



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

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F/CSUPT RODRIGO R. ABRAZALDO
Chairman, Bids and Awards Committee (BAC)
BUREAU OF FIRE PROTECTION (BFP) - NATIONAL HEADQUARTERS
Agham Road, Brgy. Bagong Pag-asa,
Quezon City

Re: Blacklisting

Dear F/CSupt Abrazaldo:

This is in response to your letter dated 8 June 2012 requesting our advice on the proper procedure for blacklisting under Republic Act (RA) 9184 and its revised Implementing Rules and Regulations (IRR).

It is represented that when the present BAC was reconstituted, there were certain matters commenced by the former BAC that were not consummated during its term. One of the concerns that have been carried over to the present BAC was a Complaint for blacklisting filed by 911 Alarm, Inc. (911) against Panpisco Technologies, Inc. (Panpisco), which was found to be sufficient in form and substance by the former BAC. Upon learning of the constitution of the present BAC, Panpisco has filed its supplemental Answer with a manifestation to dispense with the requirement of a hearing, and praying that the Complaint be submitted to the former for proper determination of the grounds relied upon in support of the same. It is in this context that you are seeking clarification on the following issues:

1. Whether the present BAC is bound by the determination made by the former BAC that the blacklisting complaint is sufficient in form and substance.
 - 1.1. If in the affirmative, would it not be a conflict since there is a possibility that the determination of the former BAC will not be the same with the present one who are now obliged to continue and conclude the case?
 - 1.2. If in the negative, is the BAC required to take cognizance of the complaint and determine anew whether there is ground for blacklisting?
2. Is blacklisting possible when the subject procurement has already been concluded? 

Reliance on Previous BFP-BAC Findings

For your guidance, Section 5.1 of the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants¹ (Guidelines) provides that a complaint for blacklisting should be initiated either by any bidder/prospective bidder or its duly authorized observer through the filing of a written complaint, or by the BAC *motu proprio*. On this basis, the BAC should verify the existence of the grounds for blacklisting.²

We note that RA 9184 and its revised IRR are silent as to the effect of changes in the BAC composition. Although the former BFP-BAC has determined that the Complaint for blacklisting filed against Panpisco was sufficient in form and substance, the present BAC, comprising of totally new membership, may or may not rely on the findings and determination made by the former BAC as it has the discretion under its quasi-judicial authority, to adopt *in toto* the findings of the former BFP-BAC, or to verify, validate, ascertain, confirm and/or investigate anew the existence of the grounds for blacklisting. This is consistent with the Guidelines and with one of the main functions of the BAC under Section 12.2 of the revised IRR of RA 9184, which is to recommend the imposition of sanctions or administrative penalties, such as blacklisting, in accordance with Section 69. In order for the present BAC to make the proper recommendation to the Head of the Procuring Entity (HOPE), it should be familiar with all the facets of the case particularly the Complaint that triggered the blacklisting procedure, and more importantly it must have carefully and judiciously examined the evidence presented, documentary or otherwise, to arrive at a reasonable, fair and just conclusion that grounds exist to validly blacklist a bidder.

Assuming *arguendo* that the present BAC relies on the determination of the previous BAC and proceed with the next step, which is the conduct of a hearing, it bears stressing that in determining that the Complaint is sufficient in form and substance, the present BAC must, nonetheless, receive relevant evidence from the respondent. Respondent will have the opportunity to defend its position by submitting its written Answer with documentary evidence, and request for the setting of a hearing. Following these procedures under the Guidelines will allow the present BAC to independently validate the evidence and make the appropriate recommendations to the HOPE.

Blacklisting: Post Conduct of Competitive Bidding

Anent your second query, Sections 5 and 6 of the Guidelines provide the sanctions and grounds for blacklisting during the (1) competitive bidding stage, and (2) contract implementation stage, respectively. Please note that blacklisting is possible even during contract implementation, when an award has already been made, or the subject procurement has been concluded. However, in case the ground for blacklisting was committed during the competitive bidding stage and is pursued during contract implementation, the PE should refer to the Guidelines on Termination of Contracts³ particularly on Termination for Unlawful Acts.

Based on the foregoing, we are of the opinion that the present BAC, in the exercise of its quasi-judicial functions, has the sole discretion to adopt or not to adopt the findings of the

¹ GPPB Resolution No. 09-2004 dated 20 August 2004.

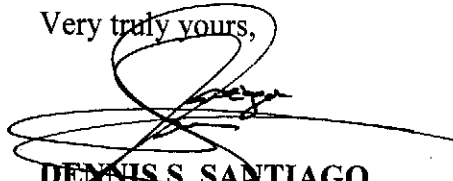
² Section 5.2 of the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributor, Contractors and Consultants.

³ GPPB Resolution No. 018-2004 dated 22 December 2004.

previous BFP-BAC. Upon its own determination, the present BAC may conduct its own investigation in verifying, validating, ascertaining and confirming the validity of the grounds raised in proceeding with the blacklisting case. In addition, a case for blacklisting can still be pursued even if the subject procurement has been awarded or concluded. In the event that the ground for blacklisting was committed during the competitive bidding stage and discovered only during contract implementation stage, the PE should be guided by the relevant provisions under the Guidelines on Termination of Contracts.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented, and may not be applicable to a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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