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**CIRCULAR 01-2013**

21 January 2013

**TO : Heads of Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units**

**SUBJECT : Reminder to Procuring Entities on the Observance of Due Process, the Contents of a Blacklisting Order, Effect of Blacklisting, and the Requirement to Submit Blacklisting Orders to the Government Procurement Policy Board**

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**1.0 Purpose**

This Circular is issued to reiterate the rules under the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants<sup>1</sup> (Guidelines), specifically on the observance of due process, the contents of a Blacklisting Order, its effect, and the requirement for submission to the Government Procurement Policy Board (GPPB).

**2.0 Coverage**

All Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government-Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units.

**3.0 Observance of Due Process**

The Blacklisting agency must ensure that the bidder is afforded *due process* by complying with the procedures for suspension and blacklisting during competitive bidding stage or during the contract implementation stage as provided for under Sections 5 and 6 of the Guidelines, respectively. Section 6 of the Guidelines should be read and applied together with the provisions and requirements of the Guidelines on Termination of Contracts<sup>2</sup>.

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<sup>1</sup> Issued through GPPB Resolution 09-2004, dated 20 August 2004, and published in the Official Gazette on 30 November 2004.

<sup>2</sup> Issued through GPPB Resolution 018-2004, dated 22 December 2004, and published in the Official Gazette on 16 May 2005; as amended by GPPB Resolution 03-2011, dated January 2011, published in the Manila Times on 6 April 2011.

## **4.0 Suspension Order and Blacklisting Order, Decision and Notice**

### **Suspension Order**

**4.1** The Head of the Procuring Entity (HOPE) shall, within fifteen (15) days from receipt of the resolution and the records of the Bids and Awards Committee proceedings, determine whether reasonable cause exists for the suspension of the contractor and the forfeiture of the latter's bid security. If the HOPE determines that such reasonable cause exists, he shall issue a decision suspending the contractor from participating in any bidding process of the agency, and further declaring that his bid security is forfeited. Otherwise, the HOPE shall dismiss the case.

**4.2** The decision shall clearly and distinctly state the facts, evidence and the law on which it is based, as well as the date of effectivity of the penalty, if any. The HOPE shall furnish the suspended contractor a copy of the decision immediately from its promulgation.

**4.3** A contractor is suspended upon receipt of the notice of decision prohibiting him from participating in the bidding process of the agency. The suspension shall remain in effect during the period of *motion for reconsideration and protest*<sup>3</sup> and shall terminate only upon a reversal of the decision by the HOPE or appellate authority.

Sample Suspension Order Form is attached hereto as **Annex "A"** and made integral part hereof.

### **Blacklisting Order**

**4.4** If no motion for reconsideration or protest is filed, the decision shall become final and executory after the lapse of seven (7) calendar days from the receipt of the notice of decision. Thereafter, the HOPE shall issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects.

## **5.0 Contents of a Blacklisting Order**

**5.1** Under Section 9.1 of the Guidelines, the Blacklisting Order shall contain, among others, the following information:

- 5.1.1 Department/Office Order or Board Resolution number;
- 5.1.2 Name and address of the blacklisted person/entity;
- 5.1.3 Authorized Management Officer (AMO), if applicable;
- 5.1.4 Name of project/contract and location;
- 5.1.5 Specific ground(s)/offense(s) committed;
- 5.1.6 Sanction imposed and its start date and completion;
- 5.1.7 Date of issuance of the order to blacklist; and
- 5.1.8 Other conditions which can extend duration of sanctions.

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<sup>3</sup> The rules and procedures in filing a motion for reconsideration and protest are outlined in Sections 5.7, 5.8 and 5.9 of the Guidelines.

Sample Blacklisting Form is attached hereto as **Annex “B”** and made integral part hereof.

**6.0 Effect and Duration of a Blacklisting Order and a Suspension Order**

**6.1** The penalty of suspension is a preventive sanction and is applied so that the supplier/contractor is prohibited from participating in any bidding of the procuring entity while the process of blacklisting is ongoing, which shall include infractions committed during the competitive bidding stage.

**6.2** A person/entity that is blacklisted by a procuring entity, and/or included in the GPPB Consolidated Blacklisting Report shall not be allowed to participate in all procurement activities of government during the entire blacklisting period of one (1) year or two (2) years, as the case may be, unless it is sooner delisted as provided for in the Guidelines.

**7.0 Submission of Blacklisting Orders to the GPPB**

Pursuant to Section 9 of the Guidelines, a procuring entity shall submit the Blacklisting Order to the GPPB within seven (7) calendar days after its issuance for inclusion in the Consolidated Blacklisting Report.

**8.0** This Circular shall take effect immediately.

**9.0** For guidance and compliance.

(Sgd.)

**FLORENCIO B. ABAD**

*Chairperson*