

<b>BUREAU OF CORRECTIONS DISPOSITION FORM</b>		SUBJECT: Blacklisting Order to Orientech Construction and Development Corporation.	
FOR: DG	THRU: DDGO	From: C, IAS	DATE: 19 June 2018

1. Blacklisting Order No. 001 s. 2018.
2. Above reference pertains to the Blacklisting of Orientech Construction and development Corporation to the Bureau of Corrections (BuCor).
3. Furthermore, the undersigned is requesting for a Special Order for a grant of authority to initiate or/and file proper court actions (collection for sum of money) and all incidental actions, whether civil or criminal, relative thereto in behalf of the Bureau of Corrections to claim any and all rights against Orientech Construction and Development Corp.
4. Issuance of Special Order relative to above cited request.
5. For his honor's signature on the attached Blacklisting Order.

*[Signature]*  
**SANTOS**

Bureau of Corrections <b>RECORDS SECTION</b> Received Dispatched  Time: 8:30 Date: 7-3-18 Signature: WVB
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DATE: 29 JUN 2018  
**OFFICE OF THE DIRECTOR GENERAL  
 APPROVED/DISAPPROVED**  
*[Signature]*  
**BUREAU OF CORRECTIONS**

OFFICE OF THE DIRECTOR GENERAL <b>RECEIVED</b> DATE: 21 JUN 2018 BY: <i>[Signature]</i> net 12-18 BUREAU OF CORRECTIONS
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CERTIFIED XEROXED COPY TAKEN FROM FILE BUREAU OF CORRECTIONS  <i>[Signature]</i> <b>ZENAIDA L. HIERCO</b> CHIEF, RECORDS SECTION
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*[Signature]* 7/2/18 11:00



Republic of the Philippines  
**DEPARTMENT OF JUSTICE**  
**BUREAU OF CORRECTIONS**  
NBP Reservation, Muntinlupa City, Philippines 1776  
Telefax: (632)809-8299



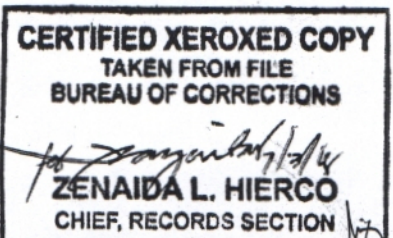
19 June 2018

**BLACKLISTING ORDER NO. 001 s. 2018**

Pursuant to Section 69.1 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 and the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants (*Government Procurement Policy Board Resolution No. 09-2004 as amended by GPPB Resolution 03-2011*) and upon recommendation of **ENGR. JUSTINE G. ROSARIO, Chief, Civil Engineering Unit, Bureau of Corrections**, the *HOPE*, under *Decision* entitled **BUREAU OF CORRECTIONS, versus ORIENTECH CONSTRUCTION & DEVELOPMENT CORP., For: Termination of Contract by Default under para 2.c) i as provided in RA 9184 Annex "I"** which *Orientech* received through its authorized representative **MS. APRIL . MADRID @ (April Acana) AVP for Finance/Admin. Orientech Construction & Development Corporation**, June 8, 2018 hereby issues this **BLACKLISTING ORDER** to the *Contractor* hereafter stated:

1. Name and Address of the Blacklisted Entity

**ORIENTECH CONSTRUCTION & DEVELOPMENT CORP.**  
**MCMP Compound Barangay Tulay, Odiongan Romblon**



2. Name of Project

**REPAIR/REHABILITATION OF NBP GYMNASIUM,  
BUREAU OF CORRECTIONS**

3. Location of Project

**NEW BILIBID PRISONS, MUNTINLUPA CITY**

4. Offense Committed

**ABANDONS THE CONTRACT WORK, REFUSES OR  
FAILS TO COMPLY WITH A VALID INSTRUCTION OF  
THE PROCURING ENTITY**

5. Sanctions Imposed:

- a. Disqualification for a period of 1 year/s from July 1, 2018 to June 30, 2019 from participating in the procurement activities of all government projects.

