

DEPARTMENT ADMINISTRATIVE ORDER NO. 22-15
Series of 2022

SUBJECT: Amending Certain Sections of Department Administrative Order No. 19-01, Series of 2019, as amended by Department Administrative Order No. 19-10, Series of 2019, Prescribing the Guidelines in the Issuance of a Certificate of Preference for Domestic Bidders Participating in Government Procurement Projects

WHEREAS, the Philippine Constitution states in Article XII Section 12 of the 1987 Constitution: "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, 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WHEREAS, Section 55 (b) of RA No. 10667, otherwise known as the "Philippine Competition Act," expressly repealed Section 4 of the Flag Law, which provides that "whenever several bidders shall participate in the bidding for supplying articles, materials, and equipment for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, Section 4 of the 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 the 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, 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, following the provisions of Commonwealth Act No. 138;

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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;

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, under Executive Order No. 366, the DTI Competitiveness Bureau was created to enhance the 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 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 to formulate guidelines for the certification of domestic bidders claiming preference in government procurement;

WHEREAS, Department Administrative Order (DAO) No.19-01, Series of 2019, otherwise known as the "Guidelines in the Issuance of a Certificate of Preference for Domestic Bidders Participating in Government Procurement Projects" was issued for the certification of domestic bidders claiming preference in government procurement under Section 4 of RA 9184, otherwise known as the "Government Procurement Reform Act," and Sections 43.1.1 and 43.1.2 of the IRR of RA 9184, in relation to Commonwealth Act No. 138, otherwise known as the "Flag Law," and Section 55(b) of RA 10667, otherwise known as the "Philippine Competition Act;"

WHEREAS, Department Administrative Order No. 19-10, Series of 2019, amended specific provisions of the DAO 19-01 to streamline the required documents submission of required documents and assessment process;

WHEREAS, recent development necessitates the need to update and revise the existing guidelines and procedures in pursuit of ease of doing business and promote efficient delivery of government services;

WHEREAS, there is a necessity to clarify the application procedures, and to specify other conditions for the issuance of the Domestic Preference Certificate and the procedure for its revocation;

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 amendments to DAO No. 19-01, Series of 2019, as amended by DAO No. 19-10, Series of 2019, are hereby prescribed and promulgated for the information, guidance, and compliance of all concerned.

1.0 TITLE – This Order shall be referred to as the “Revised Guidelines in the Issuance of Certificate of Preference for Domestic Bidders Participating in Government Procurement Projects.”

2.0 GENERAL POLICY

The economic policies enunciated in the Constitution, particularly in 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 in the Philippines substantially from articles, materials or supplies of the growth, production or manufacture of the Philippines.

3.0 SCOPE, APPLICATION, AND PURPOSE

In pursuance of Article 12, Section 43.1.3 of the IRR of RA 9184, these Guidelines shall govern the processing of all applications for the issuance of the certificate of preference involving domestic bidders for the purpose to claim preference in government procurement of goods, supplies, and materials.

The provisions of these Guidelines shall also apply to all issues relating to the qualification of domestic bidders to hold a certificate of preference that arise after their issuance, including cases for the revocation of said certificate.

4.0 DEFINITION OF TERMS

- 4.1 Bidder** – shall refer to a manufacturer, supplier, or distributor who submits a bid in response to the requirements of the Bidding Documents.
- 4.2 Bureau** – shall refer to the Competitiveness Bureau.
- 4.3 DoBid Certificate** – shall refer to the Certificate of Preference.
- 4.4 Certificate of Preference** – refers to the certification issued to a domestic bidder over goods offered or intended to be offered in the procurement bidding activities of the government pursuant to RA 9184 and its IRR after compliance with the criteria set under this Guidelines as determined by the Bureau.
- 4.5 Director** – shall refer to the Competitiveness Bureau Director.
- 4.6 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.

