or comparable quality, and at reasonable prices.

Sec. 4. Issuance of the Implementing Rules and Regulations. - The Government Procurement Policy Board shall promulgate the implementing rules and regulations governing this Administrative Order within thirty (30) days from the date of its effectivity.

Sec. 5. Penalties. - Any violation of the provisions of this Administrative Order shall be dealt with administratively, civilly and criminally under existing laws, rules and regulations.



PGMA Hologram / 44558



Sec. 6. Repealing Clause. — All issuances, orders, rules and regulations or parts thereof which are inconsistent with the provisions of this Administrative Order are hereby revoked and/or modified accordingly.

Sec. 7. Effectivity. — This Administrative Order takes effect after fifteen (15) days following the completion of its publication in a newspaper of general circulation.

DONE, In the City of Manila this 27th day of MAY, in the year of Our Lord Two Thousand and Eight.

Gloria M. Arroyo

By the President:

Eduardo R. Ermita
EDUARDO R. ERMITA
Executive Secretary

FDM/evr

12



PCNA Hologram # 44559

REPUBLIC ACT No. 5183 September 8, 1967
REGULATING THE AWARD OF CONTRACTS

REPUBLIC ACT No. 5183

**AN ACT REGULATING THE AWARD OF CONTRACTS FOR THE SUPPLY TO, OR
PROCUREMENT BY, ANY GOVERNMENT-OWNED OR CONTROLLED
CORPORATION, COMPANY, AGENCY OR MUNICIPAL CORPORATION OF
MATERIALS, EQUIPMENT, GOODS AND COMMODITIES, AND PROVIDING
PENALTY FOR THE VIOLATION THEREOF.**

Section 1. No contract either through a public bidding or negotiated contract for the supply to, or procurement by, any government-owned or controlled corporation, company, agency or municipal corporation of materials, equipment, goods and commodities shall be awarded to any contractor or bidder who is not a citizen of the Philippines or which is not a corporation or association at least sixty percent of the capital of which is owned by Filipino citizens, except, as to a citizen, corporation or association of a country the laws or regulations of which grant similar rights or privileges to citizens of the Philippines. In the latter case the Flag Law shall continue to be applicable.

Section 2. Any violation of this Act shall be punished with a fine of not less than five thousand pesos and not more than ten thousand pesos and imprisonment of not less than two years and not more than four years. If the violation is committed by a corporation or association, the penalty shall be imposed upon the president, director or directors, managers, managing partner, or other official thereof responsible for such violation. Any alien violating or responsible for the violation of this Act shall, upon completion of the service of sentence, be deported without any further proceedings on the part of the Deportation Board. Any government official or employee who violates this Act, shall, in addition to the penalty which may be imposed upon him as principal, be temporarily or perpetually disqualified from holding any public office.

Section 3. Any law or parts of laws inconsistent herewith are hereby repealed.

Section 4. This Act shall take effect upon its approval.

Approved: September 8, 1967.



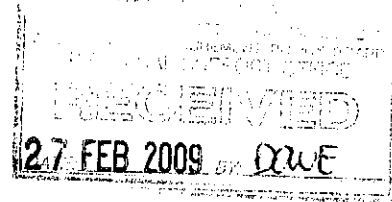
Philippine Electric Corporation



ISO 9001
CERTIFIED

Our Ref. EPA-09-011

February 26, 2009



TECHNICAL SUPPORT OFFICE

Government Procurement Policy Board
Unit 2506, Raffles Corporate Center
Ortigas Center, Pasig City

Attention: Atty. Ruby U. Alvarez
Executive Director III

Madam:

Subject: Request for Opinion regarding the application of Preferential treatment to
Local manufacturers under R.A. 9184

This is to seek your opinion regarding the subject captioned above, specifically Section 43, Article XII of R.A. 9184 and Section 43, Rule XII of the Implementing Rules and Regulations of the Government Procurement Act.

As a backgrounder, Philippine Electric Corporation (Philec), established February 7, 1969 is a domestic manufacturer of distribution and power transformers and its manufacturing activity duly registered with the Board of Investments (BOI) on a pioneer status. Our varied customers include distribution utilities, commercial and industrial establishments, economic zones (both government and private) and electric cooperatives, among others.

Our specific query is regarding the definition of a "domestic entity" qualified to avail of the 15% preferential treatment.

We understand, that to qualify a domestic bidder should at least be 75% owned by citizens of the Philippines and offering products from 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.

In our experience in our dealings with government agencies, these definitions seem to be vague, in a sense, that sometimes a domestic entity is merely defined as a company which is 75% Filipino owned. Whether said company actually produced the items they are offering or are merely selling an imported product in behalf of a foreign producer is not taken into consideration.



May we also mention that in the electricals industry, foreign products are always carried by local dealers or representatives or Phil. Branch in compliance with buyers requirements to assure smooth warranty claims and/or repairs and maintenance and technical support.

This is the reason why we seek your urgent opinion regarding said matter in view of the fact that our government is now implementing a stimulus package to perk up the economy. It would be unfair to companies like us, which invested substantial amounts to put up a plant and employs Filipinos to lose this sales opportunity just because of the vagueness of a provision of law.

Thank you for your valuable support to local industries.

Very truly yours,

EDMUNDO P. AZORES
Consultant

/ras

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