



Republica de Filipinas  
Ciudad de Zamboanga  
**OFICINA DEL SERVICIO LEGAL**



**RE: BDA JR. CONSTRUCTION  
REHABILITATION/IMPROVEMENT OF CURUAN GYMNASIUM AT CURUAN,  
ZAMBOANGA CITY**

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## NOTICE

Sirs/Mesdame:

The Office is furnishing to your end the August 11, 2022 Blacklisting Order of the Honorable City Mayor issued on the basis of the August 10, 2022 Decision issued by the Contract Termination Committee and approved by the Honorable City Mayor. Terminating the June 26, 2019 Contract/Agreement entered into by and between the City Government of Zamboanga represented by the former City Mayor Maria Isabelle G. Climaco and BDA JR. Construction, represented by its Owner/Manager, Emmylou E. Midel, for the rehabilitation/improvement of Curuan Gymnasium at Curuan, Zamboanga City and suspending said enterprise for a period of one (1) year from participating in the bidding of all government projects.

For your information and appropriate action.

August 19, 2022, Zamboanga City, Philippines.

Very truly yours,

**Atty. HAYDEE GRETCHEN G. PANGANIBAN**  
City Legal Officer

Copy furnished:

**EMMYLOU E. MIDELO**  
Owner/Manager  
BDA JR. Construction  
Unit E-41, Plaza Del Pilar,  
N.S. Valderosa St., Zamboanga City

GOVERNMENT PROCUREMENT POLICY BOARD  
Unit 2506, Raffles Corporate Center, F. Ortigas Jr. Road,  
Ortigas Center, Pasig City 1605

CITY ENGINEER'S OFFICE, Zamboanga City

CITY BUDGET OFFICE, Zamboanga City

BIDS AND AWARDS COMMITTEE, Zamboanga City

CITY TREASURER'S OFFICE, Zamboanga City

CITY ACCOUNTANT'S OFFICE, Zamboanga City

CITY ADMINISTRATOR'S OFFICE, Zamboanga City

INTERNAL AUDIT DIVISION, CITY MAYOR'S OFFICE, Zamboanga City

CITY AUDITOR, COMMISSION ON AUDIT, Zamboanga City



CITY HALL, N.S. VALDERROSA ST, ZONE IV, ZAMBOANGA CITY, 7000, PHILIPPINES



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## BLACKLISTING ORDER No. JD-01 Series of 2022

Pursuant to Roman Numeral III A (2)(a) and (c)(i) of the Guidelines on Termination of Contracts approved by the Government Procurement Policy Board per its Resolution No. 018-2004 dated December 22, 2004 and upon the findings and recommendations of the Contract Termination Committee in its Decision dated August 10, 2022, the undersigned, hereby issues this Blacklisting Order to the entity hereafter stated:

1. **BDA JR. Construction** having business address at Unit 41 Plaza del Pilar, N.S. Valderosa Street, Zamboanga City, Philippines, is hereby **SUSPENDED/DISQUALIFIED** from participating in all government procurement for ONE (1) year starting from August 11, 2022 until August 10, 2023.
2. Specific ground/offense committed:

<i>During Contract Implementation</i>	
<input type="checkbox"/>	Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed ("NTP").
<input checked="" type="checkbox"/>	<b>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 written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract.</b>
<input type="checkbox"/>	Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the procuring entity.
<input type="checkbox"/>	Unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor arising from his fault or negligence and/or unsatisfactory or inferior quality of goods, as may be provided in the contract.
<input type="checkbox"/>	Poor performance by the consultant of his services arising from his fault or negligence - Defective design resulting in substantial corrective works in design and/or construction.
<input type="checkbox"/>	Poor performance by the consultant of his services arising from his fault or negligence - Failure to deliver critical outputs due to consultant's fault or negligence.
<input type="checkbox"/>	Poor performance by the consultant of his services arising from his fault or negligence - Specifying materials which are inappropriate, substandard, or way above acceptable standards.
<input type="checkbox"/>	Poor performance by the consultant of his services arising

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	from his fault or negligence - Allowing defective workmanship or works by the contractor being supervised by the consultant.
<input checked="" type="checkbox"/>	<b>Poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the CPES rating sheet - Negative slippage of 15%.</b>
<input type="checkbox"/>	Poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the CPES rating sheet - Quality of materials and workmanship not complying with the approved specifications.
<input checked="" type="checkbox"/>	<b>Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.</b>
<input type="checkbox"/>	The contractor has engaged, before or during implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation as enumerated in Section III.D. of the Guidelines on Termination of Contracts.