- 4.7 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.
- 4.8 Goods** – refers to all items, supplies, and materials which may be needed in the transaction of public businesses or the pursuit of any government undertaking, project, or activity, whether in nature of the equipment, furniture, stationery, materials for construction, or personal property of any kind.
- 4.9 Grown** – produced by cultivation; such as crops, or products that are grown, raised, and harvested.
- 4.10 Manufactured** – shall mean conversion of raw materials into marketable form through physical, mechanical, chemical, electrical, biochemical, biological, or other means or by 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.
- 4.11 Pharmaceutical Industry** – refers to the manufacture of basic pharmaceutical products and pharmaceutical preparations. It also includes the manufacture of medicinal chemical and botanical products.
- 4.12 Processing** – shall mean converting raw materials into marketable form through physical, mechanical, chemical, electrical, biochemical, biological, or other means or by special treatment or a series of actions, such as slaughtering, milling, pasteurizing, drying or desiccating, quick freezing, that results in the change in the nature or state of the product. Merely packing or packaging shall not constitute processing.
- 4.13 Produced** – the creation of or formation of goods through a natural process.
- 4.14 Procuring Entity** – refers to any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of GoP (NGA), including GOCC, GFI, SUC, and LGU procuring goods, infrastructure projects, and consulting services.
- 4.15 Secretary** – refers to the Secretary of the Department of Trade and Industry.
- 4.16 Secretariat** – shall refer to the Competitiveness Bureau tasked to provide the assessment, verification, and recommendation to the Director for approval or disapproval of applications.

5.0 APPLICATION PROCEDURES

- 5.1 Who may apply** – Only domestic bidders may file an application for certification for domestic preference, subject to the provisions of these Guidelines on application and revocation.
- 5.2 Filing of Application** – All applications with complete supporting documents shall be filed at the Competitiveness Bureau, either (a) personally during business hours; (b) through registered mail; (c) by courier, or (d) online via email. at any time.

5.3 Submission of the Documentary Requirements – Prospective bidders seeking domestic preference must submit a duly accomplished application form and all its annexes, accompanied by the following supporting documents:

- 5.3.1** Photocopy of DTI business name registration for a sole proprietorship, or SEC certificate of registration for corporation or partnership, or CDA registration certificate for cooperative;
- 5.3.2** Photocopy of Mayor's Permit;
- 5.3.3** Photocopy of FDA registration or PS license (if applicable);
- 5.3.4** Brochure of goods sought to be certified, indicating the brand and model/brand and generic (or any term applicable); and,
- 5.3.5** A duly notarized statement executed by the applicant or his/her/its duly authorized representative stating and affirming the raw material/s or component/s that go into, or form an integral part of, every unit of the goods sought to be certified and the place/s of their origin. It shall also identify and affirm the place of manufacture of such goods.

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

5.4 Incomplete Information or Documentary Requirements – If upon preliminary assessment, it is found that the application lacks information and/or required documents, the Secretariat shall, in writing, direct applicants to supply the needed information or complete the documentary requirements within twenty-one (21) working days from receipt of such directive, stating therein with particularity the information or documents required to be supplied or resubmitted.

5.5 Application Deemed Abandoned or Withdrawn – After the lapse of the period within which to complete the required information and/or documents as prescribed in the immediately preceding Section, if the applicant has failed to comply as directed thereunder, the application shall be considered abandoned or withdrawn without prejudice to the re-filing of a new application.

A corresponding notice shall be issued by the Secretariat and served on the applicant to inform him/her/it of the fact that the application has been considered abandoned or withdrawn.

5.6 Evaluation Process – Upon receipt of the application form with complete supporting documents, the Secretariat shall evaluate and review the application and the documents submitted and shall conduct an on-site visit on the relevant premises of the applicant. The evaluation must be completed within twenty (20) working days following the submission of the applicant's complete documentary requirements.

5.6.1 Documentary Review – The review of documents will be undertaken to validate the legal operations of an applicant. It may consist of the verification with the issuing government offices or private entities that issued the submitted documents to ascertain their authenticity. It shall also include the examination of the declarations in the application and the contents of the documents to determine their relevance and sufficiency for the issuance of the Certificate.

5.6.2 On-site visit – The Secretariat, in coordination with the applicant, shall issue and serve on the latter a formal notice setting the date and time for the ocular inspection of the applicant's premises where the goods sought to be certified are grown, produced, or manufactured. The inspection shall include the facilities, machineries, instruments, or equipment used in the production or manufacture of goods as well as the actual processing of such goods, if applicable.

5.6.3 Additional Information or Documents – During or after the conduct of documentary review or on-site inspection, the Secretariat may request the applicant for additional documents if necessary for verification of the information declared in the application form, its annexes, and documents submitted. If the request is not acted upon by the applicant within three (3) working days of receipt of the request, the Secretariat shall continue with its proceedings and prepare its findings based on the result of its ocular inspection and evaluation of the documents available.

The preceding paragraph notwithstanding, if the information requested to be provided refers to those which were required to be declared in the application form or the form for application for renewal of Certificate, or if the document/s sought to be submitted refer to those documents that should have been submitted at the filing of the application pursuant to Section 5.3 or Section 5.7, as the case may be, the provision in the preceding paragraph shall not apply but the rules prescribed in Sections 5.4 and 5.5.