**USEC. RONALD DELA ROSA**

*Director General*

Received by:

Designation:

Date:

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BUREAU OF CORRECTIONS  
*Zenaída L. Hierco*  
**ZENAIDA L. HIERCO**  
CHIEF, RECORDS SECTION



Republic of the Philippines  
DEPARTMENT OF JUSTICE  
**BUREAU OF CORRECTIONS**  
NBP Reservation, Muntinlupa City, Philippines, 1776



June 25, 2018

**SPECIAL ORDER**  
NO. 349 s.2018

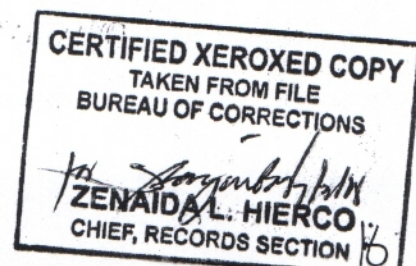
**TO : ATTY. FREDRIC ANTHONY E. SANTOS**  
Chief, IAS

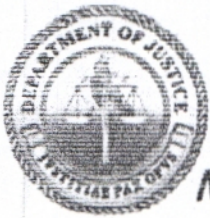
You are hereby authorized to initiate or/and file proper court actions (collection for sum of money) and all incidental actions, whether civil or criminal, relative thereto in behalf of the Bureau of Corrections to claim any and all rights against Orientech Construction and Development Corporation.

All expenses incidental thereto shall be charged against the funds of this Bureau subject to the usual accounting and auditing rules and regulations.

*TR* **USEC. RONALD M. DELA ROSA**  
*J* Director General *J*

Copy Furnished:  
1ea-ODG/DDG  
1ea-C, Admin./Acctg./Budget/Mgt.Div.  
1ea-C, IAS  
1-Records





Republic of the Philippines  
**DEPARTMENT OF JUSTICE**  
**BUREAU OF CORRECTIONS**  
 NBP Reservation, Muntinlupa City, Philippines 1776  
 Telefax: (632)809-8299



**BUREAU OF CORRECTIONS,**  
*Complainant,*

*-versus-*

*For: Termination of Contract by  
 Default under para 2.c) i as  
 provided in RA 9184 Annex "I"*

**ORIENTECH CONSTRUCTION  
 & DEVELOPMENT CORP.,**  
*Respondent,*

Bureau of Corrections  
**RECORDS SECTION**  
 Received Dispatched

X-----X

Time: 2:18 pm  
 Date: 6-19-18  
 Signature: J

**DECISION**

Before this office is the evidences and contentions for decision between Engr. Justino G. Rosario, former Chief, Civil Engineering Unit, Bureau of Corrections (**BuCor**) and Mr. Angelo Marcelino, Project Supervisor Orientech Construction and Development Corporation (**Orientech**) for alleged breach of contract by default committed by the latter in the Repair/Rehabilitation of the NBP Gymnasium (**project**) as provided in *Annex "I" Guidelines on Termination of Contracts, III Grounds for Termination of Contracts, 2. In Contracts of Infrastructure Projects; c) xxx, refuses or fails to comply with a valid instruction of the Procuring Entity, xxx; R.A. 9184 and its R-IRR.*

***The antecedents facts***

On **December 5, 2014** the BuCor through its Bids and Awards Committee (BAC) invited prospective bidders, through the posting at PhilGEPS and BuCor website, for the Repair/Rehabilitation of the NBP Gymnasium with an Approved Budget for the Contract (ABC) in the amount of 6,725,734.22 pesos. There were two bidders who responded and submitted their bids, Orientech and a certain 2H2L Construction<sup>1</sup>.