3. The penalty is being imposed in connection with the following procurement details:

- a. Name of Project: **Rehabilitation /Improvement of Curuan Gymnasium**
- b. Location of Project: **Curuan, Zamboanga City**
- c. Contract Amount: **Six Million Seventy Eight Thousand Eight Hundred Pesos & 56/100 (Php6,078,800.56)**

4. In addition to the foregoing, the following sanctions are also imposed:

- ☒ Forfeiture of Performance Security in the amount of One Million Eight Hundred Twenty-Three Thousand Six Hundred Forty and 17/100 (Php1,823,640.17)
- ☒ Suspension of account in the PhilGEPS website.

The name of the foregoing entity shall be posted within three (3) calendar days from the date of effectivity of this Blacklisting Order in the Consolidated Blacklisting Report (CBR) through the Online Blacklisting Portal pursuant to Section 10 of the "Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants", *as amended by GPPB Resolution No. 14-2020 dated 25 June 2020*. The name of the Blacklisted Entity shall be removed upon the lapse of the period of penalty.

Issued this August 11, 2022 in Zamboanga City, Philippines.

SO ORDERED.

**HON. JOHN M. DALIPE**  
City Mayor

Received by: \_\_\_\_\_

Designation: \_\_\_\_\_

Date Received: \_\_\_\_\_

*In case of concerns/clarifications, you may contact the agency through:*

Address: City Mayors Office-Procurement, Acquisition and Awards Division  
Villalobos Street, Zone IV, Zamboanga City

Contact Person: Irene G. Igot

Telephone No.: 062-9927763

E-mail Address: zcbac.sec@gmail.com

Posted on: \_\_\_\_\_

Date & time: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_





Republica de Filipinas  
Ciudad de Zamboanga

## OFICINA DEL ALCALDE

RE: BDA JR. CONSTRUCTION  
REHABILITATION/IMPROVEMENT OF CURUAN GYMNASIUM  
AT CURUAN, ZAMBOANGA CITY

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### DECISION

#### FACTS:

BDA JR. Construction and Supplies was awarded the contract for the Rehabilitation /Improvement of Curuan Gymnasium at Curuan, Zamboanga City. The aforementioned contract with a contract price of Six Million Seventy Eight Thousand Eight Hundred Pesos & 56/100 (Php6,078,800.56) was entered into by and between the above-mentioned Contractor, represented by its Owner/Manager Emmylou E. Midel and the City Government of Zamboanga, represented by then City Mayor Maria Isabelle G. Climaco on June 26, 2019. Upon execution of the said Contract, the required Notice to Proceed dated June 27, 2019 was issued to the Contractor and was received by the contractor on June 28, 2019. The calendar days required for the said project is Two Hundred Twenty-Three (223) days.

On May 4, 2022, the Office of the City Mayor received an Endorsement of Verified Report from Engr. Christopher Q. Navarro dated May 4, 2022, together with the attached Verified Report of Engr. Joy P. Lee, Assistant City Engineer, (Annex "A"). Item No. 3 of the Assistant City Engineer's Verified Report disclosed that per re-assessment and evaluation the project is at 65.69% completion only and with a computed negative slippage of -272.88% as per April 29, 2022 report of Project Engineer Michael Richie R. Manuel and there were no construction activities on site. Hence, it is presumed that it has been abandoned.

On account of the above-mentioned negative slippage incurred, City Engineer Christopher Q. Navarro in his above-mentioned endorsement of verified report, recommends the following, to wit:

*"In the light of the foregoing facts verified and reported by the Assistant City Engineer which definitely are of valid grounds, the undersigned hereby recommends to the City Mayor for the **termination of the contract: Rehabilitation/Improvement of Curuan Gymnasium at Curuan, this City**, in accordance with Annex I - Guidelines on Termination of Contract of Philippine Government Procurement Act (Revised 2016). Furthermore, in accordance to Appendix 17 - Uniform Guidelines for Blacklisting, a blacklisting order be issued disqualifying the afore-mentioned contractor from participating in bidding of all government projects and to forfeit the performance security of the same."*



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Pursuant to the recommendation given by the City Engineer per his May 4, 2022 Endorsement of Verified Report, then Honorable City Mayor, Maria Isabelle G. Climaco, in her capacity as Head of the Procuring entity issued a Notice to Terminate dated May 5, 2022, directing the Contractor to submit a Verified Position Paper within seven (7) days from receipt of the Notice why the said contract should not be terminated, but instead be given the opportunity to proceed with the implementation works and complete the said project within a limited period subject to liquidated damages (*Annex "B"*). The Contractor received the said Notice to Terminate on July 11, 2022. Hence, she has until July 18, 2022 to submit her Verified Position Paper. Unfortunately, no reply or Verified Position Paper was received from the Contractor until this date.

#### **ISSUE:**

Whether or not the June 26, 2019 Contract entered into by and between the BDA JR. Construction and the City Government of Zamboanga, represented by then City Mayor Maria Isabelle G. Climaco for the Rehabilitation/Improvement of Curuan Gymnasium at Curuan, this City should be terminated on the ground of default and abandonment, to warrant the issuance of a Blacklisting Order disqualifying BDA JR. Construction from participating in the bidding of all government projects, and the forfeiture of its performance bond?