5.6.4 Inspection Report – After evaluation of the application, whether for original Certificate or renewal thereof, the Secretariat shall submit an inspection report to the Director, attaching thereto all relevant evidence. The inspection report shall, among others, contain a statement as to whether or not the goods offered for bidding satisfy the criteria laid down in Section 5 of DAO 19-01, setting forth therein the basis or reason/s of such finding.

5.6.5 Inspection of Applicant's Books and Records – To ensure compliance with the requirements under this Guidelines, the Secretariat reserves the right to audit and inspect the books, records, and processes of the applicant at any time upon prior written notice. This provision shall also apply after the issuance of DoBid and during the Certificate's effectivity.

5.7 Renewal of Domestic Bidders Certificate of Preference – The Certificate of Preference may be renewed as early as three (3) months prior to its expiration. Renewal of certificates shall be processed within seven (7) working days from receipt of a complete application with supporting documents.

5.7.1 Documentary Requirements – Applicants for renewal should submit the following documents:

5.7.1.1 A duly accomplished and notarized Renewal of Certificate of Preference Application Form and all its annexes;

5.7.1.2 Photocopy of Mayor's Permit;

5.7.2 Additional Documents – If there are changes from the previous application:

5.7.2.1 Photocopy of DTI Business Registration, SEC Articles of Incorporation, or CDA Registration;

5.7.2.2 Photocopy of FDA Registration (for medical-grade goods) and PS-License, if applicable; and

5.7.2.3 Recent photos and brochures of the goods applied for renewal.

5.7.3 Inspection of Goods and Facility – After submission of the complete documentary requirements for renewal, the Secretariat shall conduct an on-site visit at the applicant's declared facility address to check whether the goods covered under the application for renewal remains to conform with the original specifications of the previously certified goods, and continue to be grown, produced, or manufactured in the declared address.

Should there be major changes in the major specifications of the goods vis-à-vis the goods applied for renewal, a new application is required.

5.8 Approval or Denial of Application – After review and due consideration of the Inspection Report and the documents attached therein and the finding that it conforms with the requirements for the issuance of a certificate, the Director shall issue the renewed Certificate.

If the application is denied, the Director shall issue a written notice specifying the ground/s for denial.

5.9 Provisional Certificate of Preference – For an application of a domestic bidder who has completed all documentary requirements and passed all other criteria prescribed under this Guidelines but whose actual operation for the growth, production, or manufacture of the goods sought to be certified is yet to commence or resume at the time of on-site inspections, the applicant may, upon justifiable reason or cause as determined by the Bureau Director, be issued with a Provisional Certificate which shall have the force and effect of a regular Certificate, subject to a post-audit which, in coordination with the concerned domestic bidder, shall be set not later than six (6) months thereafter.

The Provisional Certificate may be issued to applicants whose declarations have been validated, including their facility, machineries, instruments, or equipment used in the production. The provisional certificate shall be valid for six (6) months.

Applicants who were issued with a Provisional Certificate should be able to resume operation of the growth, production, or manufacturing of the goods applied within six months. A post-audit activity would validate this declaration.

However, re-application shall be required if the Domestic Bidder still has no production after the given period.

The two-year effectivity of the certificate shall be applicable for Domestic Bidders who can present actual operation within the given six-month period. The issuance date on the actual Domestic Bidders Certificate of Preference shall be the same date specified on the provisional certificate.

5.10 Request for Reconsideration – In case of denial of the application, the applicant may file a request for reconsideration with the Director, or the proper officer mentioned in Section 4.8 within three (3) working days from receipt of the notice of denial, citing therein the reason/s or grounds therefor and attaching thereto supporting papers if there be any. The request for reconsideration shall be decided within seven (7) working days from receipt thereof. A request for reconsideration shall be considered filed upon payment of the required filing fee as specified in Section 8 of DAO 19-01.

6.0 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.

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

- 6.1.1** The origin of the product shall be disputably presumed as that which is indicated on the label;
- 6.1.2** Livestock born and raised within the Philippines are deemed originated in the Philippines; and
- 6.1.3** Plants grown and produced within the Philippines are deemed originated in the Philippines.

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

- 6.2.1** 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.
- 6.2.2** 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.
- 6.2.3** Any goods presented to be grown, produced, and/or processed in the Philippines; and,
- 6.2.4** In terms of applications for a customized product with specifications changing as the clients suggest, the assessment will be on the certain part of the good which is being consistently manufactured by the applicant.

