



24 May 2019

BLACKLISTING ORDER NO. 001 s. 2019

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 07-2019*) and upon recommendation of **CTSI Laura O. Lasco, OIC, ALS Junior High School, Medium Security Compound, Bureau of Corrections**, the *HOPE*, under *Resolution* entitled **BUREAU OF CORRECTIONS versus KRBS CONSTRUCTION AND TRADING., For : Termination of Contract by default under Part III, A, Par. 1, Subpar. A as provided in 9184, Annex 1 dated March 29, 2019**, which KRBS received through the Treasurer of Barangay 174, Manila, Ms. Maria Cecilia Japzon on May 20, 2019, hereby issues this **BLACKLISTING ORDER** to the *Supplier* hereafter stated:

1. Name and Address of the Blacklisted Entity

KRBS CONSTRUCTION AND TRADING


615 Vicente Del Fierro St., Gagalangin, Tondo, 1013, Manila

2. Name of Project

SUPPLY AND DELIVERY OF CONSTRUCTION MATERIALS FOR THE REPAIR AND RENOVATION OF ALS JUNIOR HIGH SCHOOL BUILDING AND OFFICE IN MEDIUM SECURITY COMPOUND, BUREAU OF CORRECTIONS

3. Location of Project

MEDIUM SECURITY COMPOUND, NBP RESERVATION, MUNTINLUPA CITY

LEGAL OFFICE
RECEIVED BY: 
Date/Time 5-27-19 4:35 pm


R-1742

4. Offense Committed

OUTSIDE OF FORCE MAJEURE, THE SUPPLIER FAILS TO DELIVER OR PERFORM ANY OR ALL OF THE GOODS WITHIN THE PERIOD(S) SPECIFIED IN THE CONTRACT

5. Sanctions Imposed:

- a. Disqualification for a period of *one (1)* year/s from June 1, 2019 to June 1, 2020 from participating in the procurement activities of all government projects.


USEC. NICANOR E. FAELDON
Director General

Received by:
Designation:
Date:



BUREAU OF CORRECTIONS
Complainant,

-versus-

*For: Termination of Contract by Default
under Part III, A, Par. 1, Subpar. A as
provided in RA 9184, Annex 1*

**KRBS CONSTRUCTION AND
TRADING**
Respondent

X-----X

RESOLUTION

Before this office is the verified report of CTSI Laura O. Lasco, OIC, ALS Junior High School, Medium Security Compound, Bureau of Corrections (**BuCor**) *for brevity*, for the alleged breach of contract by default committed by KRBS Construction and Trading (**KRBS**) *for brevity*, for the Supply and Delivery of Construction Materials for the repair and renovation of ALS Junior High School building and office in MedSeCom, Bureau of Corrections as, provided in *Annex "I", III Guidelines on Termination of Contracts, I. In Contracts for Goods: The Procuring Entity shall terminate a contract for default when x x x: a) Outside of force majeure, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract x x x; R.A 9184 and its R-IRR.*

THE FACTUAL ANTECEDENTS

On **June 21, 2018**, CTSI Laura O. Lasco, OIC, ALS Junior High School, MedSeCom, forwarded an approved Disposition Form and Purchase Requests with P.R No. 18-06-21 to the office of the Supply Section, for the Supply and Delivery of Construction Materials for the Repair and Renovation of ALS Junior High School building and office at Medium Security Compound, with the total estimated cost amounting to Nine Hundred Seventy-Five Thousand Seven Hundred Two Pesos (PhP 975,702.00)¹.

¹ Bids and Awards Resolution No.2018-065 dated August 7, 2018.

On **June 26, 2018**, the Request for Quotation by BuCor through its Bids and Awards Committee (BAC) posted at BuCor website and conspicuous places inside the premises of BuCor, for the Supply and Delivery of Construction Materials for the Repair and Renovation of ALS Junior High School Building and Office at Medium Security Compound².

On **June 27, 2018**, the same was also posted at the electronic board of PhilGEPS under Reference No. 5446865 wherein there were no bidder who viewed to the said posting in the Documents Request List (DRL), likewise the same was sent to three suppliers thru email. Consequently, there are three bidders who responded and submitted their quotation for their bids, namely: KRBS; Thomas Trading; and Virgel Merchandise³.

On **July 2, 2018**, the BuCor-BAC conducted public bidding at the BAC Conference Room, NBP, wherein the three (3) bidders responded and submitted their quotation for their bids, among of them, only KRBS found to be compliant and passed the Eligibility requirements⁴.

Consequently, on the same date, the BuCor-BAC found that KRBS have the **Lowest Calculated Bid (LCB) with a bid of Nine Hundred Seventy-Five Thousand One Hundred Eighty-One Pesos and Thirty-One Centavos (PhP 975,181.31)**, thus the documents were turned- over to BuCor-TWG to conduct a Post Qualification of KRBS ⁵.

