

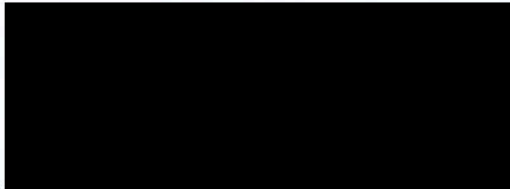


Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

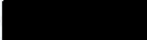


NPM No. 59-2015

9 October 2015



Re: Domestic Preference


Dear :

This refers to your letter requesting clarification on the applicability of Rule XII, Section 43 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 pertaining to Domestic Preference.

As represented, Westfield Pharmaceuticals, Inc., intends to participate in the bidding activities of the Department of Health (DOH) particularly for the supply of various drugs and medicines¹. On the strength of your representation that the corporation is a domestic entity that manufactures goods in the Philippines to be procured by the DOH, you are seeking our opinion on whether the domestic preference can be applied in your favor.

Section 43 of RA 9184 provides that in the interest of availability, efficiency and timely delivery of goods, the Procuring Entity (PE) may give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality. Relatedly, Section 4 thereof subjects the procurement of goods to the provisions of Commonwealth Act (CA) No. 138.

Under Section 43.1.2 of the IRR of RA 9184, and in line with the pronouncement of the Supreme Court in the case of *Asbestos Integrated Manufacturing, Inc. v. Hon. Elviro L. Peralta, et.al.*,² two (2) types of preferences are afforded to the bidders, thus:

1. One in favor of a Domestic Bidder, that is, 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;³ and 

¹ Amlodipine 10mg tablet, Metoprolol 50mg tablet and Losartan 50mg tablet.


² G.R. No. L-45515, 29 October 1987.

³ Section 5(j) of the IRR of RA 9184.

2. One in favor of a Domestic Entity, that is, 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.⁴

However, with the recent enactment of RA 10667 or the *Philippine Competition Act*⁵ the preference given to Domestic Entities has been removed. Section 55(b) thereof expressly repealed Section 4 of CA 138⁶, which is the basis for the preference to Domestic Entities. Henceforth, only Domestic Bidders may invoke domestic preference.

We note, however, that the application of the domestic preference to a Domestic Bidder is not automatic. For the rule to be applied, a Domestic Bidder must claim domestic preference, and comply with the following conditions, thus:

1. 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;⁸
2. To claim preference, the bidder shall include the DTI Certification as a Domestic Bidder in its second envelope that contains the financial component of the bid;⁹
3. The preference shall be applied when the lowest Foreign Bid¹⁰ is lower than the lowest bid offered by a Domestic Bidder;¹¹
4. For evaluation purposes, the lowest Foreign Bid shall be increased by fifteen percent (15%) and in the event that the lowest bid offered by a Domestic Bidder does not exceed the lowest Foreign Bid as increased, then the PE shall award the contract to the Domestic Bidder at the amount of the lowest Foreign Bid;¹² and 

⁴ Section 5(k) of the IRR of RA 9184.

⁵ Enacted on 21 July 2015 and took effect on 8 August 2015.

⁶ Section 4. 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.

⁸ Section 43.1.4 of the IRR of RA 9184.

⁹ Clause 13.1(b) of the IRR of the Philippine Bidding Documents for the Procurement of Goods.

¹⁰ Section 5(n) of the IRR of RA 9184 defines a Foreign Bid as 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.

¹¹ Section 43.2.1 of the IRR of RA 9184.

¹² Sections 43.2.2 and 43.2.3 of the IRR of RA 9184.

5. The Domestic Bidder should accept the award of contract at the amount of the Foreign Bid within two (2) calendar days from receipt of written advice from the BAC.¹³

All told, we wish to reiterate that at present, the preference given under Section 43 of RA 9184 and its IRR, in relation to the provisions of CA 138 and RA 10667, shall only be applied to Domestic Bidders, subject to the compliance with the conditions for its application under existing rules and regulations.

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

(sgd.)

DENNIS S. SANTIAGO

Executive Director V ✓

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¹³ Section 43.2.4 of the IRR of RA 9184.