

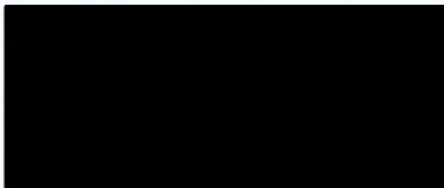


Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 39-2015

8 October 2015




Re: Domestic Preference

Dear [REDACTED]:

This refers to your letter seeking confirmation on the following: a) whether the domestic bidder must submit both certificates under Sections 43.1.3¹ and 43.1.4² of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 to avail of the application of preference; and b) whether the absence of the said Department of Trade and Industry (DTI) Certificate under Section 43.1.4 will classify a domestic bidder as having submitted a "foreign bid".

Domestic Preference prior to Competition Law

Pursuant to Section 43.1.1 of IRR of RA 9184, consistent with the Government of the Philippines' (GOP) obligations under international treaties or agreements, goods may be obtained from domestic or foreign sources. But in the interest of availability, efficiency and timely delivery of goods, the procuring entity 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 Commonwealth Act (CA) No. 138³.

Prior to RA 10667, otherwise known as the Philippine Competition Act, the procuring entity shall give preference Domestic Bidders⁴ and Domestic Entities⁵. Under 

¹ A Domestic Entity can only claim preference if it secures from the DTI a certification that it has all the qualifications required under this IRR, in case of sole proprietorships, SEC, in case of partnerships and corporations, or CDA, in case of cooperatives.

² A Domestic Bidder can only claim preference if it secures from the DTI a certification that the articles forming part of its bid are substantially composed of articles, materials, or supplies grown, produced, or manufactured in the Philippines.

³ An Act to Give Native Products and Domestic Entities the Preference in the Purchase of Articles for the Government.

⁴ Under Section 5(j) of the IRR of RA 9184, a **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 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.

⁵ Under Section 5(k) of the IRR of RA 9184, a **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

Section 43.1.2 of the IRR of RA 9184, the award shall be made to the lowest Domestic Bidder or lowest Domestic Entity, provided his bid is not more than fifteen percent (15%) in excess of the lowest Foreign Bid.

However, we wish to inform you that Section 55 of the Competition Law has repealed Section 4⁶ of CA 138, which grants preference to Domestic Entities, thus:

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.** (Emphasis supplied)

Preference to Domestic Bidder

Notwithstanding the foregoing repeal of Section 4 of CA 138, preference to Domestic Bidders still applies.


In order to claim domestic preference, a Domestic Bidder shall only submit a 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.⁷

The DTI Certification shall form part of the Second Envelope (Financial Bid Envelope) in accordance with Clause 13.1(b) of the Philippine Bidding Documents for Goods, thus:

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:

...

(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**; (Emphasis supplied) 

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.

⁶ 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.

⁷ Clause 27.3, Section II. Instructions to Bidders, Philippine Bidding Documents: Procurement of Goods.

Foreign Bid vs. Domestic Bid

A “foreign bid” means any offer of 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, as the case may be, of the Philippines.⁸ Conversely, a “domestic bid” means any offer of 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.⁹ In US jurisprudence, the term “substantially” was construed to mean “more than 75%.” Thus, even if a product is manufactured in the Philippines, it may not be considered within the ambit of the preference if its raw materials are not substantially sourced from the Philippines.

For your guidance, the absence of the DTI certificate as required under Sec. 43.1.4 of the IRR of RA 9184 does not automatically classify the bid of a domestic bidder as a “foreign bid”, but as a consequence, the domestic bidder will not be granted preference for purposes of procurement.

Summary

Accordingly, a Domestic Bidder intending to claim preference only needs to submit a Certification from the DTI, SEC, or CDA, whichever is applicable. And the absence of such certification does not automatically classify a bid as a foreign bid.

We hope this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

(sgd.)

~~DENNIS S. SANTAGO~~

Executive Director V ✓

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⁸ Section 2[d] C.A. No. 138.

⁹ Section 2[c] C.A. No. 138.