

**Bids and Awards Committee (BAC) for Infrastructure (BAC-I)**

**CONSTRUCTION OF SPECIAL AND TECHNICAL STAFF BUILDING FOR SPECIAL SERVICE CENTER (SSC) AND DIVISION ADMINISTRATIVE COMMAND CENTER (DACC) AT FORT BONIFACIO, TAGUIG**

**RESOLUTION NO. 05  
(Declaration of Failure of Bidding)**

The BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA), under the National Expenditure Program for FY 2020, has put on bid the **Contract for the Construction of Special and Technical Staff Building for SSC and DACC at Fort Bonifacio, Taguig**, with an Approved Budget for the Contract (ABC) in the sum of **Pesos: Two Hundred Eighty Four Million Three Hundred Eighteen Thousand One Hundred Seven & 36/100 (PhP284,318,107.36)**, inclusive of all applicable taxes and fees.

**WHEREAS**, the BAC for Infrastructure, through its Secretariat, advertised the Invitation to Bid on 29 October 2019 in newspaper of nationwide circulation, and on 29 October to 4 November 2019 in the following:

- a. DBM Philippine Government Electronic Procurement System (PhilGEPS);
- b. BCDA Website; and
- c. In a conspicuous place reserved for the purpose in the premises of BCDA.

**WHEREAS**, in response to the said advertisements, twelve (12) interested bidders bought the bidding documents for the project;

**WHEREAS**, out of the 12 interested bidders, only seven (7) submitted their bids prior to the set deadline of submission of bids for the project on 13 December 2019 at 12:00 noon;

**WHEREAS**, on 13 December 2019, the first envelopes which contained the Eligibility and Technical Requirements of the 7 proponents were opened and subjected to a preliminary evaluation by determining the presence or absence of the required documents using "pass/fail" criterion. After the presence or absence of the required Eligibility and Technical documents was ascertained, only six (6) proponents were rated "passed";

**WHEREAS**, the second envelopes which contained the financial proposals of the 6 proponents, who "passed" the preliminary examination of the eligibility/technical requirements, were opened and were likewise rated "passed" during the preliminary evaluation of the financial bids. The bid proposals of the said 6 proponents were considered for the detailed evaluation of the eligibility/technical bids and for the comparison of financial bids. Table below shows the bid amount of the 6 proponents (as read):

BIDDERS	BID AMOUNT (AS READ)	RANKING
D.L. Cervantes Construction Corporation / Jomarcann General Construction Joint Venture	256,945,532.07	1

S.C. Megaworld Construction and Development Corporation	260,761,202.04	2
Phesco, Incorporated	266,974,702.81	3
E.M. Cuerpo, Inc.	268,333,333.50	4
Dumduma Construction and Trading Corporation	268,382,938.96	5
A.G. Araja Construction and Development Corporation	275,348,044.44	6

**WHEREAS**, the detailed evaluation and verification of the bids of the 6 proponents, whose Eligibility/Technical Requirements and Financial Proposals were rated “passed”, were conducted on 6 to 17 January 2020 pursuant to Section 30 of the Revised Implementing Rules and Regulations (IRR) of RA 9184, to determine the bidder with the Lowest Calculated Bid (LCB) who shall undergo the post-qualification process;

**WHEREAS**, after the said detailed bid evaluation and verification, the BAC-I found the bid of E.M. Cuerpo, Inc. as the only bid which appears to comply with the requirements of the Bidding Documents for the project, subject to Post-Qualification. Thus, on 7 February 2020, the BAC-I issued BAC Resolution No. 003, which was approved by BCDA President and CEO on 21 February 2020, recommending the following:

1. To declare **E.M. Cuerpo, Inc.** as the **bidder with the Lowest Calculated Bid (LCB)** for the **Construction of Special and Technical Staff Building for Special Service Center (SSC) and Division Administrative Command Center (DACC)** at Fort Bonifacio, Taguig City; and
2. To conduct Post-Qualification on **E.M. Cuerpo, Inc.**, being the bidder with LCB;

**WHEREAS**, on 24 February 2020, the BAC-I TWG commenced the conduct of Post-Qualification on E.M. Cuerpo, Inc. to determine whether it is compliant with and responsive to the requirements and conditions specified in the Bidding Documents. In the course of Post-Qualification process, the BAC-I TWG found that:

1. E.M. Cuerpo, Inc. has four (4) ongoing projects with the Department of Public Works and Highways (DPWH) that were not declared in its submitted bid;
2. E.M. Cuerpo, Inc. has two (2) projects with DPWH with more than ten percent (10%) slippage due to contractor’s fault; and
3. E.M. Cuerpo, Inc. has projects with National Housing Authority (NHA) where an Order for Termination has been issued by the NHA for failure to complete the works within the contract duration;

