

NPM No. 74-2007

3 December 2007

MR. JOSEPH O. VERGARA

Head, Office of the Secretariat

Bids and Awards Committee

PHILIPPINE HEALTH INSURANCE CORPORATION

Citystate Center, 709 Shaw Blvd.

Brgy. Oranbo, Pasig City

Re : Blacklisting

Dear Mr. Vergara:

We refer to your letters dated 20 March 2007 and 27 December 2006 seeking for an opinion whether the Bids and Awards Committee for Information Technology Resources (BAC-ITR) may reconsider the cancellation of the contract award to Micro-D International, Inc. (MDI) for the Network Monitoring Tools Project (the "Project") and still maintain the prohibition of one (1) year from participating in any of projects of the Philippine Health Insurance Corporation (Philhealth).

Based on your letter dated 27 December 2006 and the BAC-ITR Resolution No. 11 dated 05 October 2006, the facts appear as follows:

1. The BAC-ITR recommended the award of the Project to MDI sometime in August 2005. Copies of the contract for the Project were transmitted to MDI on 09 December 2005.
2. On 30 May 2006, the representative of MDI admitted to the Office of the Secretariat of the BAC-ITR (OSBAC) that the seven (7) copies of the contract were lost. The OSBAC requested MDI to submit an affidavit of lost for the reconstitution of a new contract. On 16 August 2006, the OSBAC, upon the instructions of the BAC-ITR, wrote MDI specifying the deadline for the submission of said affidavit.
3. During the BAC-ITR meeting on 31 August 2006, the OSBAC submitted a report containing a chronology of events and a certification that MDI failed to meet the deadline for the submission of the Comprehensive Maintenance Program. The BAC-ITR decided that a meeting with MDI be held to get its side.

4. In a meeting held between the BAC-ITR and the MDI on 22 September 2006, the BAC-ITR judiciously considered the merits of the explanation of the representatives of MDI and agreed that appropriate actions be imposed upon MDI for its gross incompetence and its failure to enter into a contract with Philhealth for the Project.
5. The BAC-ITR, through its Resolution No. 11 dated 5 October 2006, resolved to recommend to the Philhealth President and CEO to cancel the award of the Project made in favor of MDI and prohibit the same from joining any bidding project of Philhealth for one (1) year effective upon the approval of said resolution.

Under Section 40 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184, if the bidder with the Lowest Calculated Responsive Bid (LCRB) or Highest Rated Responsive Bid (HRRB) fails, refuses or unable to make good its bid by entering into contract with the procuring entity within the period stipulated in the bidding documents, the bid security shall be forfeited and the appropriate sanctions provided in the IRR-A and existing laws shall be imposed.¹ In addition, the BAC shall disqualify the said bidder and shall initiate and complete the post-qualification process on the bidder with the second LCRB or HRRB; this procedure shall be repeated until the LCRB or HRRB is determined for award.²

The Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants (the "Guidelines") also provides that, during the competitive bidding stage, the procuring entity shall impose on bidders the penalty of suspension for a bidder's refusal to enter into contract with the Government without justifiable cause, after he had been adjudged as having LCRB or HRRB.³ The procedure for suspension and blacklisting is set forth in Section 5 of the Guidelines.

The determination and approval of the imposition of the administrative sanctions rest primarily with the head of the procuring entity, upon the recommendation of the BAC, based on the grounds and in accordance with the applicable rules and regulations.

A motion for reconsideration may be filed by the suspended entity within seven (7) calendar days from receipt of the notice of decision and shall be for either or both of the following causes⁴:

- a) The decision is not in conformity with the evidence and/or facts presented;
- b) Newly discovered evidence or facts which could not be discovered and produced at the investigation and which when presented would probably alter the result of the investigation.

¹ Section 40.1, IRR-A, R.A. 9184.

² Section 40.2, IRR-A, R. A. 9184.

³ Section 4.1 (4), Guidelines.

⁴ Section 5.7, Guidelines.

The head of the procuring entity shall resolve with finality the motion for reconsideration within fifteen (15) calendar days from the filing thereof and furnish the suspended contractor a copy of the resolution immediately from its promulgation.⁵

Based on the foregoing discussion, the BAC-ITR's reconsideration of its earlier decision should depend on whether there is sufficient ground(s) as provided under the law and its rules and regulations and in accordance with the procedure thereof.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III

⁵ *Ibid.*