<sup>1</sup> Bids and Award Resolution No. 2015-015 dated January 23, 2015

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 BUREAU OF CORRECTIONS

*to sayantab/ak*  
**ZENAIDA L. HIERCO**  
 CHIEF, RECORDS SECTION

<sup>1</sup>  
 Received by:  
*[Signature]*  
 APRIL 6/8/18  
 APRIL A. ANA

On **December 29, 2014**, Orientech and 2H2L's bids were opened by the BuCor BAC at the BAC Conference Room, NBP where both bidders were found to be compliant in their first envelope containing their Eligibility Documents. Upon opening of the second envelope containing the Financial Documents Orientech was found to have the lowest calculated bid (LCB) with a bid of **5,756,461.91 pesos**, hence the documents were turned-over to the BuCor TWG to conduct a Post Qualification of Orientech<sup>2</sup>.

On **January 22, 2015** the BuCor TWG conducted a post qualification of Orientech and found out that the same complied with the legal, technical and financial capability requirement. Thus the TWG recommended to the BuCor BAC that Oreintech be declared as the lowest calculated responsive bidder (LCRB). Consequently, the BuCor BAC made **BAC Resolution No. 2015-015 dated January 23, 2015** to award the Repair/Rehabilitation of the NBP Gymnasium project to Orientech<sup>3</sup>.

On **January 23, 2015** a **Notice of Award<sup>4</sup>** for the Repair/Rehabilitation of the NBP Gymnasium was issued to Orientech by then BuCor, Director General, Franklin Jesus B. Bucayu which was received by Mr. Angelo Marcelino January 28, 2015. Subsequently, on **March 3, 2015** a **Notice to Proceed** was issued by DG Bucayu which was received by Mr. Marcelino on **March 17, 2015<sup>5</sup>**.

On **March 18, 2015**, a letter request<sup>6</sup> for **15% Mobilization Fee** addressed to DG Bucayu was made by Mr. Marcelino. Thus on **March 23, 2015** an Account payable of **863,469.29 pesos** was debited to Orientech<sup>7</sup>.

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<sup>2</sup> ibid

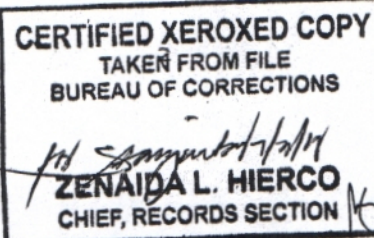
<sup>3</sup> ibid

<sup>4</sup> Notice of Award dated January 23, 2015 signed by DG Bucayu received by Mr. Marcelino on January 28, 2015

<sup>5</sup> Notice to Proceed dated March 3, 2015 signed by DG Bucayu received By Mr. Marcelino on March 17, 2015

<sup>6</sup> Request for 15% Mobilization dated March 18, 2015 signed by Mr. Marcelino

<sup>7</sup> Journal Entry Voucher dated March 23, 2015



Meanwhile, at about 3:50 pm, **March 18 2015**, a letter<sup>8</sup> from Mr. Marcelino addressed to Supt. III Mario E. Trasmonte, Chief, General Services Division, BuCor, was received by the General Services Division. In the said letter Mr. Marcelino was informing Supt. Trasmonte of Orientech's observation and concerns regarding the Structural Roof Framing of the project. ***They averred that "they are in constrained to construct the roof due to their observation (flaw of structural roof framing) and in this regard they (Orientech) requested for the temporary suspension of work until their issues and concerns are resolved.***

On **July 9, 2015** Mr. Marcelino made another letter<sup>9</sup> addressed to Supt. Trasmonte thru Engr. Joel Cereso, Chief Civil Engineering Unit, BuCor **alleging that last July 8, 2015 a meeting was conducted between Orientech and BuCor engineers and on that meeting "a structural roof framing will be re-design"**. Attached in that letter was Orientech's proposed building drawing plan and detailed cost estimate.

