

[RESOLUTION NO. 40-2017, September 06, 2018]

APPROVING THE REVISED GUIDELINES FOR BLACKLISTING OF MANUFACTURERS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS AND CONSULTANTS

*Adopted: 21 December 2017
Date Filed: 06 September 2018*

WHEREAS, Section 63.1(b) of Republic Act (R.A.) No. 9184 and its 2016 revised Implementing Rules and Regulations (IRR) authorize the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend, whenever necessary, the IRR;

WHEREAS, the GPPB issued GPPB Resolution No. 09-2004, dated 20 August 2004, approving and adopting the Uniform Guidelines for Blacklisting Manufacturers, Suppliers, Distributors, Contractors and Consultants (Blacklisting Guidelines for brevity);

WHEREAS, the Blacklisting Guidelines was amended by GPPB Resolution No. 03-2011, dated 28 January 2011 to harmonize with the 2009 IRR of RA 9184 and avoid confusion on the implementation of its provisions;

WHEREAS, during the course of implementation of the existing Blacklisting Guidelines, several issues were encountered by procuring entities and bidders and in response thereto, the GPPB Technical Support Office (TSO) proposed specific changes to the Blacklisting Guidelines;

WHEREAS, during the 7th Inter-Agency Technical Working Group (IATWG) Meeting on 14 December 2017, the GPPB-TSO presented the proposed specific changes to the Blacklisting Guidelines and after due consideration, the IATWG adopted the proposed changes to the Blacklisting Guidelines and recommended its approval by the GPPB, subject to the following comments, thus:

1. No need to mention the term "spouse" in the effect of blacklisting of individuals;
2. Clarify that the penalty of Suspension is applicable in any bidding process of the agency;
3. Clarify that the blacklisting after the lapse of project duration shall be applicable only prior to contract closure; and
4. Change the protest mechanism to appeals procedure to avoid confusion with the protest mechanism during bidding process;

WHEREAS, during the 6th GPPB and 8th IATWG Joint Meeting on 21 December 2017, the GPPB-TSO presented the proposed revision of the Blacklisting Guidelines, including the recommendation of the IATWG;

WHEREAS, after careful and due deliberation, the Board approved the proposed Revised Blacklisting Guidelines, subject to the following comments, thus:

1. Consistent use of the term "appeal" instead of "protest"; and
2. Retain the current amounts of the prescribed fees for filing an appeal in accordance with Section 55 of RA 9184 and its 2016 IRR.

NOW, THEREFORE, for and in consideration of the foregoing, WE, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on US by law, hereby **RESOLVE** to approve and adopt, as WE hereby confirm, adopt and approve the following

1. **APPROVE** the Revised Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants, copy of which is hereto attached as Annex "A"; and
2. **ISSUE** a Circular informing the procuring entities on the procedures on the submission of Blacklisting Orders, copy of which is hereto attached as Annex "B";

The Revised Guidelines shall take effect after fifteen (15) days following the publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified true copies of this Resolution.

APPROVED this 21st day of December 2017 at Pasig City, Philippines.

Signed by the Representatives of the Following Agencies:

DEPARTMENT OF BUDGET AND MANAGEMENT
DEPARTMENT OF EDUCATION DEPARTMENT OF ENERGY DEPARTMENT OF FINANCE
DEPARTMENT OF INFORMATION AND COMMUNICATION TECHNOLOGY DEPARTMENT
OF NATIONAL DEFENSE
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS DEPARTMENT OF TRADE AND
INDUSTRY PRIVATE SECTOR REPRESENTATIVE

ANNEX "A"

UNIFORM GUIDELINES FOR BLACKLISTING OF MANUFACTURERS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS AND CONSULTANTS

1. SCOPE

These guidelines shall govern the blacklisting of manufacturers, suppliers, distributors, contractors and consultants ("contractors" for brevity) involved in government procurement for offenses or violations committed during procurement and contract implementation stages, in accordance with Section 69.4 of the Implementing Rules and Regulations ("IRR") of Republic Act No. 9184 ("R.A.

9184”), otherwise known as the “Government Procurement Reform Act.”

