

[CIAP BOARD RESOLUTION NO. 5, S. 2000, July 18, 2000]

**APPROVING THE REVISED UNIFORM GUIDELINES FOR
BLACKLISTING CONSTRUCTORS INVOLVED IN PUBLIC
CONSTRUCTION**

On motion duly seconded.

WHEREAS, the Construction Industry Authority of the Philippines (CIAP), under Section 2 of PD 1746, is tasked to promote, accelerate and regulate the growth of the construction industry in conformity with the national goals;

WHEREAS, Section IB 10.5.2 of the Implementing Rules and Regulations (IRR) of PD 1594 as amended 12 July 1995, provides for the formulation of the uniform guidelines for blacklisting constructors involved in public construction and revision of the same whenever necessary by a committee composed of representatives from government tendering agencies and constructors associations created by the CIAP;

WHEREAS, the CIAP created the Inter-Agency Committee (IAC) on Blacklisting composed of representatives from the Department of Public Works and Highways (DPWH), Transportation and Communications (DOTC), Labor and Employment (DOLE), Energy (DOE), National Defense (DND), National Power Corporation (NPC), National Irrigation Administration (NIA), National Economic and Development Authority (NEDA), Philippine Constructors Association, Inc. (PCA), and National Association of Constructors Association of the Philippines (NACAP) which formulated

the Uniform Guidelines for Blacklisting Constructors Involved in Public Construction approved by the National Economic and Development Authority (NEDA) Committee on Infrastructure (INFRACOM) on 14 August 1996.

WHEREAS, the CIAP IAC on Blacklisting reviewed and revised the Guidelines and submitted the final revised version to the CIAP Board;

WHEREAS, Section V-2 of the IRR of PD 1594, as amended 24 May 2000, provides that the amendments/revisions to the Guidelines shall be approved by the CIAP Board and become effective fifteen (15) days after filing of the same with the Office of the National Administrative Register pursuant to Administrative Code of 1987.

NOW, THEREFORE, in consideration of the foregoing premises, BE IT RESOLVED, as it is hereby RESOLVED, to approve the following Revised Uniform Guidelines for Blacklisting Constructors Involved in Public Construction based on the recommendations of the CIAP IAC on Blacklisting and the agreements of the CIAP Board in its 31st Regular Meeting held on 18 July 2000:

**I
General**

The Implementing Rules and Regulations (IRR) of P.D. No. 1594 as amended last 12 July 1995 provide under Section IB 10.5-2 the formulation of uniform guidelines for blacklisting constructors involved in public construction and revision of the same whenever necessary by a committee composed of representatives from government tendering agencies and constructors associations created by the Construction Industry Authority of the Philippines (CIAP). The guidelines shall stipulate, among others, the administrative sanctions to be imposed for offenses/violations committed by constructors during the contract implementation phase.

These guidelines were developed to address the following issues: differing sanctions imposed by agencies concerned on erring constructors; absence of administrative procedures or due process for blacklisting constructors by some concerned agencies; and, lack of information networking within and among agencies on offenses committed by constructors.

II Scope

These guidelines shall cover the blacklisting of constructors involved in government infrastructure projects who committed offenses/violations during prequalification, bidding, award, and contract implementation.

The prequalification, bidding and award phases are included in these guidelines to harmonize the blacklisting and delisting procedures and to expand coverage of the blacklisting reports.

Joint ventures and consortia are likewise covered by these guidelines but the number of times sanctioned and corresponding sanctions imposed shall be accrued by the joint ventures and/or consortia concerned and their individual member-constructors.

III Constructors Not Allowed to Participate in the Pre-Qualification and Bidding of Government Projects

A CONSTRUCTOR WHO WAS SUSPENDED OR DISQUALIFIED BY A GOVERNMENT TENDERING AGENCY AND/OR INCLUDED IN THE CIAP CONSOLIDATED GOVERNMENT-LEVEL BLACKLISTED CONSTRUCTORS SHALL NOT BE ALLOWED TO PARTICIPATE IN THE PREQUALIFICATION AND BIDDING OF ALL GOVERNMENT TENDERING AGENCIES DURING THE PERIOD OF SUSPENSION/DISQUALIFICATION UNLESS A CERTIFICATE FROM CIAP CONFIRMING A DELISTING ORDER FROM THE BLACKLISTING AGENCY HAS BEEN SUBMITTED TO THE TENDERING AGENCY CONCERNED.

