



DEPARTMENT ADMINISTRATIVE ORDER NO: 19 - 01
Series of 2019

SUBJECT: GUIDELINES IN THE ISSUANCE OF A CERTIFICATE OF PREFERENCE FOR DOMESTIC BIDDERS PARTICIPATING IN GOVERNMENT PROCUREMENT PROJECTS

WHEREAS, Section 4 of Republic Act (R.A.) No. 9184, otherwise known as the "Government Procurement Reform Act", provides that the procurement of infrastructure projects, goods and consulting services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units, shall be subject to the provisions of Commonwealth Act No. 138;

WHEREAS, Section 3 of Commonwealth Act No. 138, "An Act to Give Native Products and Domestic Entities the Preference in the Purchase of Articles for the Government", commonly known as the "Flag Law", provides that preference shall be provided to unmanufactured articles, materials and supplies grown or produced, made, and manufactured in the Philippines, or articles, materials and supplies produced or manufactured substantially from articles, materials or supplies grown, produced, or manufactured in the Philippines;

WHEREAS, Section 55 (b) of R.A. No. 10667, otherwise known as the "Philippine Competition Act," expressly repealed Section 4 of the Flag Law, which provides that "whenever several bidders shall participate in the bidding for supplying articles, materials, and equipment for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";

WHEREAS, Sections 43.1.1 of the 2016 Revised Implementing Rules and Regulations (IRR) of RA 9184 provides that, in GoP's obligations under international treaties or agreements, goods may be obtained from domestic and foreign sources and that in the interest of availability, efficiency and timely delivery of goods, a procuring entity may give preference to the purchase of domestically-produced, made and manufactured goods, supplies and materials that meet the specified or desired quality, in accordance with the provisions of Commonwealth Act No. 138;

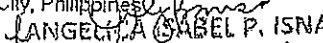
WHEREAS, Section 43.1.2 also provides that the procuring entity shall give preference to materials and supplies produced, made and manufactured in the Philippines, subject to the conditions herein below specified. The award shall be made to the lowest Domestic Bidder, provided his bid is not more than fifteen percent (15%) in excess of the lowest foreign bid;

Enabling Business. Empowering Consumers
OFFICE OF THE SECRETARY

S/F Industry & Investments Building, 385 Senator Gil J. Puyat Avenue, 1200 Makati City, Philippines

Telephone: (+632) 976.5700 | 899.7450 Fax: (+632) 896.1166
www.dti.gov.ph

CERTIFIED TRUE PHOTOCOPY


ANGELINA ISABEL P. ISNANI
Head, Records Section
Department of Trade & Industry

WHEREAS, Section 43.1.3 provides further that a domestic bidder can only claim the preference if it secures a certification from the Department of Trade and Industry (DTI) that the articles forming part of its bid are substantially composed of articles, materials, or supplies grown, produced, or manufactured in the Philippines;

WHEREAS, pursuant to Executive Order No. 366, the DTI Competitiveness Bureau was created to enhance development and pursuit of competitiveness of Philippine trade and local industries through focused efforts on the implementation of programs/projects/activities intended to improve the quality of industry outputs and services; as well as their productivity, through improvement in business systems and process and the flow of inputs and outputs;

WHEREAS, the Supply Chain and Logistics Management Division of the Competitiveness Bureau was created to formulate policies and measures relative to supply chain, trade facilitation and logistics in the interest of exporters, importers, and traders, in the shipment of commodities;

WHEREAS, the said mandate is aligned with the issuance of the certification to domestic bidders;

WHEREAS, Department Order No.16-76, Series of 2016, mandated the Competitiveness Bureau-Supply Chain and Logistics Management Division to formulate guidelines for the certification of domestic bidders claiming preference in government procurement;

WHEREAS, under Executive Order No.292, Series of 1987, otherwise known as the "Administrative Code of 1987", the Secretary has the power to promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

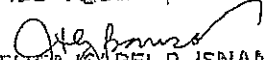
NOW THEREFORE, the following Guidelines are hereby prescribed for the information, guidance and compliance of all concerned.

1.0 GENERAL POLICY

The economic policies enunciated in the Constitution, particularly on the promotion of Filipino labor, domestic materials, and locally produced goods, R.A. No. 9184, R.A. 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"), and Commonwealth Act No. 138, are hereby adopted as the guiding principles in the application of this DAO and in issuing the requested certifications.

Thus, in the procurement of goods, regardless of the procurement method used, domestic preference shall be considered 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

CERTIFIED TRUE XERO COPY


ANGELICA ISABEL P. ISNANI
Head, Records Section

P.

in the Philippines substantially from articles, materials or supplies of the growth, production or manufacture of the Philippines.

2.0 SCOPE, APPLICATION AND PURPOSE

These guidelines shall govern the issuance of certification of domestic bidder pursuant to 43.1.3 of the IRR of RA 9184.

