



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
OFFICE OF THE SECRETARY
Bonifacio Drive, Port Area, Manila

097.13 DPWH
03.16.2015

MAR 11 2015

DEPARTMENT ORDER)
No. **39**)
Series of 2015)

SUBJECT: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

Pursuant to the provisions of Appendix 11 – entitled Uniform Guidelines for the Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants - of the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 9184, and in accordance with the provisions of Sections 69 of R.A. 9184, the following specific rules and procedures in the blacklisting of contractors, consultants and suppliers for infrastructure projects are hereby prescribed for compliance by all concerned.

A. Definitions

The following terms used in this Department Order are defined in Section 3 of Appendix 11 of the IRR:

Blacklisting – An administrative penalty from the procuring entity disqualifying a person or an entity from participating in any government procurement for a given period.¹

Suspension – The administrative penalty imposed for infractions committed by a contractor during the competitive bidding stage, whereby such contractor is prohibited from further participating in the bidding process of an agency.

The following additional terms used in this Order are defined as indicated:

Implementing Office (IO) – the DPWH office directly undertaking the execution of the project, i.e., Project Management Office (PMO)/Regional Office/District Office. Thus, the Head of the IO is the PMO Project Manager/Regional Director/District Engineer concerned.

Procuring Entity – the DPWH itself. Thus, the Head of the Procuring Entity is the DPWH Secretary who may delegate his responsibilities under this Order to an authorized official.

B. Prohibition of Blacklisted Persons/Entities

As provided in Section 2 of Appendix 11, *a person/entity that is blacklisted by a procuring entity – in this case the Department of Public works and Highways (DPWH) – 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 in these guidelines.*

¹ In this Department Order, words/characters in italics are quoted provisions of the IRR.

D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

C. DPWH Blacklist


The Procurement Service shall set up and continuously update an active DPWH Blacklist of contractors, consultants and suppliers, supported by a database. This Blacklist shall be posted in the DPWH website. The DPWH Blacklist shall include the following:

1. List of contractors, consultants and suppliers with Blacklist Orders covering penalty periods still unexpired.
2. List of contractors, consultants and suppliers with Suspension Orders still in effect.
3. List of contractors, consultants and suppliers covered by recent specific (i.e., non-automatic) Delisting Orders.

The supporting database for the DPWH Blacklist shall include the following information, among others:

1. For each Blacklisting Order and Suspension Order:
 - a. Number and date of Blacklisting Order.
 - b. Number and date of BAC resolution recommending blacklisting.
 - c. Name and address of blacklisted person/entity, license number, if applicable, Authorized Managing Officer, name of project/contract and location/amount.
 - d. Specific grounds/offenses committed as provided in Section D.1 and E.1 of this Department Order.
 - e. Sanction imposed and its date of start and expiry.
 - f. Other relevant information.
2. For each Delisting Order – in case of non-automatic delisting:
 - a. Number and date of Delisting Order.
 - b. Name and address of blacklisted person/entity, name of project/contract and location.
 - c. Specific sanction being lifted.
 - d. Other relevant information.

The DPWH IOs, Bids and Awards Committees (BACs), and other offices concerned shall refer to the latest DPWH Blacklist and see to it that no blacklisted person/entity therein is allowed to participate in any procurement of infrastructure projects during the period of his/ its blacklisting. These offices shall also refer to the latest Government Procurement Policy Board ("GPPB") Consolidated Blacklisting Report and ensure that no blacklisted



D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

person/entity therein is allowed to participate in any bidding during the period of his/its blacklisting.

D. Blacklisting During the Competitive Bidding Stage

1. Sanctions and Grounds for Blacklisting


As provided in Section 4.1 of Appendix 11 of the IRR, pursuant to Section 69 of R.A. 9184, the procuring entity – i.e., the DPWH - shall impose on bidders or prospective bidders the penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, without prejudice to imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution, as provided by applicable laws, for the following violations:

- 1. Submission of eligibility requirements containing false information or falsified documents.*
- 2. 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.*
- 3. Allowing the use of one's name, or using the name of another for purposes of public bidding.*
- 4. 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.*
- 5. Refusal or failure to post the required performance security within the prescribed time.*
- 6. 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.*
- 7. Any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor.*
- 8. All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons.*

In addition to the penalty of suspension, the bid security posted by the prospective bidder shall also be forfeited.