A JOINT VENTURE OR CONSORTIUM WITH BLACKLISTED MEMBER/S AND/OR AN INDIVIDUAL CONSTRUCTOR WHO IS A MEMBER OF A BLACKLISTED JOINT VENTURE OR CONSORTIUM IS LIKEWISE NOT ALLOWED TO PARTICIPATE IN THE PREQUALIFICATION AND BIDDING OF ALL GOVERNMENT TENDERING AGENCIES DURING THE PERIOD OF SUSPENSION.

IV Definition of Terms

4.1 APPELLATE AUTHORITY — REFERS TO THE AGENCY/OFFICE EXERCISING GENERAL AND/OR ADMINISTRATIVE SUPERVISION/CONTROL OVER THE BLACKLISTING AGENCY, I.E., IN CASE OF AGENCIES LIKE THE NATIONAL IRRIGATION ADMINISTRATION, PHILIPPINE PORTS AUTHORITY, AND PHILIPPINE TOURISM AUTHORITY, THE APPELLATE AUTHORITY SHALL BE DEPARTMENT OF AGRICULTURE, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, AND DEPARTMENT OF TOURISM, RESPECTIVELY; FOR ALL DEPARTMENT LEVEL AGENCIES SUCH AS THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, DEPARTMENT OF AGRICULTURE, THE APPELLATE AUTHORITY SHALL BE THE OFFICE OF THE PRESIDENT.

4.2 AWARD — A WRITTEN NOTICE FROM THE AGENCY ACCEPTING A BID OR NEGOTIATED PROPOSAL.

4.3 BID — AN OFFER TO PERFORM THE WORK UNDER THE TERMS AND CONDITIONS SPECIFIED IN THE INFORMATION TO BIDDERS.

4.4 BLACKLISTING — AN AGENCY DECISION TO SUSPEND/DISQUALIFY A CONSTRUCTOR FROM PARTICIPATING IN ALL GOVERNMENT CONSTRUCTION PROJECTS EITHER PERPETUALLY OR FOR A GIVEN PERIOD.

4.5 BLACKLISTING WITH CONDITIONS — AN AGENCY DECISION TO SUSPEND/DISQUALIFY CONSTRUCTOR FROM PARTICIPATING IN ALL GOVERNMENT CONSTRUCTION PROJECTS FOR A GIVEN PERIOD WHICH IS DEEMED TO CONTINUE EVEN AFTER THE LAPSE OF THE PERIOD UNTIL ALL OUTSTANDING LIABILITIES/OBLIGATIONS WITH THE AGENCY HAVE BEEN SETTLED BY THE SAID CONSTRUCTOR.

4.6 CONSOLIDATED BLACKLISTING REPORT — A REPORT PREPARED BY THE CIAP CONTAINING THE LIST OF CONSTRUCTORS BLACKLISTED BY GOVERNMENT TENDERING AGENCIES AND THE PHILIPPINE CONTRACTORS ACCREDITATION BOARD (PCAB).

4.7 CONSORTIUM — A COOPERATIVE ARRANGEMENT BETWEEN LICENSED CONSTRUCTORS AND NON-CONSTRUCTOR/S TO JOINTLY PERFORM A SINGLE SPECIFIC UNDERTAKING/PROJECT WITH THE LICENSED CONSTRUCTOR/S AS MANAGING AND OPERATING PARTNER/S AND OTHERS AS FINANCIER/S OR ANY OTHER SUPPORTIVE ROLE.

4.8 CONSTRUCTION INDUSTRY AUTHORITY OF THE PHILIPPINES (CIAP) — A GOVERNMENT AGENCY ATTACHED TO THE DEPARTMENT OF TRADE AND INDUSTRY (DTI) CREATED UNDER PRESIDENTIAL DECREE NO. 1746 (AS AMENDED BY EXECUTIVE ORDER NOS. 679 AND 768).

4.9 Constructor — deemed synonymous with the term builder and hence, any person or entity including joint venture and consortium licensed by the Philippine Contractors Accreditation Board (PCAB) who undertakes or offers to undertake or purports to have the capacity to undertake or submit a bid for infrastructure projects.

4.10 CONTRACT IMPLEMENTATION — A PROCESS OF UNDERTAKING A CERTAIN PROJECT IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

4.11 DELIST — TO REMOVE A CONSTRUCTOR FROM THE CONSOLIDATED BLACKLISTING REPORT.

4.12 Government-Level Blacklisted Constructor — a constructor who was suspended or disqualified by a government tendering agency and/or is included in the CIAP-Consolidated Government-Level Blacklisted Constructors.

4.13 HEARING OFFICER/COMMITTEE — AN OFFICER OR BODY DESIGNATED BY THE AGENCY TO CONDUCT INVESTIGATION/HEARING OF BLACKLISTING CASES.

