IMPLEMENTING GUIDELINES ON UNIFORM SYSTEM OF SUSPENDING, BLACKLISTING AND LIFTING OF SANCTION OF CONTRACTORS

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1.0
Objectives

This Circular is issued to:

- formulate common offenses, grounds or causes as bases for blacklisting or suspending NPC contractors;

- formulate a definite procedure for watchlisting, blacklisting, suspending, and delisting of erring NPC contractors;

- have uniform sanctions which shall be imposed by the Corporation on erring NPC contractors; and

- provide information networking within the Corporation and with other government agencies on offenses committed by the NPC contractors.

2.0
Definition of Terms

The following terms shall have the following definition as applied to this Circular:

2.1 "BLACKLISTING" means perpetual disqualification of the contractor from participation in the accreditation, prequalification, bidding, obtaining of contracts, and/or to enter into any negotiated contract with NPC;

2.2 "COMMITTEE" means the concerned body authorized by NPC to approve accreditation, prequalification, bidding, and/or award of contracts including imposition of sanctions to erring NPC contractors such as the Contracts Award Committee, Regional Contracts Committee, Vendors Accreditation Committee, etc.;

2.3 "CONTRACTOR", "CONSTRUCTOR" means Filipino proprietor, partnership or corporation, either alone or in a joint venture, that has applied for accreditation, prequalification, bidding, and/or awarded a contract by NPC;

2.4 "CORPORATION", "NPC" means National Power Corporation;

2.5 "DELISTING" means the lifting of sanction, suspension and/or blacklisting, imposed upon the contractor;

2.6 "INVESTIGATING COMMITTEE" means the group designated by the Committee to study and investigate offenses, and recommend appropriate sanctions that shall be imposed on erring contracting firms; composed of representatives from Internal Audit, Finance, Legal Counsel, Accreditation group, Bidding group, and others.

2.7 "REGULATORY AGENCY" means the licensing or regulatory agency mandated by the government in determining contracting firm's license to operate business;

2.8 "SUSPENSION" means disqualification of the contractor to participate in the accreditation, prequalification, bidding, obtaining of contracts, and/or to enter into any negotiated contract with NPC during suspension period.

3.0
Scope

This Circular applies to all contractors conducting businesses with NPC herein referred to as TRANSACTION: accreditation; contracting supply and/or procurement of materials, goods or services; disposal of materials or goods; prequalification bidding or obtaining contracts including projects and/or purchases financed wholly and/or partly by international financing institutions, bilateral agreements or similar sources; and/or contract implementation.

4.0
Performance Evaluation of Contractor

4.1 The Technical Task Force (TTF) designated to conduct evaluation of documents submitted by the contractor and other documents related thereto, shall prepare and submit a report of findings to the Committee that may affect the proper conduct of the transaction.

4.2 The End-user, Project Initiator or Project Manager shall submit to their respective Contractors Performance Monitoring Group (CPMG) monthly contractor's performance report, such as progress report, percentage deliveries reports and other performance related reports. The CPMG shall submit to the Committee a consolidated quarterly contractors performance report.

The Contractors Monitoring Group shall be the Project Engineering and Review Office for infrastructure projects and/or contracts, the Materials Management Office for vendors, and the likes.

4.3 The office directly dealing or conducting business with the contractors, shall implement Contractor's Performance Evaluation System and same shall be applied in evaluating performance of contractors.

5.0
Procedure for Suspending or Blacklisting Contractors

5.1 Contractors who committed offenses and/or violations, during transaction and contract implementation period, are entitled to due process prior to the imposition of a disciplinary action or sanction. The procedure for suspending or blacklisting shall be as follows:

- Verification - The verification of the offense shall be made by the Corporation, the particular offense made shall be accompanied by supporting material evidence or affidavit, if any.

- Referral to Investigating Committee - The list of contractors to be suspended or blacklisted shall be referred, and all documents submitted appertaining thereto forwarded, by the Committee to the Investigating Committee and the latter shall study, and investigate the matter, and recommend proper sanction. The Investigating Committee shall submit findings and/or reports to the Committee for deliberations.

