



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 016-2016

21 March 2016

HON. ERNESTO D. BOAC

Assistant Secretary

DEPARTMENT OF NATIONAL DEFENSE (DND)

DND Building, Camp General Emilio Aguinaldo,
Quezon City.

Re: Blacklisting of an Agent

Dear Assistant Secretary Boac:

This refers to your letter requesting our opinion relative to the extent of the application of a blacklisting order to an agent in accordance with Republic Act (RA) No. 9184, its Implementing Rules and Regulations (IRR) and the Guidelines for Blacklisting.

It is represented that in the ongoing procurement projects undertaken by the DND where there were prospective bidders who manifested interests to participate in the procurement activity, some of the proponents, or the entities/persons representing them, have questionable records or are included in the list of blacklisted entities in the GPPB website. Thus, you would like to inquire as to what extent a blacklisting order applies. For instance, if a foreign bidder has been declared blacklisted, does it also apply to its local representative in the Philippines? Similarly, if the GPPB website list of blacklisted entities is couched in this manner, is a "foreign company", as a representative, necessarily included in said blacklisting order?

We wish to stress that in cases where a bidder is represented by an agent, the principal-agent relationship is governed by the law on agency under the New Civil Code. The Honorable Supreme Court in the case of *Eurotech Industrial Technologies, Inc. vs. Edwin Cuizon and Erwin Cuizon*,¹ had the occasion to rule in this wise, thus:

In a contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another with the latter's consent. **The underlying principle of the contract of agency is to accomplish results by using the services of others – to do a great variety of things like selling, buying, manufacturing, and transporting. Its purpose is to extend the personality of the principal or the party for**

¹ G.R. No. 167552, April 23, 2007.

whom another acts and from whom he or she derives the authority to act. It is said that the basis of agency is representation, that is, the agent acts for and on behalf of the principal on matters within the scope of his authority and said acts have the same legal effect as if they were personally executed by the principal. By this legal fiction, the actual or real absence of the principal is converted into his legal or juridical presence – *qui facit per alium facit per se*. (Emphasis supplied)


The elements of the contract of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself; (4) the agent acts within the scope of his authority.

As regards the personal liability of the agent under the contract of agency, *Art. 1897 of the NCC* provides that:

[T]he agent who acts as such is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers.

Article 1897 reinforces the familiar doctrine that an agent, who acts as such, is not personally liable to the party with whom he contracts. The provision, however, presents two instances when an agent becomes personally liable to a third person. First, when he expressly binds himself to the obligation; and second, when he exceeds his authority. In the last instance, the agent can be held liable if he does not give the third party sufficient notice of his powers.²

There is no personal liability for agents. The reason for the law is that the agent who acts as agent does not represent himself but the principal. If an agent obligates himself personally, aside from acting in behalf of his principal, both are bound.³ In fact, the Honorable Supreme Court in a couple of cases held that: “[a]n action against a person who merely acted in behalf of another should be dismissed. The suit should be against the principal, not against the agent, except where the agent acts in his own name or exceeds the limit of his agency.”⁴ Hence, as long as the agent acts within the scope of his authority, he does not assume personal liability for contract entered into by him in behalf of his principal. It was also held that in such case only the principal was bound.⁵

Accordingly, applying the same principle of law, a bidder who was blacklisted as a “principal” in a previous procurement activity, may still represent a current bidder as an “agent” in government procurement opportunities, such as in the case of competitive bidding, since such blacklisted bidder is merely representing the current bidder as an “agent”. In the same manner, if the “principal” bidder is blacklisted by a procuring entity, its “agent” or representative is not blacklisted, unless the “agent” expressly binds himself through the Contract of Agency, or when he exceeds his authority as agent. 

² *Id.*

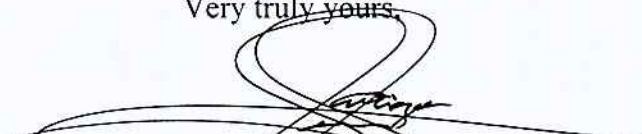
³ *Tuazon v. Orozco*, 5 Phil. 596.

⁴ *Lorca v. Dineros*, L-10919, Feb. 28, 1958 and *Singh v. Dulce*, 49 Phil. 653

⁵ *Salonga v. Warner, Barnes and Co., Ltd.* L-2246, Jan. 31, 1951 citing *Morris and Co. v. Warner, Barnes and Co.*, 43 Phil. 155.

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 V 