2. Initiation of Action

As provided in Section 5.2 of Appendix 11 of the IRR, any bidder/prospective bidder or duly authorized observer may initiate the proceedings by filing a written complaint with the Bids and Awards Committee ("BAC) against the contractor. The BAC may



D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

motu proprio (by itself) commence the proceedings upon prima facie (self-sufficient) determination that the contractor as a bidder or prospective bidder has committed any of the grounds for blacklisting during the competitive bidding stage.

In the first case, the written complaint to be filed by the bidder/prospective bidder/duly authorized observer referred to above must be verified – i.e., the complaint should be verified by a duly notarized affidavit that the complainant has read and understood the contents thereof and that the allegations therein are true and correct to his knowledge or based on authentic records. An unverified complaint shall not be accepted by the BAC.

In the second case, before motu proprio commencing the proceedings, the BAC shall conduct a preliminary investigation to determine the prima facie grounds, if any, for blacklisting. This shall essentially include a review of records of bidding processes, documents submitted by bidders/prospective bidders, and sworn statements of witnesses. The BAC may request the assistance of the concerned legal and technical staff of the DPWH in conducting the preliminary investigation.

At the option of the procuring entities, a reasonable fee may be required for initiating the suspension and blacklisting proceedings.

3. Notification

As provided in Section 5.2 of Appendix 11 of the IRR, *upon verification of the existence of grounds for blacklisting, the BAC shall immediately notify the contractor concerned in writing, advising him that:*

- a. a complaint for suspension and blacklisting has been filed against him, or he has been considered by the BAC for suspension and blacklisting, stating the grounds for such;*
- b. he has the opportunity to show cause why he should not be suspended and blacklisted;*
- c. a hearing shall be conducted before the BAC, upon his request, where he may present documentary evidence, verbal testimony and cross-examine the witnesses presented against him; and*
- d. the consequences of being suspended and blacklisted.*

Within five (5) calendar days from receipt of notification, the contractor shall submit its written answer with documentary evidence to the BAC with a manifestation for request of hearing to determine questions of fact, if he so desires. No time extension shall be allowed.

The contractor's written answer must be verified – i.e., duly notarized.

Should the contractor fail to answer within the same period, the BAC shall issue a resolution recommending to the Head of the Procuring Entity - i.e., the DPWH



D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

Secretary thru the Head of the IO - *the immediate suspension of the contractor from participation in any bidding process of the agency and the forfeiture of his bid security.*

The BAC resolution must be verified – i.e., duly notarized.

4. Hearings and BAC Resolution

As provided in Section 5.3 of Appendix 11 of the IRR, if a hearing is requested, the BAC shall immediately set the date and time for hearing. The hearing shall be non-litigious and shall be terminated within five (5) days.

The BAC may also invite a representative from a duly recognized private group in a sector or discipline relevant to the procurement at hand as an observer for each hearing.

The BAC may seek the assistance of the concerned legal and technical staff of the DPWH in conducting the hearing.

If no request (for a hearing) is made, the BAC shall make a determination of the case based on the complaint, answer, documentary evidence submitted and facts verified. If the BAC is convinced that the contractor is at fault, it shall issue a resolution, concurred in by the Head of the IO, recommending to the head of the agency – i.e., the DPWH Secretary - the suspension of the contractor from participating in any bidding process of the agency and the forfeiture of his bid security.

The BAC resolution must be verified – i.e., duly notarized.

5. Decision

As provided in Section 5.4 of Appendix 11 of the IRR, the Head of the Procuring Entity – i.e., the DPWH Secretary - shall within fifteen (15) days from receipt of the (verified BAC) resolution and the records of the BAC proceedings, determine whether reasonable cause exists for the suspension of the contractor and the forfeiture of the latter's bid security.

For this purpose, the DPWH Secretary shall require the Legal Service to review the verified BAC resolution, ascertain if reasonable cause exists for the suspension of the contractor, and submit its recommendation to the Secretary

If the Head of the Procuring Entity (DPWH Secretary) determines that reasonable cause exists, he shall issue a decision suspending the contractor from participating in any bidding process of the agency, and declaring that his bid security is forfeited. Otherwise, he shall dismiss the case.

The decision shall clearly and distinctly state the facts, evidence and the law on which it is based, as well as the penalty, if any.

The Head of the Procuring Entity (DPWH Secretary) may delegate to the BAC the authority to impose the corresponding sanction(s) provided in these guidelines.



D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

In case a contractor commits more than one offense or a combination of offenses for the same project/contract in a particular agency, each violation shall be meted the corresponding penalty.

6. Notice of Decision

As provided in Section 5.5 of Appendix 11 of the IRR, the Head of the Procuring Entity (DPWH Secretary) shall furnish the suspended contractor a copy of the decision immediately upon its promulgation.