**WHEREAS**, the above information prompted the BAC-I to further validate and verify E.M. Cuerpo, Inc.’s ongoing projects, their status as well as the performance of E.M. Cuerpo, Inc. to determine E.M. Cuerpo, Inc.’s compliance with the Bidding Documents, R.A. 9184 and its Revised IRR. However the TWG could not, at that time, do the necessary verification due to travel restrictions and work limitations, especially of government agencies, due to the public health emergency;

**WHEREAS**, following the declaration of a State of Public Health Emergency and subsequent imposition of Enhanced Community Quarantine by the National Government, the GPPB issued Resolution No. 09-2020 dated 7 May 2020 in keeping with the Bayanihan to Heal as One Act. Said resolution allows the BAC to retroactively suspend the conduct of procurement activities beginning 9 March 2020. In accordance thereto, the BAC-I issued Bid Bulletin No. 7, suspending the bidding activities from 9 March 2020 until 14 June 2020. Further, the BCDA Board approved on 10 June 2020 the 60-day extension of period or until 13 August 2020 to issue the Notice of Award (NOA) for the project due to prolonged travel restrictions and work limitations imposed by the National Government;

**WHEREAS**, pursuant also to GPPB Resolution No. 09-2020 and Bid Bulletin No. 8, the Post-Qualification and the subsequent bidding activities resumed effective 15 June 2020. However, due to coordination problems and the outbreak of COVID-positive cases in BCDA, the BAC-I issued Bid Bulletin No. 9 extending the schedule of Post-Qualification until 28 July 2020;

**WHEREAS**, on 30 July 2020, the BAC-I deliberated the Post-Qualification Report of BAC-I TWG. The results of the post-qualification activities as well as the due diligence conducted by BAC-I show that E.M. Cuerpo, Inc. is post-disqualified due to the following:

1. Two (2) of the ongoing projects of the Joint Venture of E.M. Cuerpo, Inc. and Prismodial Construction Corporation with NHA, namely:
  - a. Construction of Ten (10) Five-Storey Low Rise Residential Buildings with Land Development including Survey Works, Harmony Hills Terraces, Phase 1, Package A, Barangay Batasan Hills, Quezon City; and
  - b. Construction of Seven (7) Five-Storey Low Rise Residential Buildings with Land Development and Survey Works, Phase 3 Manggahan Floodway (East Embankment), Barangay Sta Lucia, Pasig City.

have more than 15% slippage attributable to the JV Partners and are due for cancellation by NHA as per the NHA Memoranda;

2. The project of the Joint Venture of E.M. Cuerpo, Inc., J.D. Legaspi Construction, and R.R. Encabo Constructors, Inc. with the Department of National Defense (DND) / Philippine Air Force (PAF), namely, "Phase 1 – Site Development Plan and Construction of Billeting Facilities Project for the Transfer of 15<sup>th</sup> Strike Wing, Philippine Air Force to Lumbia Airport, Cagayan de Oro City, has incurred 85.43% slippage as of 14 January 2020. As a result, a written Notice to Terminate was issued to the Joint Venture on 31 January 2020 requiring the Joint Venture to submit within a period of 7 calendar days from receipt of the Notice of a Verified Position Paper its reply and show cause why the Contract should not be terminated. However, the Joint Venture failed to comply. This led to the issuance of the Blacklisting Order dated 30 June 2020 by DND Secretary Delfin Lorenzana which named E.M. Cuerpo, Inc., J.D. Legaspi Construction and R.R. Encabo Constructors, Inc. as blacklisted companies and therefore prohibited from participating in the bidding of all government projects within one (1) year from the issuance thereof;

**WHEREAS**, after the 30 July 2020 deliberation, the head of the BAC-I Secretariat received through email a letter from NHA dated 3 August 2020 informing the BAC-I Chairman of the status of the Quezon City and Pasig City projects of the Joint Venture of E.M. Cuerpo, Inc. and

Prismodial Construction Corporation. Based on the latest NHA Memorandum, the Quezon City project shall be mutually terminated by the parties while time extension has been given to the JV Partners to continue the works relating to the Pasig City project. The inconsistencies among the Memoranda issued by the NHA appear to be very apparent;

**WHEREAS**, the apparent changing of positions of the NHA and the recent information obtained by BAC-I relating to E.M. Cuerpo, Inc.'s project with DND/PAF show the need to exercise prudence and further verify the said projects, hence, the BAC-I deemed it proper to issue Bid Bulletin No. 10 which extended the conduct of Post-Qualification until 14 September 2020 in accordance with the BCDA Board-approved additional period for the Post-Qualification and issuance of Notice of Award;

**WHEREAS**, on 27 August 2020, the BAC-I received from DND the authenticated copies of documents which validated the information gathered by the BAC-I relating to E.M. Cuerpo, Inc.'s project with DND mentioned above;

