



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 33-2012

4 April 2012

MR. ALFREDO C. BENITEZ
Chairperson, Bids and Awards Committee
BUREAU OF CORRECTIONS (BUCOR)
NBP Reservation, Muntinlupa City

Dear Mr. Benitez:

We acknowledge receipt of your letter dated 12 March 2012 transmitting a copy of the Blacklisting Order against Golden Taste Food Services & General Merchandising (Golden Taste) for the period of 15 March 2012 up to 14 March 2013.

As represented, the basis/ground for blacklisting is the finding that the “premature resort of Golden Taste to judicial intervention, without the exhaustion of available and adequate administrative remedies under Republic Act (RA) 9184, materially defeats the purpose of the competitive bidding”.

Under the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants (Guidelines), specifically, Section 4.1(8) thereof, one of the grounds for blacklisting is the commission of acts that tend to defeat the purpose of the competitive bidding, such as, but not limited to, habitually withdrawing from bidding or submitting late bids or patently insufficient bids, for at least three (3) times within a year, except for valid reasons.

In determining the acts that can be considered within the prohibition, it is imperative to understand the purpose behind competitive bidding. The Supreme Court held in the case of *Caltex (Phil.) Inc., et. al. v. Delgado Bros., et. al.*¹ that “public biddings are held for the protection of the public, and to give the public the best possible advantages by means of open competition between the bidders.” In addition, the particular aims of public or competitive bidding are (1) to secure the lowest price; (2) to curtail favoritism in the award of government contracts; (3) to avoid suspicion of anomalies; and (4) to place bidders on equal footing.²

As can be gleaned from Section 4.1(8) of the Guidelines, the examples of acts considered to be tending to defeat the purpose of competitive bidding involve acts that prevent the procuring entity from obtaining bids that genuinely offers terms worthy of

¹ G.R. No. L-5439, 29 December 1954.

² Law on Public Bidding and Government Contracts, Agapito P. Cobacha and Domingo O. Lucenario, 1960, pp. 6-7.

consideration and evaluation by the procuring entity taking into account existing market conditions. Under the principle of “*ejusdem generis*”, where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The rule is based on the obvious reason that if the legislature had intended the general words to be used in their unrestricted sense they would have made no mention of the particular classes.³

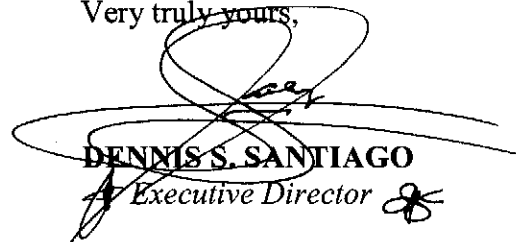
In this regard, we are of the view that in order to properly use Section 4.1(8) of the Guidelines as basis for blacklisting, the act committed by the bidder should be of the same kind as those enumerated therein. Considering that violation of the rules and procedures on protest mechanism under RA 9184 and its IRR does not involve the same kind of acts as those in the examples given, it is our considered opinion that such act cannot be deemed to be an act that tend to defeat the purpose of competitive bidding that will cause the imposition of blacklisting against the actor, for to do so will essentially negate the very nature of the protest mechanism, that is, to afford prejudiced bidders the proper remedy and procedural approach to address their grievances alongside the constitutionally enshrined due process doctrine.

Based on the foregoing, and pursuant to our mandate to monitor and ensure that the provisions of RA 9184 and its IRR are complied with, we advise that the BUCOR review its decision and the basis therefor in order to guarantee the soundness and legality of such decision. Needless to say, the BUCOR should properly comply with the procedures on blacklisting laid down in the Guidelines. In the meantime, absent any valid and appropriate ground submitted by BUCOR, we will hold in abeyance the inclusion of Golden Taste from the registry of blacklisted suppliers in the GPPB website.

Lastly, we wish to note that Section 9.1 of the Guidelines enumerate the details that should be provided in the Blacklisting Order duly signed by the head of the procuring entity and submitted to the GPPB. We suggest that such information be included in the Blacklisting Orders that will be issued by the BUCOR.

Your effort to comply with the requirements of the procurement law and its rules and regulations is highly appreciated.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director

//asg/dlsn

³ The City of Manila, et. al. v. Entote, G.R. No. L-24776, 28 June 1974.