7. Effect of Decision

As provided in Section 5.6 of Appendix 11 of the IRR, a contractor is suspended upon receipt of the notice of the 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 shall terminate only upon a reversal of the decision by the Head of the Procuring Entity (DPWH Secretary).

If no motion for reconsideration is filed, the decision shall become final and executory after the lapse of seven (7) calendar days from the receipt of the notice of decision. Thereafter, the Head of the Procuring Entity (DPWH Secretary) shall issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects.

8. Motion for Reconsideration


As provided in Section 5.7 of Appendix 11 of the IRR, a Motion for Reconsideration may be filed by the suspended person/entity within three (3) calendar days from receipt of the note of decision and shall be for either or both the following causes, provided that only one (1) Motion for Reconsideration shall be filed with the blacklisting agency:

- a) The decision is not in conformity with the evidence and/or facts presented; and*
- 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.*

The Head of the Procuring Entity (DPWH Secretary) shall resolve with finality the motion for reconsideration within seven (7) calendar days from the filing thereof and furnish the suspended contractor a copy of the resolution immediately from its promulgation.

9. Finality of Decision

As provided in Section 5.9 of Appendix 11 of the IRR, the decision of the agency suspending the contractor shall become final and executory after the lapse of seven (7) calendar days from the receipt of the notice of decision or resolution on the motion for reconsideration.



D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

Upon finality of the decision suspending the contractor, the Head of the Procuring Entity (DPWH Secretary) shall issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects.

10. Status of the Blacklisted Person/Entity

As provided in Section 7 of Appendix 11 of the IRR, before the issuance of a Blacklisting Order, the erring contractor may participate in the procurement of any government project, except in the agency where he is suspended. But if 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 the 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/contractor.

11. Delisting

As provided in Section 8 of Appendix 11 of the IRR, a blacklisted person/entity shall be automatically delisted after the period for the penalty shall have elapsed, unless the blacklisting agency (i.e., DPWH) requests the GPPB to maintain the blacklisted person/entity in the GPPB Consolidated Blacklisting Report due to justifiable reasons. In the latter case, the blacklisted person/entity shall be delisted only upon the blacklisting agency's issuance of a Delisting Order.

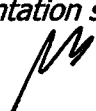
Thus, with the automatic delisting at the expiry of the penalty period, there is no need for the DPWH to issue a Delisting Order, and the penalized contractor shall be allowed to participate in the procurement of any government project.

The exception, as mentioned above, is where the DPWH requests the GPPB to maintain the blacklisted person/entity in the GPPB Consolidated Blacklisting Report beyond the original penalty period due to justifiable reasons. In case the DPWH decides later to delist the said blacklisted person/entity on justifiable grounds, it shall issue a specific Delisting Order.

E. Blacklisting During the Contract Implementation Stage (Sec. 6 of Appendix 11)

1. Sanctions and Grounds for Blacklisting

As provided in Appendix 11 Section 4.2 of the IRR, 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 (i.e., DPWH) shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, for the violations committed during the contract implementation stage, which include but not limited to the following:



D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

- 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 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 not limited to the following:*
 - i. *Employment of competent technical personnel, competent engineers and/or work supervisors;*
 - ii. *Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;*
 - iii. *Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;*
 - iv. *Deployment of committed equipment, facilities, support staff and manpower; and*
 - v. *Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.*
- c) *Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the procuring entity.*
- d) *For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor arising from his fault or negligence and/or unsatisfactory or inferior quality of goods, as may be provided in the contract;*
- e) *For the procurement of consulting services, poor performance by the consultant of his services arising from his fault or negligence. Any of the following acts by the consultant shall be construed as poor performance:*
 - i. *Defective design resulting in substantial corrective works in design and/or construction;*
 - ii. *Failure to deliver critical outputs due to consultant's fault or negligence;*
 - iii. *Specifying materials which are inappropriate, substandard, or way above acceptable standards; and*



D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

- iv. *Allowing defective workmanship or works by the contractor being supervised by the consultant.*
- f) *For the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the procuring entity shall be applied. Any of the following acts by the contractor shall be construed as poor performance:*
 - i. *Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor; and*
 - ii. *Quality of materials and workmanship not complying with the approved specs arising from the contractor's fault or negligence.*
- g) *Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.*

In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited

2. Procedure for Termination of Contracts

As provided in Section IV, Appendix 4 of the IRR, the following procedure for termination of contracts prior to blacklisting shall be observed:

- a. Verification. *Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report (duly notarized), with all relevant evidence attached.*
- b. Notice to Terminate. *Upon recommendation by the implementing Unit the Head of Procuring Entity shall terminate contracts only by a written notice to the Supplier/Contractor conveying the termination of the contract. The notice shall state:*
 - i. *that the contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;*
 - ii. *the extent of termination, whether in whole or in part;*
 - iii. *an instruction to the Supplier/Contractor/Consultant to show cause as to why the contract should not be terminated; and*
 - iv. *special instructions of the Procuring Entity, if any.*

The Notice to Terminate shall be accompanied by a copy of the Verified Report.