On **July 21, 2015**, again another letter<sup>10</sup> from Mr. Marcelino addressed to Supt. Trasmonte was received by the GSD, making a follow up on their proposal to revise the roof framing structural and their request for temporary suspension of work. **Mr. Marcelino further alleged that the meeting on June 8, 2015 with Engr. Cerezo, Engr. Rosario, Arch. Castillo, Arch. Areniego and Engr. Catindig together with Orientech structural engineer Engr. Jay Nucum, Arch. Roberto Avila and Arch. Alan Madrid for the re-designing of the structure was discussed and agreed upon.**

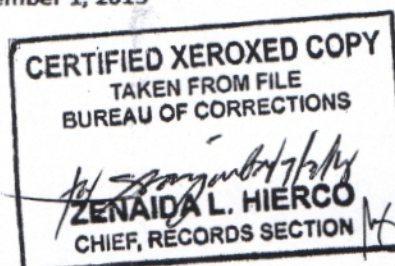
Subsequently, two other letters<sup>11</sup>, dated **November 2 and December 1, 2015** of similar nature relative to their previous letter request or inquiry, was sent by Mr. Marcelino addressed this time to DG Ricardo Rainier Cruz.

<sup>8</sup> Letter signed by Mr. Marcelino dated March 18, 2015

<sup>9</sup> Letter signed by Mr. Marcelino dated July 9, 2015

<sup>10</sup> Letter signed by Mr. Marcelino dated July 21 2015

<sup>11</sup> Letters signed by Mr. Marcelino dated November 2 and December 1, 2015



On **October 23, 2015** Engr. Rosario made a letter<sup>12</sup> addressed to Orientech **directing them to commence with the execution of the contract** within the specified period of time in compliance with the BuCor issued Notice to proceed. On **January 6, 2016** a letter<sup>13</sup> addressed to then BuCor DG Ricardo Rainier G. Cruz coming from Bonifacio M. Sison Law Office was received by the BuCor requesting in behalf of his client Orientech for a joint conference with BuCor. On **April 22, 2016** letter reply<sup>14</sup> was made by DG Cruz through Atty. Alvin Lim, Chief, Legal Office, BuCor to Atty. Sison declining the requested for joint conference and **demanding Orientech until April 30 2016 to comply with the undertaking.**

On **April 2, 2018** a **Notice of Termination of Contract**<sup>15</sup> signed by Acting Director General, BuCor, PCSUPT. Valrie G. Tabian (Ret.) was sent to Orientech through Mr. Angelo Marcelino which was **received by the latter on May 16, 2018.** Mr. Marcelino was given 7 days from receipt thereof to submit a verified position paper stating the reason as to why the contract should be terminated. On **May 23, 2018** a verified position paper<sup>16</sup> addressed to ADG Tabian thru Atty. Fredric Anthony Santos was submitted by Mr. Marcelino.

### Discussion

Orientech is banking its contention on the premise that the structural design of the Repair/Rehabilitation of the NBP Gymnasium project is flawed and therefore should be re-designed to avoid any untoward incident that may happen in the future. **Orientech continuously harps about the flaw in the structural roof framing of the project.** That this flaw may be cured by re-designing said structure roof framing. They contend that this was brought about "due to small structural member of the trusses" and "inadequate structural design of the roof framing". And with these reason they "are constraint to construct the roof due to the above concerned".

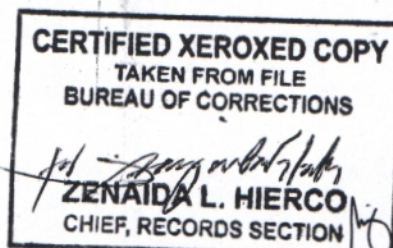
<sup>12</sup> Letter signed by Engr. Rosario dated October 23, 2015

<sup>13</sup> Letter signed by Atty. Binifacio Sison dated January 6, 2016

<sup>14</sup> Letter signed by Atty. Alvin Herera Lim dated April 22, 2016

<sup>15</sup> Notice of Termination of Contract signed by ADG Tabian dated April 2, 2018

<sup>16</sup> Verified position paper signed by Mr. Marcelino dated May 23, 2018





However, after a careful perusal of the events that took place, Orientech's contention was negated by their own argument. It is crystal clear that can be seen in their submitted verified position, when they, as early as December 23, 2014, conducted site inspection<sup>17</sup> over the project without any comment on the alleged structural flaw that needed to be re-designed. They also, averred in said verified position paper<sup>18</sup> that the "site inspection is a requirement and forms part of the bid document".