When a charge has been verified but before any decision is made, the contractor is not considered suspended or blacklisted and therefore may still participate in the transaction. However, award of contract to the contractor shall be held in abeyance pending completion of the investigation and/or proceedings and subsequent final decision on the matter.

- Decision - The Committee shall deliberate and decide based on the merits of the case presented.

Based on the offense committed by the contractor, the corresponding sanction shall be imposed. The date of effectivity of serving the given penalty, i.e. date of start and completion, shall be stated clearly in the decision.

In case a contractor commits more than one offense or a combination of offenses for the same period, each

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violation shall be probed individually following the established procedures but in the imposition of the penalty, the gravest offense shall be meted the corresponding penalty while the rest shall be considered as aggravating circumstances.

- Notification - The Corporation shall notify the suspended or blacklisted contractor. Copy/ies of the decision suspending or blacklisting a contractor shall be furnished to other offices of Corporation: such as the Office of the President, all regional profit centers, materials procurements group, etc., and other government agencies for information networking.

- Effectivity of Suspension or Blacklisting - The effectivity of suspending or blacklisting a contractor shall take effect upon approval by the Committee.

5.2 The Corporation reserves the right to elevate the offenses or violations committed by the contractor to the concerned regulatory agencies such as the Philippine Contractors Accreditation Board (PCAB) or Inter-Agency Committee (IAC) for Registration and Classification of Contractors (IAC-RCC), for infrastructure projects; PNP-SOSIA for security services; SEC for corporations, DTI for proprietorships, etc, for revocation or suspension of contracting firm's license, or suspension or blacklisting of Authorized Managing Officer (AMO).

Contractors appearing in the Consolidated Agency-List of Watchlisted Contractors with suspended, blacklisted and revoked licenses and/or certificate are automatically disqualified to participate in NPC transactions.

6.0
Criteria for Imposing Sanctions on Contractors

The following administrative sanctions shall be imposed by the Committee for offenses and/or violations committed by the contractors during:

6.1 Accreditation, Prequalification, Bidding and Award

- 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:

- misrepresentation or concealment of any material fact or information in the sworn statements, and/or bids, including but not limited to:

1. falsification of public documents
2. submission of borrowed license

- submission of bids and/or detailed estimates that are identical to each other which manifestly indicate rigging or collusion.

- other acts of the contractors which directly or indirectly tend to defeat the purpose of public bidding.

- 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 disqualification for five (5) years for succeeding offense on any of the following:

- non-submission of bids by qualified contractors or submission of letter of withdrawal after the deadline set by the Committee, or submission of a letter of withdrawal before the deadline but without a valid reason.

- failure to undertake repair of materials and/or supplies delivered.

- rejection of materials and/or supplies delivered.

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- Forfeiture of bid security for first offense, and suspension of one (1) year for second offense, and disqualification for five (5) years for succeeding offense on any of the following:

- unjustified failure or unreasonable refusal of the winning bidder to accept or signify conforme to the notice of award.

- non-submission by the proposed awardee within the prescribed time of the performance security and other requirements necessary for contract preparation, such as, Contractor's All Risk (CAR) Insurance, Affidavit of No Pending Case for Non-Payment of Tax, Construction Schedule, Cash Flow and other documents necessary for the perfection of the contract.

- unjustified refusal or failure of the proposed awardee to enter or sign the prepared contract within the Corporation's prescribed time.

6.2 Contract implementation

- Suspension of six (6) months for first offense, disqualification for one (1) year for second offense, disqualification for two (2) years for third offense, and disqualification for five (5) years for succeeding offense including forfeiture of performance security and other guarantees/securities filed by the contractor in favor of the Corporation on any of the following:

- unjustified/unreasonable refusal of the contractor to accept the notice to proceed within the prescribed time set by the Corporation.

- failure of the contractor to mobilize and start work within the Corporation's specified period in the notice to proceed due solely to his fault or negligence.

