

GOVERNMENT PROCUREMENT POLICY BOARD

RESOLUTION NO. 09-2004

WHEREAS, Republic Act No. 9184 (“R.A. 9184”) entitled “An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes,” otherwise known as the “Government Procurement Reform Act” (“GPRA”) was enacted on January 10, 2003, and took effect on January 26, 2003;

WHEREAS, Section 75 of R.A. 9184 provides that the Government Procurement Policy Board (“GPPB”) and the members of the Joint Congressional Oversight Committee (“JCOC”) shall formulate the necessary rules and regulations for the proper implementation of its provisions, to wit:

Section 75. Implementing Rules and Regulations and Standard Forms. – Within sixty (60) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the GPPB, jointly with the members of the Oversight Committee created under Section 74 hereof. The said rules and regulations shall be approved by the President of the Philippines. For a period not later than thirty (30) days upon the approval of the implementing rules and regulations, the standard forms for Procurement shall be formulated and approved;

WHEREAS, pursuant to Section 75 of R.A. 9184, the GPPB and JCOC drafted the Implementing Rules and Regulations Part A (“IRR-A”) of R.A. 9184 and endorsed the same for the approval and signature of Her Excellency, President Gloria Macapagal Arroyo, through Joint Resolution No. 01-2003 of the GPPB and the JCOC, dated July 11, 2003;

WHEREAS, the IRR-A of R.A. 9184 was approved and signed by Her Excellency on September 18, 2003 and took effect on October 8, 2003;

WHEREAS, pursuant to Section 69.4 of the IRR-A of R.A. 9184, the GPPB shall issue the guidelines for the blacklisting of manufacturers, suppliers, distributors, contractors or consultants for Government projects;

WHEREAS, the GPPB tasked the GPPB-Technical Support Office (“GPPB-TSO”) to make an initial draft of the said guidelines to be submitted to and reviewed by the GPPB;

WHEREAS, the first draft of the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants was presented by the GPPB-TSO to the GPPB during its 6th meeting held on October 20, 2003,

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however, the GPPB decided to submit the same to other government agencies for further comments;

WHEREAS, the draft Uniform Guidelines for Blacklisting was again presented to the GPPB for deliberation on its 7th Meeting on December 11, 2003 along with the comments coming from the government agencies and after extensive discussions thereof, the GPPB again tasked the GPPB-TSO to revise the same in accordance with the suggestions of the members of the Board;

WHEREAS, the draft Uniform Guidelines for Blacklisting has undergone several revisions based on the instructions of the GPPB and in consultation with the Technical Working Group, as well as with the lawyers from different legal offices of various government agencies and the private sector;

WHEREAS, the GPPB has reviewed the final draft of the Uniform Guidelines for Blacklisting submitted by the GPPB-TSO during its 6th meeting held on August 20, 2004, at Unit 1103, The Taipan Place, Emerald Avenue, Ortigas Center, Pasig City, a copy of which is attached hereto as Annex "A" to form an integral part hereof;

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **Government Procurement Policy Board**, by virtue of the powers vested in **US** by law, hereby **RESOLVE** to confirm, adopt and approve, as **WE** hereby confirm, adopt and approve the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants as referred to **US** and revised according to **OUR** instructions.

This resolution shall take effect immediately.

APPROVED this 20th day of August, 2004 at Pasig City, Philippines

HON. EMILIA T. BONCODIN
Secretary
Department of Budget and Management

HON. ROMULO L. NERI
Director General
National Economic and Development
Authority

GOVERNMENT PROCUREMENT POLICY BOARD
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**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

**DEPARTMENT OF NATIONAL
DEFENSE**

DEPARTMENT OF EDUCATION

DEPARTMENT OF HEALTH

**DEPARTMENT OF INTERIOR AND
LOCAL GOVERNMENT**

DEPARTMENT OF ENERGY

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

DEPARTMENT OF FINANCE

**DEPARTMENT OF TRADE AND
INDUSTRY**

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

PRIVATE SECTOR REPRESENTATIVE

UNIFORM GUIDELINES FOR BLACKLISTING OF MANUFACTURERS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS AND CONSULTANTS

1. SCOPE

These guidelines shall govern the blacklisting of manufacturers, suppliers, distributors, contractors and consultants (“contractors” for brevity) involved in government procurement for offenses or violations committed during competitive bidding and contract implementation, in accordance with Section 69.4 of the Implementing Rules and Regulations Part A (“IRR-A”) of Republic Act No. 9184 (“R.A. 9184”), otherwise known as the “Government Procurement Reform Act.”