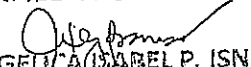
3.0 DEFINITION OF TERMS

For purposes of these guidelines, the following terms or words and phrases shall be defined as follows:

- 3.1 **Bidder** – shall refer to a manufacturer, supplier, or distributor who submits a bid in response to the requirements of the Bidding Documents.
- 3.2 **Committee** – shall refer to the unit composed of a Chairperson and two (2) members.
- 3.3 **Director** – shall refer to the Competitiveness Bureau Director.
- 3.4 **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.
- 3.5 **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.
- 3.6 **Goods** – refers to all items, supplies, and materials which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind.
- 3.7 **Grown** – produced by cultivation; such as crops, or products that are grown, raised, and harvested.
- 3.8 **Manufactured** – shall mean conversion of raw materials into marketable form through physical, mechanical, chemical, electrical, biochemical, biological or other means or by a special treatment or a series of actions. It shall include transformation which can be geometric or compositional, or both. Merely packing or packaging shall not qualify as manufactured.
- 3.9 **Produced** – creation of or formation of goods through a natural process;
- 3.10 **Procuring Entity** – refers to any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of GoP (NGA),

Page 3 | 8

CERTIFIED TRUE PHOTOCOPY


ANGELICA ISABEL P. ISNANI
Head, Records Section F



including GOCC, GFI, SUC and LGU procuring goods, infrastructure projects and consulting services.

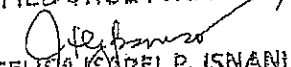
- 3.11 **Secretary** – refers to the Secretary of the Department of Trade and Industry
- 3.12 **Secretariat** – shall refer to the Supply Chain and Logistics Management Division of the Competitiveness Bureau tasked to provide the assessment, verification, and recommendation to the Committee for approval or disapproval.

4.0 APPLICATION PROCEDURES

- 4.1 **Who may apply.** Only domestic bidder may file an application for certification for domestic preference.
- 4.2 **Where to file the application.** The application shall be filed at the Supply Chain and Logistics Management Division of the Competitiveness Bureau.
- 4.3 **When to file the application.** The application may be filed at any time.
- 4.4 **Submission of the documentary requirements.** Prospective bidders seeking domestic preference must submit a duly accomplished application form (Annex A) with the following supporting documents:

- 4.4.1 Photocopy of DTI business name registration (if sole proprietorship), or SEC certificate of registration (if corporation or partnership), or CDA registration certificate (if cooperative);
- 4.4.2 Photocopy of Mayor's Permit;
- 4.4.3 Photocopy of FDA registration or PS license (if applicable);
- 4.4.4 Brochure of goods sought to be certified, indicating the brand and model / brand and generic (or any term applicable);
- 4.4.5 Complete list of raw materials or components comprising the goods sought to be certified, together with the percentage cost;
- 4.4.6 Proof to support place of origin of each raw material or component that goes into every unit of the goods sought to be certified (e.g. copies of the delivery receipts issued by the supplier/s of the applicant for certification; and
- 4.4.7 Sworn statements from the applicant and from the supplier/s of the applicant, if any, for certification, as to the place of origin of each raw material or component that goes into every unit of the goods sought to be certified, and the place of manufacture of the goods sought to be certified.

Any false or misleading information supplied, or submission of materially false or misleading document to support the application shall be a ground for the summary denial of the application for certification

CERTIFIED TRUE PHOTOCOPY

ANGELICA ISABEL P. ISNANI
Secretary

4.5 Evaluation Procedures.

- 4.5.1 **Documentary Review.** Upon receipt of complete documents, documentary review will be undertaken to check for compliance and verification of contents and ascertain that declarations were made. The Secretariat may request for additional information or documents if necessary for verification.
- 4.5.2 **On site visit.** Verification of the origin of the goods sought to be certified shall be done through ocular inspection of the site where the goods were grown, produced or manufactured.
- 4.5.3 After review, the Secretariat shall, within a period of ten (10) working days, submit an Inspection Report to the Committee, with all relevant evidence attached. The inspection report shall, among others, contain a statement as to whether the goods offered for bidding satisfy or do not satisfy the requirements hereunder, and the basis for such finding.

4.6 Approval or Denial of Application. All applications shall be acted upon within twenty (20) working days from receipt of complete documents.

- 4.6.1 After evaluation, if the Secretariat finds that an applicant conforms to and meets the requirement for a Domestic Bidder's Certificate, the Director shall approve the application and sign/issue the corresponding Certificate.
- 4.6.2 If the application is denied, the Director shall issue a written notification specifying the grounds for the denial of the application.
- 4.6.3 Where no request for reconsideration is filed in accordance with Section 4.7 hereof, the denial of the application shall become final upon expiration of the 3-working day period. The denial shall be without prejudice to re-filing of application.

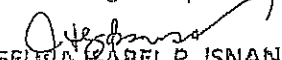
4.7 Request for Reconsideration. In case the application is denied, the applicant may request for reconsideration before the Office of the Director of CB within three (3) working days from receipt of the notification of denial. The request for reconsideration shall be made in writing citing therein the reason/s.