- Suspension for one (1) year for first offense, disqualification for two (2) years for second offense, and perpetual disqualification for succeeding offense including forfeiture of performance security and other guarantees/securities filed by the contractor in favor of the Corporation on any of the following:

- willful or deliberate abandonment of the project by the contractor without lawful and/or just excuse.

- delays entirely attributable to the fault or negligence of the contractor in the prosecution of the work beyond 20% of the specified contract time plus time extensions granted.

- assignment and subcontracting of the contracts or construction works or any part thereof to any person who is an employee or official of the Corporation or to any firm whose owner or its officials are employees/officials of the Corporation.

- assignment and subcontracting of the contracts or construction works or any part thereof without prior approval of the Corporation.

- delays in deliveries, ghost deliveries, tampering and/or adultering of materials and/or supplies.

In any of the abovementioned offenses, NPC may initiate rescission of the contract or take-over of the remaining work by administration or to award the same to other qualified contractor through negotiated contract after giving due notice to the erring contractor.

- 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 lawful instruction of the Corporation or his duly authorized representative pursuant to the implementation of the contract including but not limited to the following:

i. employment of competent engineers and/or work supervisors, etc.

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ii. provision of warning signs and barricades.

iii. stockpiling in proper places of all materials including broken pavement and excavated debris.

iv. deployment of sufficient 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.

- Poor performance by the contractor or unsatisfactory quality of work or progress of work arising from his fault or negligence as recorded in Contractors Performance Evaluation System (CPES) rating sheet. Any of the following acts by the contractor shall be construed to mean as poor performance:

i. negative slippage beyond 30% due entirely to the fault or negligence of the contractor.

ii. unsatisfactory quality of materials and workmanship arising from contractors fault or negligence.

iii. deceit or any malicious act perpetrated by the contractor in the implementation of the contract.

iv. repeated rejection of materials delivered.

- Suspension for a minimum of six (6) months for failure of the contractor to submit the documents for final acceptance, such as, the as-built drawings within five (5) months after substantial contract completion as certified by the respective resident engineer.

7.0
Procedures for Lifting Sanction

The following procedure shall apply for lifting sanction:

7.1 Suspension for a given period - The Committee shall issue an order of delisting provided the suspended or blacklisted contractor submit a written request for lifting of sanction after serving the given period of suspension.

7.2 Blacklisting of contractor - No corrective action for lifting of sanction.

The suspended or blacklisted contractor may file a request for reconsideration of sanction and the Committee shall evaluate the merit of contractor's appeal.

8.0
Methodology for Information Sharing/Networking

8.1 The Corporation shall submit to the regulatory agency the list of suspended or blacklisted contractors. Likewise, the Corporation shall furnish other government agencies with the data on suspended or blacklisted contractors.

8.2 The data on suspended or blacklisted contractors shall be accompanied with the following supporting documents:

- Copy of the Approved List of Suspended or Blacklisted Contractors duly signed by the Chairman of the Committee.

- Copy of the Notice of Suspension or Blacklisting issued to the contractor by the Corporation.

- Copy of the Order of Delisting/Lifting of Suspension or Blacklisting duly signed by the Chairman of the Committee, if any.

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8.3 Submission of the list of blacklisted contractors shall be made monthly.

9.0
Clarifications

All requests for clarifications related to Policy on Uniform System of Watch listing, Suspending, Blacklisting and Delisting of Contractors shall be referred to the Office of the President.

10.0
Repealing Clause

All directives and issuances contrary to and/or inconsistent with this Circular are hereby repealed or modified accordingly.

11.0
Effectivity

This Circular shall form part of the accreditation, prequalification, bidding and award documents, and shall take effect 01 September 1994.

Adopted: 15 Aug. 1994

(SGD.) FRANCISCO L. VIRAY
President

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[*] Developed by Inter-Agency Committee organized last April 1992 by Philippine Domestic Construction Board (PCAB) of the Construction Industry Authority of the Philippines (CIAP) and adopted by the Corporation under NP Board Resolution No. 93-4 dated 8 March 1993.

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