These guidelines shall apply to all branches, constitutional commissions and offices, agencies, departments, bureaus, offices, and instrumentalities of the Government, including government-owned and/or controlled corporations (“GOCCs”), government financial institutions (“GFIs”), state universities and colleges (“SUCs”), and local government units (“LGUs”).

2. PROHIBITION ON BLACKLISTED PERSONS/ENTITIES TO PARTICIPATE IN THE BIDDING OF GOVERNMENT PROJECTS/CONTRACTS

A person/entity that is blacklisted by a procuring entity and/or included in the Government Procurement Policy Board (“GPPB”) Consolidated Blacklisting Report shall not be allowed to participate in the bidding of all government projects during the period of disqualification unless it is delisted as provided for in these guidelines.

A joint venture or consortium which is blacklisted or which has blacklisted member/s and/or partner/s as well as a person/entity who is a member of a blacklisted joint venture or consortium are, likewise, not allowed to participate in any government procurement during the period of disqualification.

In the case of corporations, a single stockholder, together with his/her relatives up to the third civil degree of consanguinity or affinity, and their assignees, holding at least twenty percent (20%) of the shares therein, its chairman and president, shall be blacklisted after they have been determined to hold the same controlling interest in a previously blacklisted corporation or in two corporations which have been blacklisted; the corporations of which they are part shall also be blacklisted.

3. DEFINITION OF TERMS

3.1 **Appellate Authority.** The department, office or government unit exercising general and/or administrative supervision/control over the blacklisting agency. Department level agencies shall exercise appellate authority over offices, agencies, bureaus, government units, GOCCs and SUCs under their jurisdiction. *Provided, further,* that blacklisting decisions of government agencies that are not subject to general and/or administrative supervision/control of any department, office or government unit shall be final and executory.

3.2 **Award.** A written notice from the procuring entity accepting a bid or proposal.

- 3.3 **Blacklisting.** An administrative penalty disqualifying a person or an entity from participating in any government procurement for a given period.
- 3.4 **Suspension.** The administrative penalty imposed for infractions committed by a contractor during the competitive bidding stage, whereby such contractor is prohibited from further participation in the bidding process of an agency.
- 3.5 **Consolidated Blacklisting Report.** A report prepared by the GPPB containing the list of suppliers, manufacturers, distributors, contractors or consultants blacklisted by procuring entities.
- 3.6 **Contract Implementation.** A process of undertaking a project or contract in accordance with the contract documents.
- 3.7 **Termination of Contract.** Extinction of contract by reason of resolution or rescission under Articles 1191, 1380, 1381 of the Civil Code, Section 68 of the IRR-A of R.A. 9184 and other applicable laws arising from the default of the contractor.
- 3.8 **Delist.** Removal of a person/entity from the Consolidated Blacklisting Report.
- 3.9 **Blacklisted Person/Entity.** A person/entity who was disqualified by an agency and/or is included in the GPPB Consolidated Blacklisting Report.

4. SANCTIONS AND GROUNDS FOR BLACKLISTING

4.1 *Competitive Bidding Stage*

During the competitive bidding stage, pursuant to Section 69 of R.A. 9184, the procuring entity shall impose on bidders or prospective bidders the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution, as provided by applicable laws, for the following violations:

- 1. Submission of eligibility requirements containing false information or falsified documents.
- 2. Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
- 3. Unauthorized use of one's name, or using the name of the name of another for purpose of public bidding.
- 4. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.
- 5. Refusal or failure to post the required performance security within the prescribed time.

6. Refusal to clarify or validate in writing its Bid during post qualification within a period of seven (7) calendar days from receipt of the request for clarification.
7. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.
8. All other acts that tend to defeat the purpose of the competitive bidding, such as but not limited to: an eligible contractor not buying bid documents or not complying with the requirements during bid evaluation, and contractors habitually withdrawing from bidding or submitting letters of non-participation for at least three (3) times within a year, except for valid reasons.

In addition to the penalty of suspension, the bid security posted by the concerned bidder or prospective bidder shall also be forfeited.

4.2 *Contract Implementation Stage*

Pursuant to Section 69 (6) of R.A. 9184 and without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the procuring entity shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

- a) Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed (“NTP”);
- b) Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:
 - i. Employment of competent technical personnel, competent engineers and/or work supervisors;
 - ii. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
 - iii. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;
 - iv. Deployment of committed equipment, facilities, support staff and manpower; and
 - v. Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.
- c) Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the procuring entity.

