



Republic of the Philippines
Department of Social Welfare and Development
Batasan Pambansa Complex, Constitution Hills
Quezon City
Telephone No. 931-8101 to 07

MEMORANDUM CIRCULAR

NO. 07
Series of 2007

SUBJECT: Guidelines for Providing Sanctions to Erring Suppliers from Participating in Department Procurements through Shopping

I. RATIONALE

Shopping, under Republic Act No. 9184 otherwise known as the Government Procurement Reform Act, is an alternative method of procurement used to acquire goods for the government. It is resorted to only in cases provided for under the Act and its Implementing Rules and Regulations Part-A (IRR-A).

As such, the safeguards established under the general method of competitive bidding, which secure the principles of transparency, competitiveness, and accountability embodied by the Act, were made liberal to promote economy and efficiency.

It is this liberality that has spurred cases of abuse on the part of suppliers who continue to participate and qualify in the Department's procurement undertakings thereby defeating the purpose of shopping.

In the absence of guidelines promulgated by the Government Procurement Policy Board (GPPB) on this issue, i.e. dealing specifically on the process of suspension or blacklisting erring suppliers/contractors participating in shopping, the Department undertook the initiative to address the issue by formulating these Guidelines.

II. DEFINITION OF TERMS

The following are the terms used for purposes of these guidelines:

- A. Act – Republic Act No. 9184: Government Procurement Reform Act;
- B. Administrative Service – the office that manages the procurement of goods and services for the Department; property, supply, asset and record management; property and facility maintenance and the supervision of the operation of transportation, communication, utility, janitorial and security services.

- C. Bids and Awards Committee (BAC) – the body which conducts and oversees procurement activities, determine eligibility of prospective bidders, resolves motion for reconsideration, and recommends award of contracts to the head of the procuring entity. It ensures the agency's compliance to the Procurement Reform Law.
- D. BAC Secretariat – the main support unit of the BAC, responsible for the safekeeping and custody of procurement documents.
- E. Blacklisting – an administrative penalty permanently disqualifying a supplier/ contractor from participating in all government procurements when any of the violations under Part IV hereof has been violated a fourth time or any of the particular offenses is violated a second time in two separate Shopping processes. (e.g. when a supplier/ contractor who has committed the violation of - *Submission of price quotations containing false information or falsified documents*, commits the particular violation a second time in another concurrent or subsequent separate Shopping process).
- F. Competitive Bidding – a method of procurement which is open to participation by any interested party consisting of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, evaluation of bids, post-qualification, and award of contract. For purposes of, and throughout this Memorandum Circular, the terms "Competitive Bidding" and "Public Bidding" shall have the same meaning and shall be used interchangeably.
- G. Department – refers to the Department of Social Welfare and Development (DSWD).
- H. End-user - refers to the person, public officer, unit, office, service, or bureau connected to or with the Department or any of its projects or programs who will ultimately use the goods being procured, as opposed to the officers and offices undertaking the goods' procurement.
- I. *ex parte* - 'on behalf of one party', phrase that generally refers to action taken without notice to the adverse party or participation by that party in the hearing.
- J. *force majeure* - literally means 'greater force', these clause excuses a party from liability if some unforeseen event beyond the control of that party prevents it from performing its obligations under the contract. Typically, *force majeure* clauses cover natural disasters or other "Acts of God.
- K. Fortuitous Event - an event of natural or human origin that could not have been reasonably foreseen or expected and is out of the control of the persons concerned (as parties to a contract).
- L. Government Procurement Policy Board (GPPB) – responsible for the protection of national interest in all matters affecting public procurement thru the formulation of public procurement policies, rules and regulations, and ensures the procuring entity's proper implementation of the GPRA.

- M. Head of Procuring Entity – refers to: (i) the head of the agency or his duly authorized official, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned or controlled corporations; or (iii) the local chief executive, for local government units. Provided, that in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to limitations and authority delegated by the head of the department, office or agency.
- N. Shopping – a method of procurement of goods whereby the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications. This method of procurement shall be employed only in cases provided under the Act.
- O. Suspension – is an administrative penalty disqualifying, for a given period, a supplier/contractor from participating in procurement transaction through Shopping.

III. LEGAL BASES

Republic Act No. 9184 (Government Procurement Reform Act) – An Act Providing for the Modernization, Standardization and Regulation of Procurement Activities of the Government and its Implementing Rules and Regulations Part A (IRR-A). Specifically Rule XXIII Administrative Sanctions, *Section* 69.4 which provides as follows: Xxx Pending the issuance of the guidelines by the GPPB, all existing blacklisting guidelines and reports of the Government or any of its procuring entity shall continue to remain in force.

IV. OFFENSES

Hereunder is a list of punishable offenses of suppliers which may warrant imposition of sanctions to protect the rights and interests of the agency.

1. Submission of price quotations containing false information or falsified documents.
2. Concealment of such information in the quotations in order to influence the outcome of Shopping or any of its stages.
3. Allowing the use of one's name, or using the name of another for the purpose of submission of price quotations.

