



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

NPM No. 125-2014

13 November 2014

Mr. HOMER CONCHADA

Owner

HLYC TRADING

1133E Aguilar St., Sta. Cruz, Manila

Re: Blacklisting

Dear Mr. Conchada:

This refers to your letter raising the following concerns, citing Sections 5.6 and 5.9 of the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants¹ (Guidelines), thus:

1. When does the Blacklisting Order become final and executory?
2. When is the effectivity date of the Blacklisting Order?
3. Is there a period within which the Blacklisting Order is issued?

To begin with, it is the **Decision to Suspend** that becomes final and executory which results in the issuance of a **Blacklisting Order**. Conversely, the Blacklisting Order contains, among others, the sanction/s imposed on the erring contractor, *i.e.*, the disqualification from participating in the bidding of all government projects².

As to when the Decision to Suspend becomes final and executory, Sections 5.6 and 5.9 of the Guidelines are clear on this:

5.6 *Effect of Decision*

A contractor is suspended upon receipt of the notice of decision prohibiting him from participating in the bidding process of the agency. The suspension shall remain in effect during the period of motion for reconsideration and protest and shall terminate only upon a reversal of the decision by the Head of the Procuring Entity or appellate authority. (Emphasis ours)

If no motion for reconsideration or protest is filed, the decision shall become final and executory after the lapse of seven (7)

¹ GPPB Resolution No. 09-2004 as amended by GPPB Resolution No. 03-2011

² Section 5.1 of GPPB Circular No. 01-2013

calendar days from the receipt of the notice of decision. Thereafter, the Head of the Procuring Entity shall issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects. (Emphasis ours)

5.9 *Finality of Decision*

The decision of the agency shall become final and executory after the lapse of the seven (7) calendar days from the receipt of the notice of decision or resolution on the motion for reconsideration. If a protest is filed, the affirmed, modified or reversed decision shall become final and executory upon receipt thereof by the agency and person/entity concerned. (Emphasis ours)

From the above cited provisions, the Decision to Suspend becomes final and executory under the following instances:

1. If the bidder did not file a Motion for Reconsideration on the Decision to Suspend, said Decision becomes final and executory after the lapse of seven (7) days counted from receipt of the Notice of the Decision; or,
2. If the bidder did not file a Protest after his Motion for Reconsideration has been denied, the Decision becomes final and executory after the lapse of seven (7) days counted from receipt of the resolution on the motion for reconsideration; or,
3. If a Protest was filed and the same was denied, the Decision becomes final and executory upon receipt by the agency and person/entity concerned of the Decision on the protest.

It must be noted that Section 5.4 of the Guidelines provides that the bidder remains suspended from participating in any procurement activity of the agency during the pendency of the Motion for Reconsideration and/or Protest and the suspension shall terminate only when the Head of the Procuring Entity or appellate authority reverses the subject Decision.

Upon finality of the Decision to Suspend, it is incumbent upon the Procuring Entity to immediately issue the Blacklisting Order disqualifying the bidder from participating in the bidding of all government projects where the start date and completion of the sanction is stated,³ which may either be one (1) year or two (2) years as the case may be. This is because the Blacklisting Order affects the eligibility of the erring contractor *vis-à-vis* its participation in government procurement opportunities. Section 7 of the Guidelines provides:

7. 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

³ *Supra*, note 1.

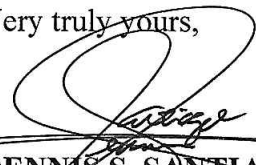
in the agency where he is suspended. But if the Blacklisting Order is issued prior to the date of the notice of award (“NOA”), the blacklisted person/entity shall not be qualified for award and such project/contract shall be awarded to another bidder pursuant to R.A. 9184 and its IRR.

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.

Additionally, it is worthy to stress that the issuance of the Blacklisting Order presupposes that the blacklisted bidder was afforded due process by the procuring entity prior to the issuance of the Blacklisting Order pursuant to the blacklisting Guidelines.

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

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