- d) For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor arising from his fault or negligence and/or unsatisfactory or inferior quality of goods, as may be provided in the contract;
- e) For the procurement of consulting services, poor performance by the consultant of his services arising from his fault or negligence. Any of the following acts by the consultant shall be construed as poor performance:
 - i. Defective design resulting in substantial corrective works in design and/or construction;
 - ii. Failure to deliver critical outputs due to consultant's fault or negligence; and
 - iii. Specifying materials which are inappropriate, substandard, or way above acceptable standards.
 - iv. Allowing defective workmanship or works by the contractor being supervised by the consultant.
- f) For the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the procuring entity shall be applied. Any of the following acts by the constructor shall be construed as poor performance:
 - i. Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor; and
 - ii. Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence.
- g) Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited.

5. PROCEDURE FOR SUSPENSION AND BLACKLISTING DURING THE COMPETITIVE BIDDING STAGE

5.1 *Initiation of Action*

Any bidder/prospective bidder or duly authorized observer may initiate the suspension and blacklisting proceedings by filing a written complaint with the Bids and Awards Committee ("BAC"). The BAC may also *motu proprio* (by itself) commence the proceedings upon *prima facie* (self-sufficient) determination that the contractor as a bidder or prospective bidder has committed any of the grounds for blacklisting during the competitive bidding stage.

At the option of the procuring entities, a reasonable fee may be required for initiating the suspension and blacklisting proceedings.

5.2 *Notification*

Upon verification of the existence of grounds for blacklisting, the BAC shall immediately notify the contractor concerned in writing, advising him that:

- a) a complaint for suspension and blacklisting has been filed against him, or he has been considered by the BAC for suspension and blacklisting, stating the grounds for such;
- b) he has the opportunity to show cause why he should not be suspended and blacklisted;
- c) a hearing shall be conducted before the BAC, upon his request, where he may present documentary evidence, verbal testimony and cross-examine the witnesses presented against him; and
- d) the consequences of being suspended and blacklisted.

Within five (5) calendar days from receipt of notification, the contractor shall submit its written answer with documentary evidence to the BAC with a manifestation for request of hearing to determine questions of fact, if he so desires. No time extension shall be allowed.

Should the contractor fail to answer within the same period, the BAC shall issue a resolution recommending to the Head of the Procuring Entity the immediate suspension of the contractor from participating in any bidding process of the agency and the forfeiture of his bid security.

5.3 *Hearings*

If a hearing is requested, the BAC shall immediately set the date and time for hearing. The hearing shall be non-litigious and shall be terminated within five (5) days.

The BAC may also invite a representative from a duly recognized private group in a sector or discipline relevant to the procurement at hand as an observer for each hearing.

If no request is made, the BAC shall make a determination of the case based on the complaint, answer, documentary evidence submitted and facts verified. If the BAC is convinced that the contractor is at fault, it shall issue a resolution recommending to the head of the agency the suspension of the contractor from participating in any bidding process of the agency and the forfeiture of his bid security.

5.4 *Decision*

The Head of the Procuring Entity shall, within fifteen (15) days from receipt of the resolution and the records of the BAC proceedings, determine whether reasonable cause exists for the suspension of the contractor and the forfeiture of the latter's bid security. If the Head of the Procuring Entity 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, he shall dismiss the case.

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 Head of the Procuring Entity may delegate to the BAC the authority to impose the corresponding sanction(s) provided for in these guidelines.

In case a contractor commits more than one offense or a combination of offenses for the same project/contract in a particular agency, each violation shall be meted the corresponding penalty.

5.5 *Notice of Decision*

The Head of the Procuring Entity shall furnish the suspended contractor a copy of the decision immediately from its promulgation.

5.6 *Effect of Decision*

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 and shall terminate only upon a reversal of the decision by the Head of the Procuring Entity or appellate authority.

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 Head of Procuring Entity shall issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects.

5.7 *Motion for Reconsideration*

A Motion for Reconsideration may be filed by the suspended person/entity within seven (7) calendar days from receipt of the notice of decision and shall be for either or both of the following causes, provided that only one (1) Motion for Reconsideration shall be filed with the blacklisting agency:

- a) The decision is not in conformity with the evidence and/or facts presented; and
- b) Newly discovered evidence or facts which could not be discovered and produced at the investigation and which when presented would probably alter the result of the investigation.

The Head of the Procuring Entity shall resolve with finality the motion for reconsideration within fifteen (15) calendar days from the filing thereof and furnish suspended contractor a copy of the resolution immediately from its promulgation.