4. Refusal to accept an award or enter into contract with the Department, without justifiable cause, after he had been adjudged by the Bids and Awards Committee (BAC) as having submitted the Lowest Calculated Responsive Offer.
5. There is a violation when the contract or purchase order has not been implemented due to the default of the supplier. There is default on the part of the supplier when any of the following conditions attend its implementation:
 - a. The supplier/contractor fails to deliver or perform any or all of the Goods within the period(s) specified in the contract/purchase order, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the supplier/contractor prior to the delay, and such failure amounts to at least ten percent (10%) of the total contract price unless the failure is occasioned by force majeure or fortuitous event.
 - b. Due to the occurrence of force majeure or fortuitous event, the supplier/contractor is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the total contract price, for a period of not less than sixty (60) calendar days after receipt of the Notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased; or
 - c. The supplier/contractor fails to perform any other obligation under the contract/purchase order.
6. Refusal to clarify or validate in writing its price quotation during the deliberation of the submitted quotation within a period of seven (7) calendar days from receipt of the request for clarification.
7. Any unsolicited attempt in writing by a supplier/contractor to unduly influence the outcome of Shopping in his favor.

8. All other acts that tend to defeat the purpose of Shopping, such as supplier's/contractor's repeated withdrawal of his/her price quotation for the third (3rd) time within the calendar year without justifiable cause, or, supplying defective goods to the Department, whether or not such goods are covered by warranty.

V. ADMINISTRATIVE SANCTIONS

Imposition of Administrative Penalties. – (a) in addition to the provisions of Articles XXI – PENAL CLAUSE and XXII – CIVIL LIABILITY of Republic Act No. 9184 (RA 9184) and Rules XXI – PENAL CLAUSE and XXII – CIVIL LIABILITY of its IRR-A, the head of the procuring entity, subject to the authority delegated to the BAC, if any, shall impose on suppliers/contractors or prospective suppliers/contractors, the administrative penalty of: a.) suspension for six (6) months for the first offense, without a Blacklisting Order from the Secretary/Regional Director; b.) suspension for one (1) year for the second offense, without a Blacklisting Order from the Secretary/Regional Director, and c.) suspension of two (2) years for the third offense, with a Blacklisting Order from the Secretary/Regional Director, from participating in the shopping process.

The supplier shall be permanently disqualified from participating in all procurement undertakings (Competitive Bidding or Alternative Methods) of the Department if a fourth (4th) offense is committed, or any of the particular offenses is violated a second (2nd) time in two separate Shopping processes, with an appropriate Blacklisting Order submitted to the GPPB.

VI. GENERAL PROCEDURE

Hereunder are the General Procedures for Suspension and Blacklisting under Alternative Method of Procurement through Shopping:

1. Report

1.1 The Procurement and Supply Division (PSD), Procurement Unit (PU) in case of Field Offices, or any End-user may initiate the suspension or blacklisting

proceedings by filing a verified report with the Bids and Awards Committee (BAC). The BAC may also *motu proprio* (by itself) commence the proceedings upon *prima facie* (self-sufficient) determination that the supplier/contractor has committed any of the grounds for suspension or blacklisting during the Shopping process.

1.2 Upon receipt of the above mentioned report, the BAC shall within a period of fifteen (15) calendar days, verify the existence of such. Otherwise, if no ground exists, the Report is to be disregarded and all the evidence attached. The BAC may request that additional evidence be submitted in support of the Report against the supplier/contractor.

2. Notification

2.1 Upon verification of the existence of the grounds for suspension or blacklisting, the BAC shall immediately notify the supplier/contractor concerned in writing, advising that:

- a. a Report for suspension or blacklisting has been filed with the BAC against the supplier/contractor , or the supplier/contractor has been considered by the BAC *motu proprio* for suspension or blacklisting, stating the grounds for such;
- b. that the supplier/contractor has the opportunity to show cause why the supplier/contractor should not be suspended/blacklisted;
- c. that a hearing shall be conducted before the BAC, upon his request, where he may present documentary evidence, verbal testimony and cross-examine the witnesses presented against him; and
- d. the consequences of being suspended/blacklisted.

2.2 Within ten (10) calendar days from receipt of the notice, the supplier/contractor shall submit a written answer and documentary evidence to the BAC.

2.3 No Motion for Extension to file Answer shall be allowed.

2.4 Should the supplier/contractor fail to answer within the given period, the BAC shall determine the issue *ex parte*.

3. Hearing

3.1 If a hearing is requested, the BAC shall immediately set the date and time for hearing. The hearing shall be non-litigious and shall be terminated within ten (10) days.

3.2 If a hearing is not requested, the BAC shall, within fifteen (15) calendar days, make a thorough determination of the case based on the Report submitted by the end-user, as well as the Answer and documentary evidence submitted by supplier/contractor, and the facts verified.

