

[NEDA, September 17, 1997]

UNIFORM GUIDELINES FOR BLACKLISTING CONTRACTORS INVOLVED IN PUBLIC CONSTRUCTION

1. 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, due process for blacklisting constructors by some concerned agencies; and, lack of information networking within and among agencies on offenses committed by constructors.

2. SCOPE

These guidelines shall cover the blacklisting of constructors involved in government infrastructure projects who committed offenses/violations during pre qualification, bidding, 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.

3. DEFINITION OF TERMS

3.1 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 submits a bid for infrastructure projects.

3.2 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.

3.3 Government-Level/Blacklisted Constructor — a constructor who was suspended or disqualified by a government tendering agency Head and/or Board and/or is included in the CIAP-Consolidated Government-Level Blacklisted Constructors. Said constructor shall not be allowed to participate in the prequalification and bidding of all government tendering agencies for a given period of time.

4. CRITERIA FOR BLACKLISTING CONSTRUCTORS

4.1 Government-Level Blacklisting Criteria during Prequalification, bidding, and award

The following administrative sanctions as provided for under Section 10.5-1 of the amended 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 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 (ME) which manifestly indicate rigging or collusion.

a.3 Other acts of the 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 of bids by prequalified constructors.

c. Forfeiture of bid security for first offense, and suspension of one (1) year for second offense, 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 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.

4.2 Government-Level Blacklisting Criteria during Contract Implementation

The following administrative sanctions shall be imposed for offenses violations committed by constructors during contract implementation

a. Forfeiture of performance security, and disqualification for six (6) months for first offense, and disqualification for one (1) year for second offense, and disqualification for two (2) years for third offense and perpetual disqualification for succeeding offense on any of the following:

a.1 Failure of the constructor due solely to his fault or negligence to mobilize and start work within the agency specified period in the Notice to Proceed (NTP).

a.2 Failure by the constructor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the constructor to comply with any lawful instruction of the contracting officer or its representative/s pursuant to the implementation of the contract in any or combination of the following:

i. Employment of 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 including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions.

iv. Deployment of committed equipment and manpower.

v. Failure to renew the effectivity dates of the performance security after its expiration during the course of the execution of the works.

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

b.1 Assignment and subcontracting of the construction works or any part without written approval by the agency Head concerned.

b.2 Poor performance by the constructor or unsatisfactory quality of