4.14 Infrastructure Projects — refers to construction, improvement or rehabilitation of roads and highways, airports and air navigation facilities, railways, ports, flood control and drainage, water supply and sewerage, irrigation systems, dams, buildings, communication facilities, dredging and reclamation, power generating plants, power transmission and distribution facilities and other related construction projects.

4.15 JOINT VENTURE — A COOPERATIVE ARRANGEMENT OF LICENSED CONSTRUCTORS TO JOINTLY PERFORM A SINGLE SPECIFIC UNDERTAKING/PROJECT WITH EACH OF THE PARTNERS CONTRIBUTING TO THE PERFORMANCE.

4.16 PREQUALIFICATION — THE PROCESS OF EVALUATING THE QUALIFICATIONS OF PROSPECTIVE BIDDERS ON THE BASIS OF THEIR COMPETENCE, INTEGRITY, AND RESPONSIBILITY RELATIVE TO THE CONTEMPLATED PROJECT.

4.17 PREQUALIFICATION, BID AND AWARD COMMITTEE (PBAC) — A COMMITTEE RESPONSIBLE FOR THE CONDUCT OF PREQUALIFICATION, BIDDING AND EVALUATION OF BIDS AND RECOMMENDING AWARD OF CONTRACT.

4.18 PROJECT MANAGEMENT OFFICE — A DEPARTMENT/DIVISION IN AN AGENCY ASSIGNED TO SUPERVISE/MONITOR THE IMPLEMENTATION OF PROJECTS.

V

SANCTIONS AND GROUNDS FOR BLACKLISTING

5.1 Prequalification, Bidding and Award STAGE

The following administrative sanctions as provided for IN THE IRR of P.D. 1594 shall be imposed for offenses/violations committed by constructors during prequalification, bidding and award:

a. Suspension for one (1) year for first offense, disqualification for two (2) years for the second offense, and perpetual disqualification for succeeding offense on any of the following:

a.1 Misrepresentation or concealment of any material fact or information in the sworn prequalification statements and/or bids, including but not limited to:

- i. falsification of public documents
- ii. submission of borrowed license (license lending).

a.2 Submission of bids and/or detailed estimates that are identical to each other or to the Approved Agency Estimate (AAE) which manifestly indicate rigging or collusion.

a.3 PARTICIPATING IN PBAC ACTIVITIES AS A CONSTRUCTORS ASSOCIATION (CA) REPRESENTATIVE WHERE HE/SHE HAS ANY PECUNIARY INTEREST.

a.4 Other acts of constructors which directly or indirectly tend to defeat the purpose of public bidding.

b. Suspension for six (6) months for first offense, disqualification for one (1) year for second offense, disqualification for two (2) years for third offense, and perpetual disqualification for succeeding offense;

b.1 Non-submission OR LATE SUBMISSION of bids by prequalified constructors **WITHOUT JUSTIFIABLE REASON AND WRITTEN NOTICE OF WITHDRAWAL OF INTENT TO PARTICIPATE IN THE BIDDING FIVE (5) WORKING DAYS BEFORE THE DEADLINE OF SUBMISSION OF BIDS.**

c. Forfeiture of bid security for first offense, FORFEITURE OF BID SECURITY and suspension of one (1) year for second offense, and FORFEITURE OF BID SECURITY AND perpetual disqualification for succeeding offense on any of the following:

c.1 Unjustified failure or unreasonable refusal of the winning bidder to accept or signify conforme to the Notice of Award (NOA).

c.2 Non-submission by the proposed awardee within the AGENCY prescribed time of the performance security and other requirements necessary for contract preparation, i.e., Contractor's All Risk (CAR) Insurance, Affidavit of No Pending Case for Non-Payment of Tax, Construction Schedule, Cash Flow and other requirements necessary for the formalization of the contract.

c.3 Unjustified refusal or failure of the proposed awardee to enter or sign the prepared contract within the agency prescribed time.

d. SUSPENSION FOR FIVE (5) YEARS FOR FIRST OFFENSE AND PERPETUAL DISQUALIFICATION FOR SUCCEEDING OFFENSE:

d.1 RECEIVING A FEE, GIFT, OR OTHER VALUABLE THING IN RELATION TO, OR IN CONNECTION WITH, PBAC ACTIVITIES FROM ANY PERSON/ENTITY IN THE HOPE OR EXPECTATION OF RECEIVING FAVOR OR OTHER TREATMENT THAN THAT ACCORDED OTHER PERSONS;