*Also worthy of noting is that Orientech or their duly authorized representatives, as a requirement for their bid to be responsive, signed the bidder's undertaking in Annex "V" of the bidding documents for the project<sup>19</sup>, stating their compliance to the technical requirement enumerated therein, also without raising any issue of defect; signed in Annex "VI" of the same bidding documents signifying that they conformed to the project's scope of work<sup>20</sup> without qualification; signed the building drawing plan of the project<sup>21</sup> which also forms part of the bidding documents as Annex "VII" without contending that there is defect in the structural design; and, signed the bill of quantities/detailed estimates and cash flow by quarter and payment schedule<sup>22</sup>, in conformity with the bidding document's bidder's undertaking without any qualification. All these events enumerated above were made by Orientech prior to the issuance of the Notice to Proceed which they received on **March 17, 2015**.*

In fine, they have all the time in the world, starting from the time the pre bid conference was conducted, to the opening of the bids and up to post qualification by the TWG, to raise the issue of flaw in the structural design, surprisingly, this they did not do. In fact, it was only on March 18, 2015, a day after the Notice to Proceed was received by Orientech, that they informed BuCor through Supt. Trasmonte about an alleged flaw in the project's structural design.

<sup>17</sup> Affidavit of Site Inspection signed by Ms. April D. Madrid, AVP, for Finance and Admin., Orientech dated December 23, 2014

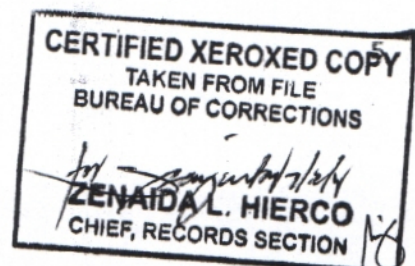
<sup>18</sup> Ibid @ Discussion and Argument of the Verified Position Paper paragraph No. 1

<sup>19</sup> Technical Bid Form Signed by Ms. April D. Madrid dated December 23, 2014

<sup>20</sup> Scope of Work Signed by Ms. April D. Madrid dated December 23, 2014

<sup>21</sup> Drawing Plan with signature of Signed by Ms. April D. Madrid

<sup>22</sup> Bill of Quantities/Detailed Estimates and Cash Flow by Quarter signed by Signed by Ms. April D. Madrid dated December 23, 2014



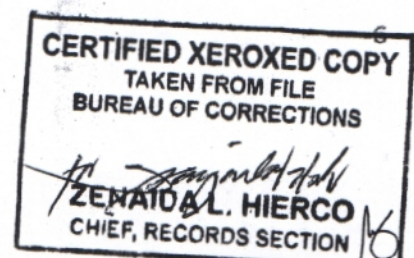
Therefore, having conformed to the bidding documents which forms part of the contract of the project, Orientech is now **estopped** in contending that there is a flaw in the structural design of the project. Article 1431 of the Civil Code provides;

*Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.*

***In estoppel, a person, who by his deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to another. It further bars him from denying the truth of a fact which has, in the contemplation of law, become settled by the acts and proceedings of judicial or legislative officers or by the act of the party himself, either by conventional writing or by representations, express or implied of in pais.*** (Adoracion E. Cruz, et al. v. CA and Sps. Eliseo & Virginia Malolos GR 126713, Jul. 27, 1998)

Even assuming *arguendo* that there was flaw in the structural design of the project, they could have told BuCor about it so that BuCor may review and correct the flaw, should there be any. Instead, Orientech, unilaterally declared that there is a flaw in the project's design and proposed its own version of the project design together with the detailed cost estimate. Worse, instead of waiting for the BuCor's reply on the issue of the alleged flaw, Orientech, on that same day when they allegedly saw a defect in the structural design on March 18, 2015, requested for the 15% Mobilization Fee for the project. Whatever flaw there may be in the projects structural design, Orientech may therefore have deemed **waived** such defect.

