



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

**NPM No. 92-2013**

19 December 2013

**MR. JOEL R. CRUZ**

*Director*

**DEPARTMENT OF TRADE AND INDUSTRY (DTI)**


G/F, Trade and Industry Building, Sen. J. Puyat Ave.  
Makati City

**Re: Applicability of Blacklisting Order to the Affiliate/Sister  
Company of a Blacklisted Entity**

Dear Director Cruz:

This is in response to your letter dated 10 October 2013, which we received on 14 October 2013, seeking our opinion on whether the affiliate/sister company of a blacklisted bidder may also be considered as blacklisted.

It is represented that Masangkay Computer Center (Masangkay), one of the bidders for the procurement of laptop computers of the DTI, is allegedly an affiliate/sister company of HLYC Trading, an entity included in the Government Procurement Policy Board (GPPB) Consolidated Blacklisting Report. It is in this context that you are seeking our opinion on whether Masangkay may be considered blacklisted being an affiliate/sister company of HLYC Trading, a blacklisted bidder.

Section 2 of the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants<sup>1</sup> (Guidelines) dictates that 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 the bidding of all government projects during the period of disqualification unless it is delisted as provided for in the Guidelines. The same prohibition applies to 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. 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. 

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

Hence, the applicability of a blacklisting order to the affiliate/sister company of a blacklisted entity depends on the nature of the entity, as well as the extent of representation of the latter in the former. The fact that an entity is an affiliate/sister company of a blacklisted entity does not in and of itself a ground for the former's blacklisting.


It has to be established that the blacklisting entity is a member or partner of its affiliate/sister company if the latter is a joint venture or consortium, or that the blacklisted entity is a stockholder holding at least twenty percent (20%) of the shares of the affiliate/sister company if the latter is a corporation.

If the blacklisted entity and its affiliate/sister company are sole proprietorships owned by the same person, the blacklisting order applies to the affiliate/sister company since a sole proprietorship does not have a separate juridical nor legal personality<sup>2</sup> from its owner, and it is thru the individual doing business under the name and style of the sole proprietorship who would in effect be blacklisted under the Guidelines. The law merely recognizes the existence of a sole proprietorship as a form of business organization conducted for profit by a single individual, and requires the proprietor or owner thereof to secure licenses and permits, register the business name, and pay taxes to the national government. It does not vest juridical or legal personality upon the sole proprietorship nor empowers it to file or defend an action in court.<sup>3</sup> In this regard, the blacklisted person remains blacklisted regardless of the name and number of sole proprietorships registered under her name, and shall not be allowed to participate in the bidding of all government projects during the period of disqualification unless delisted as provided for in the Guidelines.

In view of the foregoing, the affiliate/sister company of a blacklisted bidder may only be considered as blacklisted upon determination by the procuring entity that the blacklisted entity has that degree of relationship or extent of representation mentioned in Section 2 of the Guidelines existing in the affiliate/sister company.

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

Very truly yours,

  
**DENNIS LORNE S. NACARIO**  
*Officer-In-Charge*

/sds

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<sup>2</sup> Art. 44. The following are juridical persons:

- (1) The State and its political subdivisions;
- (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
- (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

<sup>3</sup> Juansing Hardware vs. The Honorable Rafael T. Mendoza, et. al., G.R. No. L-55687 dated 30 July 1982.