

NPM No. 36-2017

20 December 2017

MS. EDITHA R. ORCILLA

Project Director and Assistant National Statistician

Civil Registration Service

PHILIPPINE STATISTICS AUTHORITY (PSA)

PCA-CVEA Bldg., East Avenue,

Diliman, Quezon City

Subject: Status of Blacklisted Entity

Dear Director Orcilla:

This refers to your letter dated 17 July 2017¹ requesting for clarification and guidance on your current contract with Ascott Pacific Consultants, Incorporated.

Based on your letter, the Philippine Statistics Authority (PSA) have an existing contract with Ascott Pacific Consultants, Incorporated. It is further represented that after the date of the negotiation and signing of the contract, PSA learned that Ascott Pacific Consultants, Inc. was blacklisted for a period of one year which commenced after the negotiation and contract was signed. You are now seeking guidance as to whether or not PSA may continue its contract with Ascott Pacific Consultants, Inc., notwithstanding the latter's inclusion in the GPPB's list of blacklisted suppliers.

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy matter opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We have no authority to dictate to the Procuring Entity how to decide or resolve issues relative to its procurement activities. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, except courts of competent jurisdiction, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity (HoPE) and the BAC, since these duties and responsibilities fall solely within the ambit of their authority and discretion. In this regard, we shall limit our discussion on the interpretation of relevant procurement rules and regulations pertinent to the issues presented.



¹ Received on 26 July 2017

Status of Blacklisted Person/Entity

The *Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants*², which is appended³ in the 2016 revised Implementing Rules and Regulations of Republic Act No. 9184, the Government Procurement Reform Act, provides that:

“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 its IRR.

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.”

This section of the Guidelines provide for two different rules for each of the two scenarios provided, that is, when the Blacklisting Order was issued prior to the date of notice of award; and when the Blacklisting Order was issued after the award of government project or contract.

If the Blacklisting Order was issued prior to the date of issuance of the notice of award, the person/entity subject of the blacklisting order shall not be qualified for award. On the other hand, if the Blacklisting Order was issued after the contract has been awarded, the person/entity subject of the blacklisting order shall be allowed to continue to carry-on with the implementation of the contract, provided that the offense committed is not in any way connected with the awarded project/contract.

Under the abovementioned rules, there are two factors that must be considered in order to assess which scenario is applicable, thus:

1. Date of Blacklisting Order; and
2. Date of Notice of Award;

Based on the information provided in your letter, you were able to *negotiate and sign a contract* on 06 April 2017 while the blacklisting of Ascott Pacific Consultants, Incorporated commenced on 16 May 2017. On the third (3rd) paragraph of your letter, however, you stated that, “... *whether we could still continue our contract with Ascott Pacific Consultants, Inc., with no legal violations or complications as our date of negotiation was signed prior to the date of blacklisting it.*” It must be emphasized that the date the negotiation was signed is not the date contemplated in the abovementioned rule. While it may be implied that the Notice of

² GPPB Resolution 09-2004 issued on 20 August 2004

³ Appendix 17 of the 2016 Revised Implementing Rules and Regulations of RA 9184

Award was issued prior to the date of the Blacklisting Order, it is not clear in your letter what the actual dates are for both of the issuances.

Summary:

All told, the dates of the Notice of Award and the Blacklisting Order should be determined by PSA in order to identify which scenario should be considered and what rule is applicable. If it is determined that the Blacklisting Order was issued after the Notice of Award and contract execution, the PSA may continue with the contract, but must identify whether the offense/s committed by Ascott Pacific Consultants, Inc. is/are connected with their current contract with PSA. If it is connected with the current contract, PSA cannot continue to implement the same in accordance with Item 7 of the Uniform Guidelines for Blacklisting.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director 

