



BIDS AND AWARDS COMMITTEE I

SUPPLEMENTAL BID BULLETIN NO. 3

SUPPLY AND DELIVERY OF 230,903 SETS BRAND NEW PHILIPPINE ARMY PATTERN (PHILARPAT) BATTLE DRESS UNIFORM (BDU) WITH BALL CAP FOR THE PHILIPPINE ARMY (PA)

Bid Reference No. MPG-B1-2020-253

Approved Budget for the Contract – ₱437,145,559.60

This is to notify all eligible bidders of the change of schedule for the above cited project:

SUBMISSION & BID OPENING OF BID DOCUMENTS

From	To
23 October 2020, 2:00 PM	30 October 2020, 4:00PM

Below are the queries/requests for consideration by the prospective bidders, which have been answered by the PITC Bids and Awards Committee I and Philippine Army (PA).

GOLDBELL PHILIPPINES IMPEX CORP. in its letter dated 19 October 2020 and received by BAC on the same date via electronic email.

<p>Query 1:</p>	<p>It is to our observation that the Supplemental Bid Bulletin 2 of MPG-BI-2020-253 was uploaded on October 17, 2020 sometime between 2:38 PM and 4:15 PM in the afternoon. It seems that October 17, 2020 is six (6) calendar days before the date of the deadline for the submission and receipt of bids, October 23, 2020.</p> <p>According to Sec. 22.5.1 of RA 9184:</p> <p><i>The BAC shall respond to the said request by issuing a Supplemental/Bid Bulletin, duly signed by the BAC Chairperson, to be made available to all those who have properly secured the Bidding Documents, at least seven (7) calendar days before the deadline for the submission and receipt of bids.</i></p> <p>Therefore, would like to ask the BAC when the rescheduled bid opening date will be held?</p> <p>Along with this, we would like to take the liberty to ask for clarifications regarding the answers to our initial queries within Supplemental Bid Bulletin 2.</p> <p>RA 11494 - BAYANIHAN TO RECOVER AS ONE ACT</p> <p>We agree that Section 3 of RA 11494 must be observed, particularly Section 3 subsection a, e, i, and l. However, one must not forget that Section 3 is merely one part of a whole law and must not be taken out of context in its interpretation.</p> <p><i>“Provision of personal protective equipment (PPE) including, but not limited to, protective suits, face masks, shoe covers, face shields, and goggles to public and private COVID-19 referral hospitals, both national and local, barangays, and other indigent persons that need protection from the spread of COVID-19 by the national government through the DOH: Provided, That preference and incentives shall be given to medical safety products that are locally manufactured;</i></p>
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We would once again like to reiterate that Battle Dress Uniforms are **NOT** medical safety products.

Section 4.u provides exemptions to RA 9184 when procuring the items listed in subsection t, which are personal protective equipment (PPE) including, but not limited to, protective suits, face masks, shoe covers, face shields, and goggles.

In the event PITC would like to implement RA 11494, it goes without saying that it must follow Section 4.u.ix, to wit:

A certification stating that the procuring entity exerted all efforts to secure the most advantageous price to the government based on existing price data of the agency, the DTI or other relevant agencies or preliminary market scanning done by the agency showing prevailing market prices and practice.

RA 11494 gives preference to local manufacturers within Section 4.1.6, to wit:

*Provided, that to ensure adequate and responsive supply of critical products, the government, as procuring entity shall. give preference and procure products, materials and supplies produced, made or manufactured in the Philippines. For this purpose, the DTI through Negosyo Centers shall coordinate the availment of relevant credit and training programs under this Act to promote and facilitate domestic supply: Provided, further, That it shall be subject to competitive procurement procedures: Provided, furthermore, That the Department of Budget and Management-Procurement Service (DBM-PS) or the concerned procuring entity shall make the award to the lowest domestic manufacturer-bidder **notwithstanding that its bid is fifteen percent (15%) in excess of the lowest foreign bid: Provided, furthermore, That 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: Provided, finally, That other qualification and documentary requirements for local manufacturers and suppliers shall be prioritized and expedites by the DOH, FDA and other concerned departments and agencies;***

Since RA 11494 mentions the “lowest foreign bid”, it can be inferred that foreign bidders are expected to participate in public procurements and shall **NOT** be excluded and be given exclusively to the lowest domestic manufacturer-bidder. This provision is aligned with Section 43.1.2 and 43.1.3 of the 2016 Revised IRR of RA 9184, to wit:

43.1.2. 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.

43.1.3. 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.



The foregoing exemplifies that RA 11949 emphasizes compliance to RA 9184 and does not allow anti-competitive provisions. If the domestic manufacturer is too uncompetitive, as defined by the law that its price is “more than fifteen percent (15%) in excess of the lowest Foreign Bid”, then it shall not be given preference.

SECTION 23.4.1.2 OF THE 2016 REVISED IRR OF RA 9184

We are glad that the BAC has cited Section 23.4.1.2 of the 2016 Revised IRR of RA 9184, to wit:

23.4.1.2. Foreign bidders may be eligible to participate under any of the following circumstances in accordance with the guidelines issued by the GPPB:

- a) When provided for under any Treaty or International or Executive Agreement as **provided in Section 4 of the Act and this IRR**;
- b) When the foreign supplier is a citizen, corporation or association of a country, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines;
- c) When the goods sought to be procured are not available from local suppliers; or
- d) When there is a need to prevent situations that defeat competition or restrain trade.**

Section 4 of RA 9184 states the following:

*Scope and Application.- This act shall apply to 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, **subject to the provisions of Commonwealth Act No. 138**. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is signatory shall be observed.*

Commonwealth Act No. 138, particularly Section 3 and 4, states the following:

SECTION 3. Only unmanufactured 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*
- 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*
- f) is not more than fifteen per centum in excess of the lowest foreign bid.*

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.