On **July 27, 2018**, the BuCor TWG submitted their Post Qualification Summary Report in relation to the post qualification process conducted on KRBS and found out that the same was compliant with the legal, technical and financial capability requirements. Henceforth, the TWG recommended to the BuCor-BAC that KRBS be declared as the lowest calculated responsive bidder (LCRB). Thus, the BuCor-BAC made **BAC Resolution No. 2018-065 dated August 7, 2018** to award the procurement for the Supply and Delivery of Construction Materials for the Repair/ Renovation of ALS Junior High School Building and Office at Medium Security Compound ⁶.

² *ibid.*

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*

On **September 6, 2018**, a **Notice to Proceed** for the Supply and Delivery of Construction Materials for the Repair/ Renovation of ALS Junior High School Building and Office at Medium Security Compound was issued to KRBS by the then BuCor, Director General, USEC. Ronald M. Dela Rosa, which was received and acknowledged by KRBS Manager Ms. Grishna C. Jabonero on September 20, 2018⁷.

On the same date as mentioned in the last preceding paragraph, **Purchase Order No. 18-09-044** was approved by BuCor OIC, Directorate for Finance and Logistics, Mrs. Bienvenida F. Tupas, and signed by the then BuCor, Director General, USEC. Ronald M. Dela Rosa, and subsequently acknowledged by KRBS Manager Ms. Grishna C. Jabonero still on the same date⁸.

Surprisingly, on September 28, 2018 a letter which was signed by KRBS owner/proprietor Mr. Rhodney B. Silo wherein addressed to the then BuCor, Director General, USEC. Ronald M. Dela Rosa thereby containing the request for cancellation of Purchase Order No. 18-09-044⁹.

On **December 7, 2018**, a letter addressed to BuCor Supply and Section Chief, Mr. William M. Terrado which was signed by CTO3 Loida M. Viscocho, which emphatically states that "the two (2) Purchase Orders were both received last September 20, 2018 but up to this date, the supplier has not delivered even a single construction material"¹⁰. Thereafter, the same was sent to Legal Office on January 24, 2019¹¹.

On **January 24, 2019**, a letter addressed to the then BuCor OIC and Deputy Director General for Operations, ASEC. Melvin Ramon G. Buenafe was sent by CTSI Laura O. Lasco, OIC, ALS Junior High School, MedSeCom, and the end-user, stating her request for the termination of contract and blacklisting procedure against KRBS¹².

⁷ Letter of Notice to Proceed signed by former Director General, USEC. Ronald M. Dela Rosa dated September 6, 2018.

⁸ Copy of Purchase Order No. 18-09-44 dated September 6, 2018.

⁹ Letter request for Cancellation of Purchase Order signed by Mr. Rhodney B. Silo dated September 28, 2018.

¹⁰ Letter for information signed by CTO3 Loida M. Vizcocho dated December 7, 2018.

¹¹ *ibid.*

¹² Letter request for the termination of contract of KRBS Construction and Trading signed by CTSI Laura O. Lasco dated January 24, 2019.

On **February 7, 2019**, a **Notice of Termination of Contract** ¹³ signed by Chief of Legal Division, Atty. Fredric Anthony E. Santos was sent via LBC delivery with its Tracking No. 139654592798 to KRBS through Mr. Rodney B. Silo, which was received by the latter on February 8, 2019 ¹⁴. The latter was given seven (7) calendar days from the receipt thereof to submit a verified position paper stating the reason as to why the contract should be terminated. However, after the lapsed of the reglementary period of seven (7) calendar days upon receipt, no such response on the part of KRBS.

DISCUSSION

It is undisputed and undeniable that BuCor and KRBS entered into a contract for the Supply and Delivery of Construction Materials for the Repair and Renovation of ALS Junior High School Building and Office at Medium Security Compound by virtue of BAC Resolution No. 2018-065 dated August 7, 2018, to award the procurement of the same. As agreed upon by the parties, the Request For Quotation No. 18-06-21 which stated that: the price quotation/s must be valid for a period of one hundred twenty (120) days form the date of submission; and the items the item/s shall be delivered within Fifteen (15) calendar days from receipt of the purchase order.

Moreover, additionally stated in Purchase Order No. 18-09-044 dated September 6, 2018 by which the parties conformed thereto which quoted "In case of failure to make the full delivery within the time specified above, a penalty of one-tenth (1/10) of one percent for every day of delay shall be imposed on the undelivered item/s". Truly, however, KRBS failed, not only to perform its part of the contract on time but, in fact, did not perform their obligation to supply and to deliver the construction materials for the Repair/Renovation of ALS Junior High School Building and Office at Medium Security Compound/Camp to complete the projects.