The Resolution of the Request for Reconsideration shall be issued within ten (10) working days from receipt of thereof, the Resolution shall be final.

5.0 DETERMINATION OF SUBSTANTIAL COMPLIANCE

Prospective bidders shall only be granted a Domestic Bidder's Certificate and apply for domestic preference when the goods, supplies, or materials offered for bidding are substantially grown, produced, or manufactured in the Philippines

CERTIFIED TRUE AND CORRECT COPY


ANGELITA ISABEL P. ISNANI
Head, Records Section /



5.1 In determining whether the goods are substantially grown and produced in the Philippines, the following general principles shall be considered:

- 5.1.1 The origin of the product shall be disputably presumed as that which is indicated in the label;
- 5.1.2 Livestock born and raised within the Philippines are deemed originated in the Philippines; and
- 5.1.3 Plants grown and produced within the Philippines are deemed originated in the Philippines.

5.2 In determining whether the goods are substantially manufactured, the following general principles shall be considered:

- 5.2.1 Manufacture of industrial goods or processing of agricultural products into (a) semi-finished/intermediate goods for use as inputs in the production of other goods, or (b) finished products for final consumption, shall be deemed manufactured or processed in the Philippines.
- 5.2.2 Casting or molding, forming, machining, or joining / assembly of raw materials, and the production of discrete parts to transform materials from one form to another valuable form encompasses manufacturing. Mere packing or packaging shall not constitute manufacturing. Simple processing covering any or a combination of activities, e.g., cleaning, sorting, shredding, pulverizing, grinding, crushing, compacting, dissolving and filtration shall also not be considered manufacturing.

6.0 INSTITUTIONAL ARRANGEMENTS

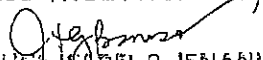
6.1 The Secretariat may be expanded to include other technical staff from other relevant government agencies and DTI offices, for a more expedient processing of application. Whenever necessary, the Director shall request regional/provincial offices to provide technical support such as but not limited to site-visits.

6.2 A Committee of Three shall be established to review the recommendation of the Secretariat, and to grant/deny each application.

6.3 The Committee shall be composed of the head of agency of the Competitiveness Bureau as Chair, with 3rd level officials from any of the following DTI agencies:

- 6.3.1 Regional/Provincial Offices
- 6.3.2 Bureau of International Trade Relations (BITR)
- 6.3.3 Board of Investments
- 6.3.4 Competitiveness and Ease of Doing Business Group
- 6.3.5 Consumer Protection Group

CERTIFIED TRUE AND CORRECT COPY


ANGELICA ISABEL P. ISNANI
Head, Records Section

6.3.6 Management Services Group

6.4 Except for the officials and staff of the Competitiveness Bureau, the Committee members and technical staff shall be entitled to receive an honorarium subject to the existing rules and regulations issued by the Department of Budget and Management and the Commission on Audit, charged to the Competitiveness Bureau.

7.0 DOMESTIC BIDDERS CERTIFICATE

7.1 The Certification shall remain valid for a period of two (2) years, which effectivity shall be on the date the certificate is issued. The certificate shall include the scope (minimum technical specifications of products covered), validity, remarks or conditionalities and shall bear the signature of the Director of the Competitiveness Bureau.

7.2 Subject to notice and hearing, the Certificate shall be automatically revoked for any of the following grounds:

7.2.1 Making material false statement in the application required of the Bidder when a true statement would have warranted the Secretariat's denial or to recommend Certification;

7.2.2 Making false representation as a matter of fact, whether or not the same results in damage or legal injury to a third party, after the Certification has been issued; and

7.2.3 Any other circumstance analogous to the foregoing.

7.3 The Certification is non-transferable and limited only to the products specified in the scope.

8.0 FEES/CHARGES

The following fees and charges shall be collected:

Type of Payment	Amount
Application/Processing (per product) for Micro Enterprises	Php 5,000.00
Application/ Processing (per product) for Small Enterprises	Php 10,000.00
Application/ Processing (per product) for Medium Enterprises	Php 15,000.00
Application/ Processing (per product) for Large Enterprises	Php 20,000.00
Certified True Copy of Certificate	Php 100.00
Appeal	Php 10,000.00

Applicable Documentary Stamp Tax shall likewise be imposed pursuant to Revenue Memorandum Circular No. 3-2018 dated 04 January 2018.

Travelling expenses of evaluators for on-site visit outside Metro Manila will be shouldered by the applicant.

9.0 SEPARABILITY CLAUSE

Should any provision of this Order or any part thereof be declared invalid, the other provisions as far as they are separable from the invalid provisions shall remain in force and effect.


10.0 REPEALING CLAUSE

The pertinent provisions of Department Order No. 16-76, Series of 2016, prescribing the Interim Guidelines for Certification of Domestic Bidders claiming Preference, is hereby repealed.

11.0 EFFECTIVITY

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines

Signed this 3rd day of January 2019, Makati City, Philippines.


Ramon M. Lopez
Secretary