#### **FINDINGS:**

After a careful appreciation and faithful deliberation of the documents on record, the following facts have been sufficiently established by the evidence:

1. That on June 26, 2019 a Contract Agreement was entered into by and between the City Government of Zamboanga and BDA JR. Construction, represented by its Owner/Manager Emmylou E. Midel with contract amount of Six Million Seventy Eight Thousand Eight Hundred Pesos & 56/100 (Php6,078,800.56) for the execution and completion of the project: Rehabilitation /Improvement of Curuan Gymnasium at Curuan, Zamboanga City.
2. That the Notice to Proceed was received by the Contractor on March 24, 2022 with Two Hundred Twenty-Three (223) calendar days contract duration.
3. That based on the Verified Report of Assistant City Engineer Joy Pontillas-Lee, she revealed that per re-assessment and evaluation the project is at 65.69% completion only and with a computed negative slippage of -272.88% as per April 29, 2022 report of Project Engineer Michael Richie R. Manuel and there were no construction activities on site. Hence, it is presumed that it has been abandoned. Thus, the recommendation for the termination of the said project pursuant to Annex I - Guidelines on Termination of Contract of Philippine Government Procurement Act (Revised 2016) and further recommended that the contractor be blacklisted due to contractor's defaults.
4. That a Notice to Terminate dated May 5, 2022 was issued by then City Mayor as Head of the Procuring entity pursuant to the above recommendation and received by the Contractor on July 11, 2022.



5. That the Contractor did not submit its Verified Position Paper as required by the above notice.

**RULING:**

Clearly, from the above series of events, the Contractor violated the Contract/ Agreement dated June 26, 2019 it entered into with the City Government of Zamboanga specifically paragraph three (3) thereof, to wit:

*"3. In consideration of the payments made by the Entity to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Entity to execute and complete the Works and remedy any defects therein in conformity with the provisions of this Contract in all respects."(underscoring ours)*

Along this line, Article 1380 of the New Civil Code provides that: "Contracts validly agreed upon may be rescinded in the cases established by law"

Article 1191 of the same Code reads: "The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. x x x x x

Corollary thereto, letter, (b), (f) and (g) of Number 4.2 of Resolution No. 09-2004 otherwise known as the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants pertinently provides:

*"Pursuant to Section 69(6) of R.A. 9184 and without prejudice to the imposition of additional administrative sanction as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the procuring entity shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:*

*b) 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 written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. x x x x x*

*f) For the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the procuring entity shall be applied. Any of the following acts by the constructor shall be construed as poor performance:*



i. Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor;

g) Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited. (underscoring supplied)

Further, Roman Numeral III A (2) (a),(c)(i) of the Guidelines on Termination of Contracts approved by the Government Procurement Policy Board per its Resolution No. 018-2004 dated December 22, 2004 provides:

"A. Termination for Default

2. In contract for Infrastructure Projects:

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

a) Due to the Contractor's fault and while the project is ongoing, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870; Due to the Contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work; x x x x

Xxxxxx

c) The Contractor:

i. abandons the contract works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity; (emphasis supplied)

Also, number 6 "PROCEDURE FOR BLACKLISTING DURING THE CONTRACT IMPLEMENTATION STAGE" of the same Resolution reads:

"Upon termination of contract due to default of the contractor, the Head of the Procuring Entity shall immediately issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects. The performance security of said contractor shall also be forfeited."

The evidence on record, indisputably shows that the Contractor violated the June 26, 2019 Contract/Agreement which it entered into with the City Government of Zamboanga for the Rehabilitation/Improvement of Curuan Gymnasium at Curuan, Zamboanga City, when it failed to implement the contract and finish the above-named project worse said firm abandoned the said project to the damage and prejudice of the City Government of Zamboanga.

WHEREFORE, premises considered, immediately upon receipt of this instant Decision the June 26, 2019 Contract/Agreement entered into by and between the City of Zamboanga, and BDA JR. Construction, represented by its Owner/Manager Emmylou E. Midel, is hereby terminated with forfeiture of the performance bond and suspension for one (1) year from participating in the public bidding of all government projects.

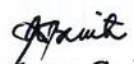
SO ORDERED.


August 10, 2022, Zamboanga City, Philippines.

Recommending Approval:

Contract Termination Review Committee


  
**Atty. Novelyn E. Ong-Villadolid**  
Chairperson

  
**Engr. Lalane G. Benito**  
Member

  
**Ms. Alice C. Omicting**  
Member

  
**Mr. Leonard Y. Ong**  
Member

Approved/Disapproved:

  
**HON. JOHN M. DALIPE**  
City Mayor  
Head of the Procuring Entity