7.0 REVOCATION OF DOBID CERTIFICATE

7.1 Grounds for Revocation

A Certificate of Preference may be revoked, after due notice and hearing, *motu proprio*, or upon a complaint filed by an interested party on the following grounds:

- 7.1.1 Making/providing false statement/information on a material fact in the application required of the grantee where the truth of which would not have warranted the Secretariat to give favorable action on the application and recommendation for the issuance of corresponding the Certificate therefor;
- 7.1.2 Making false representation on a matter of fact after the Certification has been issued, regardless of whether or not the same result in damage or injury to a third party;
- 7.1.3 Constant refusal of the grantee to cooperate in or during investigation proceedings for possible revocation of its Certificate; and,
- 7.1.4 Any other circumstance that is similar or analogous to the foregoing.

A bidder shall be deemed to have committed constant refusal to cooperate in or during the investigation, if, despite having been duly served with two (2) consecutively written notices, he/she/it failed, without justifiable reason or cause, to comply with the directive or order issued by the Bureau on said investigation for the revocation of its DoBid.

7.2 Procedures

The rules and procedures for revocation of the Certificate of Preference shall be governed by Department Administrative Order No. 7, series of 2006, including all future amendments, modifications, or revisions thereof, and the penalties as stated in Executive Order No. 913, series of 1983.

Upon receipt of final orders from the Bureau over the complaint, petition, or formal charge for revocation, the DTI shall revoke the Certificate of Preference which shall be immediately executory unless restrained by a restraining order from a court.

8.0 DOMESTIC BIDDERS CERTIFICATE

- 8.1 Issuance of Domestic Bidder Certificate** – No Certificate or Provisional Certificate shall be issued until after the corresponding fees/charges assessed by the Bureau have been paid by the applicant. The Certificate shall be issued only after submission to the Bureau of a photocopy of the proof of payment or official receipt for the said fees or charges.

The Certification is limited only to the products specified in the scope.

- 8.2 Contents of Domestic Bidder Certificate** – The Domestic Bidders Certificate shall be dated and signed by the Director and shall contain the following:

- 8.2.1 The name and official business address of the domestic bidder for whom the certificate is issued;
- 8.2.2 Location of the facility or plant where the goods covered are grown, produced, or manufactured;
- 8.2.3 Its scope, i.e., the name and/or description of the covered goods for which the domestic bidder shall be preferred, including their technical specifications;
- 8.2.4 Period of validity; and,
- 8.2.5 Remarks or conditionalities for its issuance, if applicable.

- 8.3 Effectivity of the Certificate of Preference** – The Certificate shall be valid for two (2) years from the date of issuance. For this purpose, the date of issuance shall refer to the date appearing on the Certificate.

9.0 INSTITUTIONAL ARRANGEMENTS

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

9.1 Designation of Regional Operations Group (ROG) Staff Coordinator for DoBid – For easier verification and coordination, at least one (1) DoBid Coordinator will be designated among the DTI regional and provincial offices to assist the Secretariat in matters such as but not limited to the following:

- 9.1.1** Promotion of the issuance of the Domestic Bidders Certificate of Preference in the Coordinator's designated area;
- 9.1.2** Provision of technical support to the Secretariat to verify the declaration of applicants;
- 9.1.3** Assistance during the overall evaluation of the applicants including site visits; and,
- 9.1.4** Coordination with the applicant, the Secretariat whenever necessary, and other relevant program activities.

9.2 Whenever necessary, the Director may also request other government agencies or DTI offices to provide technical support relative to the overall evaluation procedures.

10.0 FEES/CHARGES

For new and renewal applications, the following fees and charges shall be collected:

Type of Payment	Amount
Application/Processing (per product) for Micro Enterprises	Php 2,500.00
Application/Processing (per product) for Small Enterprises	Php 5,000.00
Application/Processing (per product) for Medium Enterprises	Php 7,500.00
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 an on-site visit outside Metro Manila will be shouldered by the applicant.

In consideration of the Pharmaceutical Industry, a quota of Php 100,000 will be imposed for at most 100 goods classified under one type of medicine. This shall only apply to basic pharmaceutical products and preparations, including medicinal chemical and botanical products, and not to pharmaceutical equipment.

11.0 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.


12.0 REPEALING CLAUSE

Any DTI orders, rules and regulations, guidelines, and policies that are inconsistent herewith are hereby repealed.

13.0 EFFECTIVITY

This Department Administrative Order or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or 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 01 of December 2022, Makati City, Philippines



ALFREDO E. PASCUAL
Secretary