Section 2 of the Commonwealth Act No. 138 defines the term "domestic entity" as:

"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;"

Having been independent from the United States since July 4, 1946, we can assume that all references to the United States are now obsolete.

As a summary to the foregoing:

1. Section 4 of RA 11949 defines the policies set within Section 3. 2. Section 4.u of RA 11949 states that only medical safety products manufactured locally receive preferential treatment under the Act. 3. Section 4.u.ix of RA 11949 requires the implementing agency to issue a certificate stating it has exerted efforts in securing the most advantageous price.
4. Section 4.1.6 reiterates portions of the Commonwealth Act No. 138
5. Commonwealth Act No. 138 gives preferences to domestic manufacturers under the condition that they comply with the provisions therein.

All of the foregoing legal provisions points to the conclusion that foreign bidders cannot be barred from participating in public procurements.

TIMELY DELIVERY OF GOODS

In addition to the foregoing, we would like to reiterate once again **Section 43.1.1 of the 2016 Revised IRR of RA 9184**, to wit:



43.1.1. Consistent with the GoP's obligations under international treaties or agreements, goods may be obtained from domestic or foreign sources: Provided, however, That the procurement thereof shall be open only to eligible suppliers, manufacturers and distributors: Provided, further, That 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 No. 138.

It is true that It is the prerogative of the Procuring Entity and the End-User to define the delivery period/requirement. However, such prerogative needs to comply with the relevant rules and regulations within RA 9184.

Given the procurement history of this product by the same Procuring Entity and End-User, relaxation of the delivery period goes against the interest of timely delivery of goods when preference is given to domestic manufacturers under Section 43.1.1 of the 2016 Revised IRR of RA 9184. Had the PHILARPAT BDU never been previously procured via open competitive procurement which allowed both foreign and local manufacturers to be eligible, no precedence would be established to the timely delivery of goods. However, a precedence was established and thus comparison can be made that the delivery period of goods for this procurement was indeed relaxed to accommodate the slower capabilities of the local manufacturer. This was also iterated during the Prebid Conference last September 28, 2020.

As proof, during November 28, 2019 when this project was first published under bid reference No. MPG-BI 2019-412, the ITB stated that the delivery period shall be three hundred (300) calendar days. Attached is the ITB of the said project. This delivery period was given when no provisions prohibited foreign manufacturers from participating. However, now that a provision was added prohibiting foreign manufacturers from participating, the delivery period was relaxed to four hundred eighty (480) calendar days. This shows that not only will the timely delivery of goods be compromised, but it also establishes that local manufacturers are sixty (60% percent more inefficient than foreign manufacturers, far beyond the fifteen (15%) the law allows.

Should the PITC and the Philippine Army wish to support RA 11949, it may do so when the goods to be procured are those listed within Section 4.t of the Act, namely *“personal protective equipment (PPE) including, but not limited to, protective suits, face masks, shoe covers, face shields, and goggles”*.

Once again, in summary, we would like to ask the PITC BAC to:

1. Omit the requirement of exclusively allowing local manufacturers to bid.
2. Allow first-tier distributors to participate in the procurement.



Query 1	Omit the requirement of exclusively allowing local manufacturers to bid.
BAC1/PA's Reply:	<p>REQUEST DENIED</p> <p>All your points are well taken, but the requirement of the project remains.</p> <p>To reiterate BACs position on Item d) of Section 23.4.1.2 of the 2016 Revised IRR of RA 9184, we have more than enough local manufacturers to supply the bid requirement and Item c) of the same Section indicates that <u>Foreign Bidder may be eligible to participate when the goods sought to be procured are not available from local suppliers.</u></p> <p>Again, this in support of the Republic Act No. 11494 known as "Bayanihan to Recover as One Act" be it a medical safety product requirement or any goods that may be produced locally that will <i>mitigate the economic cost and losses stemming from the COVID-19 pandemic and promote and protect the collective interests of all Filipinos in these challenging times</i> as provided on Section 3 of RA 11494.</p> <p>On timely delivery, though the delivery period is extended to Four Hundred Eighty (480) calendar days, there is no stopping the winning bidder to deliver the goods earlier.</p>
Query 2	Allow first-tier distributors to participate in the procurement.
BAC1/PA's Reply:	<p>REQUEST DENIED</p> <p>As mentioned in the above reply, the requirement of the project remains.</p>

For guidance and information of all concerned.

Issued this 21st day of October 2020 in Makati City.

Approved by:

CHRISTABELLE P. EBRIEGA

Chairperson

MYRA CHITELLA T. ALVAREZ

Vice Chair

JOEL S. RODRIGUEZ

Member

ATTY. MITZELL ARTHUR R. MAGDAONG

Member

ATTY. ROXANNE MARIE Q. CRUZ

Member

Concurred by:

MGEN GLENN E CRUZ PA

Provisional Member

Received by (PLS SIGN)	:	_____
Bidder's Name (PLS PRINT)	:	_____
Date	:	_____
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