5.8 *Protest from Decision*

A protest may be filed under Section 55.1 of the IRR-A of R.A. 9184 by the suspended contractor with the appellate authority within seven (7) calendar days from receipt of the resolution on the Motion for Reconsideration.

5.9 *Finality of Decision*

The decision of the agency shall become final and executory after the lapse of seven (7) calendar days from the receipt of the notice of decision or resolution on the motion for reconsideration. If a protest is filed, the affirmed, modified or reversed decision shall become final and executory upon receipt thereof by the agency and person/entity concerned.

Upon finality of the decision suspending the contractor, the Head of Procuring Entity or appellate authority shall issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects.

6. PROCEDURE FOR BLACKLISTING DURING THE CONTRACT IMPLEMENTATION STAGE

Upon termination of contract due to default of the contractor, the Head of the Procuring Entity shall immediately issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects. The performance security of said contractor shall also be forfeited.

7. STATUS OF BLACKLISTED PERSON/ENTITY

Before the issuance of a Blacklisting Order, the erring contractor may participate in the procurement of any government project except in the agency where he is suspended. But if Blacklisting Order is issued prior to the date of the notice of award ("NOA"), the blacklisted person/entity shall not be qualified for award and such project/contract shall be awarded to another bidder pursuant to R.A. 9184 and its IRR-A.

If the Blacklisting Order is issued after award of a government project/contract to the blacklisted person/entity, the awarded project/contract shall not be prejudiced by the said order: *Provided, however*, that the said offense(s) committed by the blacklisted person/entity is/are not connected with the awarded project/contract.

8. DELISTING

8.1 A blacklisted person/entity shall be automatically delisted after the period for the penalty shall have elapsed, unless the blacklisting agency requests the GPPB to maintain the blacklisted person/entity in the GPPB Consolidated Blacklisting Report due to justifiable reasons. In the latter case, the blacklisted person/entity shall be delisted only upon the blacklisting agency's issuance of a Delisting Order.

9. METHODOLOGY FOR NOTIFICATION TO THE GPPB

9.1. Unless otherwise provided in these guidelines, the blacklisting agency concerned shall submit to the GPPB, within seven (7) calendar days after the issuance of the blacklisting order/delisting orders made by the agency, the following documents:

- a) Blacklisting Order duly signed by the Head of the Procuring Entity/appellate authority containing, among others, Department/Office Order or Board Resolution number, name and address of the blacklisted person/entity, license number, if applicable, Authorized Managing Officer ("AMO"), name of

project/contract and location/amount, specific ground(s)/offense(s) committed as provided in Section 4 hereof, sanction imposed and its date of start and completion, date of issuance of the order to blacklist, and other conditions which can extend duration of sanctions in Sections 4 hereof.

- b) Delisting Order duly signed by the blacklisting agency containing, among others, Department/Office Order or Board Resolution number, name and address of the blacklisted person/entity, name of project/contract and location, specific sanction being lifted and the number of previously issued blacklisting Department/Office Orders or Board Resolutions, effectivity date of delisting, and date of delisting approval.
- 9.2 The GPPB shall prepare the Consolidated Blacklisting Report every quarter, based on the submitted Blacklisting Orders as provided for in Section 9.1(a) hereof and disseminate the same to procuring entities and the Commission on Audit (“COA”). The report shall be further posted in the GPPB website and the Government Electronic Procurement System (“G-EPS”) and shall indicate the number of times a person/entity has been blacklisted, the type of offense/violation committed, the penalty imposed, and the blacklisting agency concerned. The GPPB shall delist from such report those whose sanctions are lifted automatically after serving the given penalty as provided for in Section 8.1 hereof and those whose sanctions are lifted through the issuance of Delisting Orders.
- 9.3 In the case of procurement of infrastructure projects, should a blacklisting agency decide to refer the case of its blacklisted person/entity to the Philippine Contractors Accreditation Board (“PCAB”) for license suspension/revocation, it shall submit to PCAB a copy of the decision accompanied with supporting documents.
- 9.4 All existing blacklisting reports of the Government or any of its procuring entities, as well as the list of constructors whose licenses are suspended or revoked by the PCAB as of the date of effectivity of the IRR-A, are hereby adopted and made part of the GPPB Consolidated Blacklisting Report upon the issuance of these guidelines.

10. AMENDMENTS

- 10.1 In the implementation of these guidelines, the GPPB may introduce modifications thereto through the amendment of its specific provisions as the need arises.
- 10.2 Any amendment to these guidelines shall be applicable to government projects advertised for bid after the effectivity of the said amendment

11. EFFECTIVITY

These Guidelines or any amendments thereof shall take effect immediately 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.