- c. Show Cause. *Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier/Contractor/Consultant shall submit to the*

D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

Head of the Procuring Entity a verified position paper stating why the contract should not be terminated.

If the Supplier/Contractor/Consultant fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Procuring Entity shall issue an order terminating the contract.

- d. Rescission of Notice of Termination. *The Procuring Entity may, at anytime before receipt of the Supplier's/Contractor's/Consultant's verified position paper to withdraw the Notice to Terminate if it is determined that certain items or works subject of notice had been completed, delivered, or performed before the Supplier's/Contractor's/Consultant's receipt of the notice.*
- e. Decision. *Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the Procuring Entity shall decide whether or not to terminate the contract. It shall serve a written notice to the Supplier/Contractor/Consultant of its decision and, unless otherwise provided, the Contract is deemed terminated from receipt of the Supplier/Contractor/Consultant of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate.*
- f. Contract Termination Review Committee (CTRC). *The Head of the Procuring Entity may create a committee to assist him in the discharge of his function under these Guidelines. All decisions recommended by the CTRC shall be subject to the approval of the head of the Procuring Entity.*

3. Procedure for Blacklisting after Contract Termination

Upon termination of the contract due to default of the contractor, the Head of the Procuring Entity (DPWH Secretary) shall immediately issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects. The performance security of said contractor shall also be forfeited.

4. Status of the Blacklisted Person/Entity

As provided in Section 7 of Appendix 11 of the IRR, before the issuance of a Blacklisting Order, the erring contractor may participate in the procurement of any government project, except in the agency where he is suspended. But if 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 the 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/contractor.

5. Delisting

As provided in Section 8 of Appendix 11 of the IRR, a blacklisted person/entity shall be automatically delisted after the period for the penalty shall have elapsed, unless

D.O. No. 39 Series of 2015: SUSPENSION AND BLACKLISTING OF CONTRACTORS, CONSULTANTS AND SUPPLIERS FOR INFRASTRUCTURE PROJECTS

the blacklisting agency requests the GPPB to maintain the blacklisted person/entity in the GPPB Consolidated Blacklisting Report due to justifiable reasons. In the latter case, the blacklisted person/entity shall be delisted only upon the blacklisting agency's issuance of a Delisting Order.

Hence, with the automatic delisting at the expiry of the penalty period, there is no need for the blacklisting agency to issue a Delisting Order, and the penalized contractor shall be allowed to participate in the procurement of any government project.

The exception, as mentioned above, is where the DPWH requests the GPPB to maintain the blacklisted person/entity in the GPPB Consolidated Blacklisting Report beyond the original penalty period due to justifiable reasons. In case the DPWH decides later to delist the said blacklisted person/entity on justifiable grounds, it shall issue a specific Delisting Order.

6. Notification to GPPB

As provided in Section 9 of Appendix 11 of the IRR, *the blacklisting agency concerned (i.e., DPWH) shall submit to the GPPB, within seven (7) calendar days after the issuance of the blacklisting order/delisting orders made by the agency, with the following documents:*

- g. Blacklisting Order duly signed by the Head of the Procuring Entity (DPWH Secretary/representative) containing, among others, Department Order number, name and address of the blacklisted person/entity, license number, if applicable, Authorized Managing Officer ("AMO"), name of project/contract and location/amount, specific ground(s)/offense(s) committed as provided in Section 4 hereof, sanction imposed and its date of start and completion, date of issuance of the order to blacklist, and other conditions which can extend duration of sanctions in Section 4 hereof.*
- h. Delisting Order duly signed by the blacklisting agency (DPWH) containing, among others, Department Order number, name and address of the blacklisted person/entity, name of project/contract and location, specific sanction being lifted and the number of previously issued blacklisting Department Orders, effectivity date of delisting, and date of delisting approval.*

This Order takes effect immediately.


ROGELIO L. SINGSON
 Secretary

Department of Public Works and Highways
 Office of the Secretary



WIN5102599