Truly, KRBS tried to exempt themselves from the consequences of said breach through explaining that the cancellation of Purchase Order was due to the increase in the price of materials because of TRAIN Law. It also claimed that purchase order was only released several months (about 5 months) from the date their quotation price is only valid for 3 months.

¹³ Letter of termination of contract signed by Chief, Legal Division, Atty. Fredric Anthony E. Santos dated February 7, 2019.

¹⁴ Copy of LBC Express INC. Tracking No. 1396 5459 2798 dated February 8, 2019.

Records show that KRBS conformed to Request For Quotation No. 18-06-21 dated July 2, 2018¹⁵ after submitting their price quotations to BuCor-BAC through the acknowledgement of Ms. Grishna C. Jabonero, wherein stipulated the terms and conditions in the documents:

- a. xxxxx
- b. xxxxx
- c. *Price quotation/s must be valid for a period of One Hundred Twenty (120) calendar days from the date of submission.*
- d. xxxxx
- e. xxxxx
- f. xxxxx
- g. xxxxx
- h. *The item/s shall be delivered within Fifteen calendar days from receipt of the purchase order.*
- i. xxxxx
- j. xxxxx
- k. xxxxx
- l. xxxxx

Furthermore, as specified in Purchase Order No. 18-09-044 dated September 6, 2018, they likewise conformed that quoted plainly in this wise *"In case of failure to make the full delivery within the time specified above, a penalty of one-tenth (1/10) of one percent for every day of delay shall be imposed on the undelivered item/s"*¹⁶.

It was only in its September 28, 2018 letter when KRBS cancelled its Purchase Order and the BuCor received thereat thru Supply & Property Office on November 15, 2018 wherein the former explanations were outside of those circumstances that would exempt them from liability.

¹⁵Copy of Request For Quotation No. 18-06-21 dated July 2, 2018.

¹⁶*ibid.*

It can be inferred from the foregoing facts that there was not only a breach as stipulated in Request for Quotation No. 18-06-21¹⁷ but a failure to complete the delivery as stated in the Purchase Order No. 18-09-044¹⁸; that KRBS could not complete the supply and delivery of Construction Materials for the repair/ repainting of ALS Junior High School building and office in Medium Security Compound due to the increase of materials because of TRAIN Law; and that the purchase order was only released several months (about 5 months) from the date their quotation price is only valid for 3 months¹⁹.

Evidently, KRBS should learned and awared that Republic Act No. 10963 or Tax Reform for Acceleration and Inclusion (TRAIN) Law is on the stage of enforcing and bearing its full implementation since it was enacted into law on December 19, 2017 and became effective on January 1, 2018 or five (5) months and twenty-nine days (29) after submitting their price quotations to BuCor-BAC and conformed thereto as appeared in Request For Quotation No. 18-06-21 dated July 2, 2018, as well as specified in Purchase Order No. 18-09-044 dated September 6, 2018 or eight (8) months and five (5) days after they conformed similarly. Simply put, the TRAIN Law is not a shield that significantly warrant the former to perform their obligation.

As the BuCor sees it, the Request For Quotation submitted by KRBS may have been sufficient to supply and deliver for the completion of the said project, but instead they insist their reasons that neither exempt nor excuse them to fulfill their obligations.

In view of the foregoing disquisitions, we find that there was not only delay but non- performance of the contract that KRBS having been entered into without justifiable grounds. Undoubtedly, the former is guilty of breach of contract. Breach of contract is defined as the failure without legal reason to comply with the terms of the contract. It is also defined as the failure, without legal excuse to perform any promise which forms the whole or the part of the contract. In the present case, KRBS did not perform their obligation to supply and to deliver the construction materials for the Repair/ Renovation of ALS Junior High School Building and Office at Medium Security Compound.

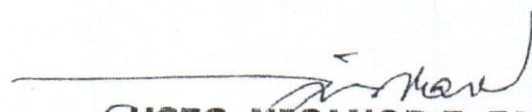
¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

Wherefore, premises considered, this office finds substantial and valid cause to **TERMINATE** the contract for the Supply and Delivery of Construction Materials for the repair/ repainting of ALS Junior High School in MedSeCom from KRBS, as, provided in *Annex "I", III Guidelines on Termination of Contracts, I. In Contracts for Goods: The Procuring Entity shall terminate a contract for default when x x x: a) Outside of force majeure, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract x x x; R.A 9184 and its R-IRR.* This is without prejudice to the filing of any legal action/s, civil or criminal under the circumstances.

Muntinlupa City, March 29, 2019.


JUSEC. NICANOR E. FAELDON
 Director General