*In Lopez v. Ochoa L-7955, May 30, 1958, the Supreme Court held that waiver and estoppel are frequently used as convertible terms. The doctrine of waiver belongs to the family of, is of the nature of, is based on, estoppel. The essence of waiver is estoppel, and where there is no estoppel, there is no waiver. This is especially true where the waiver relied upon is constructive or implied from the conduct of a party. Thus, when it is asserted that a "party is in estoppel," this is the same as saying that said party had made a waiver.*



With regard to Orientech's contention that the BuCor engineers agreed to the re-designing of the framing structure of the project and the approval of the suspension of work until said re-designing is done, suffice it to say that there is no agreement or approval that was made by the BuCor. It was only a mere request of Orientech that was not acted upon and was deemed disapproved considering the supervening events of demand made by BuCor for Orientech to commence the implementation of the project<sup>23</sup>.

**Wherefore**, premises considered, this office finds substantial and valid cause to **TERMINATE** the contract of Repair/Rehabilitation of the NBP Gymnasium from Orientech, as provided in Annex "I" Guidelines on Termination of Contracts, III Grounds for Termination of Contracts, 2. In Contracts of Infrastructure Projects, c) xxx refusal or failure to comply with the valid instruction of the procuring entity and to demand from them the sum of **863,469.29 pesos** representing the Mobilization Fee which was transferred to them. This is without prejudice to the filing of any legal action/s, civil or criminal, under the circumstances.

7  
**USEC. RONALD M. DELA ROSA**  
Director General 8

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<sup>23</sup> Ibid

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ZENAIDA L. HIERCO  
CHIEF, RECORDS SECTION 16



Republic of the Philippines  
DEPARTMENT OF JUSTICE  
BUREAU OF CORRECTIONS

NBP Reservation, Muntinlupa City, Philippines 1776

Telefax: (632)809-8299



April 2, 2018

**MR. ANGELO C MARCELINO**

*Project Supervisor*

*Orientech Construction and Development Corporation*

*Regalado Avenue cor. Ipil St.*

*North Fairview, Quezon City*

**NOTICE OF TERMINATION OF CONTRACT**

Dear Mr. Marcelino:

We write to inform you that your contracts with the Bureau of Corrections (BuCor) on the Repair/Renovation of our NBP Gymnasium and Budget Office are subject to full termination in accordance provided in R.A. 9184, particularly Annex "I", to wit;

**III. GROUNDS FOR TERMINATION OF CONTRACTS**

**A. Termination for Default**

1. xxx
2. *In contracts for Infrastructure Projects:*

*The Procuring Entity shall terminate a contract for default when any of the following conditions attended its implementation*

- (a) xxx
- (b) xxx
- (c) *The contractor:*
  1. *Abandons the contract work, refuses or fails to comply with a valid instruction of the Procuring Entity xxx;*

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*ZENAIDA L. HIERCO*  
CHIEF, RECORDS SECTION

You are likewise mandated to pay the amount of P216,514.84 and P863469.29 or a total of P1,079,885.13 representing the 15% mobilization fee for the Budget Office and Gymnasium Contract respectively, which you have earlier collected from BuCor, within thirty (30) calendar days from receipt hereof; otherwise we will be constrained to institute Blacklisting Proceedings against you and other legal remedies available under the circumstances.

You may submit within seven (7) calendar days from receipt of this Notice, a verified Position Paper stating why the abovementioned contracts should not be terminated.

Kindly give this matter preferential attention so that we may avoid the inconvenience, expenses and other incidental cost of litigation.

Thank you.

*[Handwritten initials]*  
**PCSUPT. VALFRID G. TABIAN (Ret.)**  
**Acting Director General** *[Handwritten signature]*  
*[Handwritten initials]*

*Attachments :*

- i. Copy of the contracts representing the abovementioned projects together with pertinent documents included in the contract such as floor plan, scope of work duly conformed, bidders undertaking etc.*
- ii. Copy of the report of Engr. Justino G. Rosario, Chief, Engineering Unit dated May 23, 2017.,*
- iii. Copy of requests for mobilization funds and issuance of check/ ADA in favour of Orientech relative to the abovementioned projects.*