These guidelines shall apply to all branches, constitutional commissions and offices, agencies, departments, bureaus, offices, and instrumentalities of the Government, including government-owned and/or controlled corporations (“GOCCs”), government financial institutions (“GFIs”), state universities and colleges (“SUCs”), and local government units (“LGUs”).

2. PROHIBITION ON BLACKLISTED PERSONS/ENTITIES TO PARTICIPATE IN THE BIDDING OF GOVERNMENT PROJECTS/CONTRACTS

A person/entity that is blacklisted by a procuring entity and/or included in the Government Procurement Policy Board (“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 these guidelines. Blacklisting shall apply to the following persons:

- a) In case of individuals or sole proprietorships, to the bidders and their spouses;
- b) In case of partnerships, to the partnership itself and its partners;
- c) In case of cooperatives, to the cooperative itself and members of the board of directors, general manager or chief executive officer;
- d) A partnership, 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 are, likewise, not allowed to participate in any government procurement during the period of disqualification;
- e) 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.

3. DEFINITION OF TERMS

3.1 Appellate Authority. The department, office or government unit exercising general and/or administrative supervision/control over the blacklisting agency. Department level agencies shall exercise appellate authority over offices, agencies, bureaus, government units, GOCCs and SUCs under their jurisdiction. Provided, further, that blacklisting decisions of government agencies that are not subject to general and/or administrative supervision/control of any department, office or government unit shall be final and executory.

3.2 Award. A written notice from the procuring entity accepting a bid or proposal.

3.3 **Blacklisting.** An administrative penalty disqualifying a person or an entity from participating in any government procurement for a given period.

3.4 **Suspension.** An interim penalty imposed for infractions committed by a bidder during the procurement stage, whereby such bidder is prohibited from further participation in any of the bidding process of an agency. It shall remain in effect during the period of motion for reconsideration and/or appeal and shall terminate only upon final decision by the HoPE or appellate authority.

3.5 **Consolidated Blacklisting Report.** A report prepared by the GPPB containing the list of suppliers, manufacturers, distributors, contractors or consultants blacklisted by procuring entities.

3.6 **Contract Implementation.** A process of undertaking a project or contract in accordance with the contract documents.

3.7 **Termination of Contract.** Extinction of contract by reason of resolution or rescission under Articles 1191, 1380, 1381 of the Civil Code, and Section 68 and Annex "I" (Guidelines on Termination of Contracts) of the IRR of R.A. 9184 and other applicable laws arising from the default or unlawful act of the contractor.

3.8 **Delist.** Removal of a person/entity from the Consolidated Blacklisting Report

3.9 **Blacklisted Person/Entity.** A person/entity who was disqualified by an agency and/or is included in the GPPB Consolidated Blacklisting Report.

3.10 **Offense.** A violation under Section 69 of RA 9184 and its IRR in one procurement project wherein the Procuring Entity has already issued a Blacklisting Order.

4. SANCTIONS AND GROUNDS FOR BLACKLISTING

4.1 Procurement Stage

During the procurement stage, pursuant to Section 69 of R.A. 9184, the procuring entity shall impose on bidders or prospective bidders the penalty of blacklisting for one (1) year for the first offense, blacklisting for two (2) years for the second offense, from participating in the public bidding process, without prejudice to the imposition of additional administrative, civil or criminal sanctions, as provided by applicable laws, for the following violations:

- a) Submission of eligibility requirements containing false information or falsified documents.
- b) Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
- c) Allowing the use of one's name, or using the name of the name of another

for purpose of public bidding.

d) Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

e) Refusal or failure to post the required performance security within the prescribed time.

f) Refusal to clarify or validate in writing its Bid during post qualification within a period of seven (7) calendar days from receipt of the request for clarification.

g) Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.

h) All other acts that tend to defeat the purpose of the competitive bidding, such as 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 addition to the penalty of blacklisting, the bid security posted by the concerned bidder or prospective bidder shall also be forfeited.

4.2 Contract Implementation Stage

Pursuant to Section 69 (6) of R.A. 9184 and without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the procuring entity shall impose on contractors after the termination of the contract the penalty of blacklisting for one (1) year for the first offense, blacklisting for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

a) Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed ("NTP");

b) Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:

i. Employment of competent technical personnel, competent engineers and/or work supervisors;