




24 May 2019

BLACKLISTING ORDER NO. 002 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 **CTSOIII Wilmema V. Marco, OIC, ALS Elementary 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 April 11, 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 / REPAINTING OF ALS ELEMENTARY 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 4:35pm

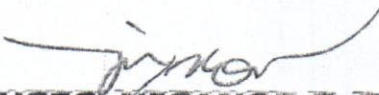
R-1738

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, 2020 to June 1, 2021 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

1) Before this office is the verified report of CTSOIII Wilmema V. Marco, OIC, ALS Elementary School, MedSeCamp, 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/ Repainting of ALS Elementary School Building and Office in MedSeCamp, BuCor 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

2) On **May 11, 2018**, CTSOIII Wilmema V. Lasco, OIC, ALS Elementary School-MedSeCamp, BuCor, forwarded a Purchase Requests with P.R No.18-05-40 to Supply Section for the Supply and Delivery of Construction Materials for the Repair/ Repainting of ALS Elementary School Building and Office in Medium Security Compound with total estimated cost amounting to One Hundred Ninety-Nine Thousand One Hundred Forty-Five Pesos and Three Centavos (Php 199,145.03)¹.

3) On **June 13, 2018**, the Request For Quotation for the Supply and Delivery of Construction Materials for the Repair/ Repainting of the same was posted at BuCor website and at conspicuous places inside the premises of BuCor².

¹ Bids and Awards Resolution NO.2018-66 dated August 7, 2018

² *Ibid.*

4) On **June 15, 2018**, the RFQ³ was also posted at the electronic board of PhilGeps under Reference No. 5420813, wherein there were four (4) bidders who viewed to the supposed posting in the Documents Request List (DRL), viz.: MZR Builders; Buildtrade Construction Supply; Litany Commercial; and HLYC Trading⁴.

5) On **June 21, 2018**, the supposed submission and bid opening was held at the BAC Conference Room, BuCor, Muntinlupa City, but there was no bidder who attended and submitted their bid⁵.

6) On **June 26, 2018**, the RFQ for the same was re-posted at BuCor website and at conspicuous places inside the premises of BuCor⁶.

7) On **June 27, 2018**, it was also re-posted at the electronic board of Philgeps under Reference No. 5446818, wherein there was no bidder who viewed to the said posting in the Documents Request List (DRL). Thereafter, this RFQ was also sent to the three (3) suppliers thru email⁷.

8) On **July 2, 2018**, there were three (3) bidders who responded and submitted their quotations, viz.: KRBS Construction and Trading; Thomas Trading; and Virgel Merchandise, and their quotations were publicly opened by the BuCor on the same day, wherein only KRBS found to be compliant and passed in their Eligibility Documents. Subsequently, also on the same date, the BuCor-BAC found that KRBS to have the Lowest Calculated Bid (LCB)⁸.

9) On **July 27, 2018**, the BuCor-Technical Working Group 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. 2018-066 dated August 7, 2018** to award the procurement for the Supply and Delivery of Construction Materials for the Repair/ Repainting of ALS Elementary School Building and Office in Medium Security Compound⁹.

10) On **September 5, 2018**, a **Notice to Proceed** for the Supply and Delivery of Construction Materials for the Repair/ Repainting of ALS Elementary School Building and Office in 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, 2018¹⁰.

³Brevity for Request For Quotation.

⁴*ibid.*

⁵*ibid.*

⁶*ibid.*

⁷*ibid.*

⁸*ibid.*

⁹*ibid.*

¹⁰ Letter of Notice to Proceed signed by former Director General, USEC. Ronald M. Dela Rosa dated September 6, 2018.

11) Prior to the Notice of Proceed which dated **September 4, 2018, Purchase Order No. 18-09-042** 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 date as mentioned in the last preceding paragraph¹¹.

12) Astonishingly, 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 therein their request for cancellation of Purchase Order No. 18-09-042¹².

13) 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"¹³. Thereafter, the same was sent to Legal Office on January 24, 2019¹⁴.

14) 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 CTSOIII Wilmema V. Lasco, OIC, ALS Elementary School in Medium Security Compound, BuCor, and the end-user, stating her request for the termination of contract and blacklisting procedure against KRBS¹⁵.

15) On **February 7, 2019**, a **Notice of Termination of Contract** ¹⁶ 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. Rhodney B. Silo, which was received by the latter on February 8, 2019 ¹⁷. 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.

¹¹ Copy of Purchase Order No. 18-09-42 dated September 6, 2018.

¹² Letter request for Cancellation of Purchase Order signed by Mr. Rhodney B. Silo dated September 28, 2018.

¹³ Letter of information signed by CTO3 Loida M. Vizcocho dated December 7, 2018.

¹⁴ *ibid.*

¹⁵ Letter request for the termination of contract of KRBS Construction and Trading signed by CTSI Lauro O. Lasco dated January 24, 2019.

¹⁶ Copy of Notice of Termination of Contract signed by Legal Office Chief, Atty. Fredric Anthony E. Santos.

¹⁷ Copy of LBC Express INC. Tracking No. 1396 5459 2798 dated February 8, 2019.

DISCUSSION

16) Evidently, it is certain that BuCor and KRBS entered into a contract for the Supply and Delivery of Construction Materials for the Repair/ Repainting of ALS Elementary School Building and Office in Medium Security Compound by virtue of BAC Resolution No. 2018-066 dated August 7, 2018, to award the procurement of the same. Based on the agreement of the parties, the Request For Quotation No. 18-05-40 reflects concurrence of the latter that they will perform their obligation in accordance therewith which was 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.

17) Records show that KRBS conformed to Request For Quotation No. 18-05-40 which was dated July 2, 2018¹⁸ 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. x x x x x
- b. x x x x x
- c. *Price quotation/s must be valid for a period of One Hundred Twenty (120) calendar days from the date of submission.*
- d. x x x x x
- e. x x x x x
- f. x x x x x
- g. x x x x x
- h. *The item/s shall be delivered within Fifteen calendar days from receipt of the purchase order.*
- i. x x x x x
- j. x x x x x
- k. x x x x x
- l. x x x x x

18) Likewise, as specified in Purchase Order No. 18-09-042 dated September 4, 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"*¹⁹.

¹⁸Copy of Request For Quotation No. 18-05-40 dated July 2, 2018.

¹⁹ *ibid.*

19) Surprisingly however, 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.

20) KRBS tried to exempt themselves from the consequences of said breach through explaining to their letter that the cancellation of Purchase Order was due to the increase in the price of materials because of TRAIN Law. They 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.

21) Clearly, it can be inferred from the foregoing facts that there was not only a breach as stipulated in Request for Quotation No. 18-05-40²⁰ but a failure to complete the delivery as stated in the Purchase Order No. 18-09-042²¹.

22) In a nutshell, 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 in the same vein. Simply put, the TRAIN Law is not a shield that significantly warrant the former to perform their obligation.

23) 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.

24) Where a party to contract for the supply of goods fails to comply with the duty imposed by the terms of the contract, a breach results for which an action may be maintained to recover the damages sustained thereby, and of course, a breach occurs where the supplier inexcusably fails to perform the duty in accordance with the terms of the contract. This case refers to the supplier's failure to deliver and perform their obligation within the period as specified in the contract due on account of TRAIN Law.


²⁰ *ibid.*

²¹ *ibid.*

25) 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. Undubiously, 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 Supply and Delivery of Construction Materials for the Repair/ Repainting of ALS Elementary School Building and Office in Medium Security Compound

26) 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 Elementary School Building and Office in Medium Security Compound 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, April 11,2019.


USEC. NICANOR E. FAELDON
Director General