**WHEREAS**, the documents from the DND evidently show that the Joint Venture of E.M. Cuerpo, Inc., J.D. Legaspi Construction, and R.R. Encabo Constructors, Inc., which was awarded by DND with the project, confirmed the 85.43% slippage incurred by the Joint Venture which resulted in the termination of the contract and subsequent issuance by the DND Secretary of the Blacklisting Order dated 30 June 2020;

**WHEREAS**, the GPPB's List of Blacklisted Entities as of 27 August 2020 further reflects the blacklisting of E.M. Cuerpo, Inc., J.D. Legaspi Construction and R.R. Encabo Constructors, Inc. effective 30 June 2020 to 29 June 2021 and the reason behind the blacklisting which is stated therein as follows: "Contract Agreement was terminated for incurring a negative 85.43% slippage and failure to show cause within the provided period for the termination of the project.";

**WHEREAS**, the Revised IRR of R.A. 9184 specifically provides the following:

1. Section 34.3 (b) (ii)

*"b. Technical Requirements. To determine compliance of the goods, infrastructure projects, or consulting services offered with the requirements specified in the Bidding Documents, including, where applicable:*

- i) Xxx xxx xxx;
- ii) *Verification of availability and commitment, and/or inspection and testing for the required capacities and operating conditions, of equipment units to be owned/leased/under purchase by the bidder for use in the contract under bidding, as well as checking the performance of the bidder in its ongoing government and private contracts, if any of these ongoing contracts shows:*

*a. Negative slippage of at least fifteen percent (15%) in any one project or a negative slippage of at least ten percent (10%) in each of two (2) or more contracts;*

Xxx xxx xxx;

*If the BAC verifies any of these deficiencies to be due to the contractor's fault or negligence, the agency shall disqualify the contractor from the award, for the procurement of Infrastructure Projects."*

2. Sections 2 and 7 of GPPB's Uniform Guidelines for Blacklisting of Contractors (Appendix 17 of the Revised IRR) provides:

Section 2:

*"A person/entity that is blacklisted by a procuring entity and/or included in the Government Procurement Policy Board ("GPPB") Consolidated Blacklisting Report shall not be allowed to participate in the bidding of all government projects during the period of disqualification unless it is delisted as provided for in these guidelines."*

*A joint venture or consortium which is blacklisted or which has blacklisted member/s and/or partner/s as well as a person/entity who is a member of a blacklisted joint venture or consortium are, likewise, not allowed to participate in any government procurement during the period of disqualification."*

Section 7:

*"Xxx xxx xxx, if Blacklisting Order is issued prior to the date of the notice of award ("NOA"), the blacklisted person/entity shall not be qualified for award and such project/contract shall be awarded to another bidder pursuant to R.A. 9184 and its IRR-A."*

The slippage incurred by the Joint Venture of E.M. Cuerpo, Inc., J.D. Legaspi Construction and R.R. Encabo Constructors, Inc. and the eventual blacklisting of the same are sufficient valid grounds to post-disqualify E.M. Cuerpo, Inc. in the bidding of the aforementioned Project pursuant to the above provisions;

**WHEREAS**, Section 35.1 of the 2016 Revised IRR of R.A. 9184 provides:

*"The BAC shall declare the bidding a failure when:*

*Xxx*

*b) All prospective bidders are declared ineligible;*

*c) All bids fail to comply with all the bid requirements or fail post-qualification, xxx."*

**NOW, THEREFORE**, foregoing considered, we, the Members of the Bids and Awards Committee (BAC) for Infrastructure, hereby **RESOLVE** as it is hereby **RESOLVED** to recommend the following:

1. To declare **E.M. Cuerpo, Inc. as Post-Disqualified** for the Bidding for the Construction of Special Technical Staff (STS) Building for Special Service Center (SSC) and Division Administrative Command Center (DACC) at Fort Bonifacio, Taguig based on the aforecited grounds;

2. To declare a **FAILURE OF BIDDING** for the Bidding for the Project as all bids failed to comply with all the bid requirements and failed post-qualification;
3. To conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates, pursuant to Section 35.2 of the Revised IRR of RA 9184; and
4. To proceed with the rebidding of the Project based on the results of the aforementioned mandatory review pursuant to Section 35.3 of the Revised IRR of RA 9184.

**RESOLVED**, at the BCDA Corporate Center Office, this 01 September 2020.

**BIDS AND AWARDS COMMITTEE (BAC) FOR INFRASTRUCTURE**



**AILEEN ANUNCIACION R. ZOSA**  
Chairperson



**ARREY A. PEREZ**  
Vice Chairperson



**ENG. RICHARD BRIAN M. CEPE**  
Member



**ATTY. GISELA Z. KALALO**  
Member



**ENG. RYAN PAUL S. GALURA**  
Member

Approved by:



**VIVENCIO B. DIZON**  
President and CEO