3.3 If the BAC is convinced that the supplier/contractor has committed any of the violations enumerated under Part IV hereof, it shall issue a resolution recommending to the Secretary/Regional Director the suspension or blacklisting of the supplier/contractor from participating in any procurement transaction of the DSWD. It shall likewise submit to the Secretary/Regional Director any resolution dismissing a Report against a supplier/contractor.

4. Decision

4.1 The Secretary/Regional Director as head/authorized representative of the procuring entity shall within fifteen (15) calendar days from receipt of the resolution and the records of the BAC proceedings, determine whether

reasonable cause exists for the suspension or blacklisting of the supplier/contractor. If the Secretary/Regional Director determines that such reasonable cause exists he/she shall issue a decision suspending or blacklisting the supplier/contractor. Otherwise, he/she shall dismiss the case.

4.2 The decision shall clearly and distinctly state the facts, evidence and the law on which it is based, as well as the duration of the penalty.

4.3 The Secretary/Regional Director may delegate to the BAC the authority to impose the corresponding sanction(s) provided for in these guidelines.

4.4 In case the supplier/contractor commits more than one offense or a combination of offenses for the same procurement, each violation shall be meted the corresponding penalty.

5. Notice of Decision

The Secretary/Regional Director, or other duly authorized representative, if delegated, shall furnish the suspended or blacklisted supplier/contractor a copy of the decision.

6. Effect of Decision

A supplier/contractor is suspended or blacklisted upon receipt of the Notice of Decision, prohibiting him from participating in the procurement transactions of the Department. The suspension or blacklisting shall remain in effect during the period of Motion for Reconsideration. The filing of such motion shall not preclude the execution of the decision suspending or blacklisting the supplier/contractor and shall terminate only upon a reversal of the decision by the Secretary/Regional Director.

If no Motion for Reconsideration is filed, the decision shall become final and executory after the lapse of fifteen (15) calendar days from receipt of the Notice of Decision. Thereafter, the Secretary shall issue a Suspension or Blacklisting Order, as the case may be, disqualifying the erring supplier/contractor from participating in any Department procurement through Shopping.

7. Motion for Reconsideration

A Motion for Reconsideration may be filed by the suspended/blacklisted supplier/contractor within fifteen (15) calendar days from the receipt of the Notice of Decision.

The Secretary/Regional Director shall resolve with finality the Motion for Reconsideration within fifteen (15) calendar days from the filing thereof and furnish the suspended supplier/contractor a copy of the resolution immediately from its promulgation.

No second Motion for Reconsideration shall be entertained.

8. Protest of the Decision

A Protest may be filed under Sec. 55.1, of the IRR-A of R.A. 9184, by the suspended supplier/contractor with the Secretary as appellate authority within seven (7) calendar days from the receipt of the Resolution on the Motion for Reconsideration.

9. Finality of the Decision

The decision of the Department shall become final and executory after the lapse of fifteen (15) calendar days from receipt of the Notice of Decision or

Resolution on the Motion for Reconsideration. If a Protest is filed, the affirmed, modified or reversed decision shall become final and executory upon receipt thereof by the supplier/contractor concerned

Upon finality of the decision suspending or blacklisting the supplier/contractor, the Secretary/Regional Director or appellate authority, shall issue the Suspension or Blacklisting Order disqualifying the erring supplier/contractor from participating in any Department procurement.

Regional Directors shall notify and submit a copy of the final suspension or blacklisting order to the Secretary within five (5) calendar days from the issuance thereof.

An updated list of blacklisted/suspended suppliers/contractors shall be maintained, and posted in the DSWD Website.

10. Delisting or Removal from Suspension

A suspended or blacklisted supplier/contractor shall automatically be delisted or removed from suspension after the period for the penalty shall have lapsed unless the Department requests the GPPB to maintain the blacklisted supplier/contractor due to justifiable reasons. In the latter case, the blacklisted supplier/contractor shall be delisted only upon the Department's issuance of a Delisting Order.

11. Notification to the GPPB

The Department shall furnish to the GPPB within seven (7) calendar days after the issuance of the Blacklisting/Delisting Order made by the agency, a copy thereof with the following particulars:

Blacklisting Order duly signed by the Secretary/Regional Director containing among others Department Order, name and address of the Blacklisted supplier/contractor, license number if applicable, Authorized Managing Officer, name of the contract, amount, location, specific grounds, offenses committed, sanction imposed and the duration, date of issuance of the order, and other details.

Delisting Order duly signed by the Secretary/Regional Director containing, among others, Department Order, name and address of the Blacklisted supplier/contractor, license number if applicable, Authorized Managing Officer, name of the contract, amount, location, specific grounds, offenses committed, sanction imposed and the duration, date of issuance of the order, and other details.

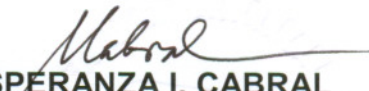
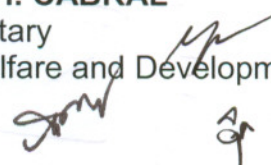
VII. REPEALING CLAUSE:

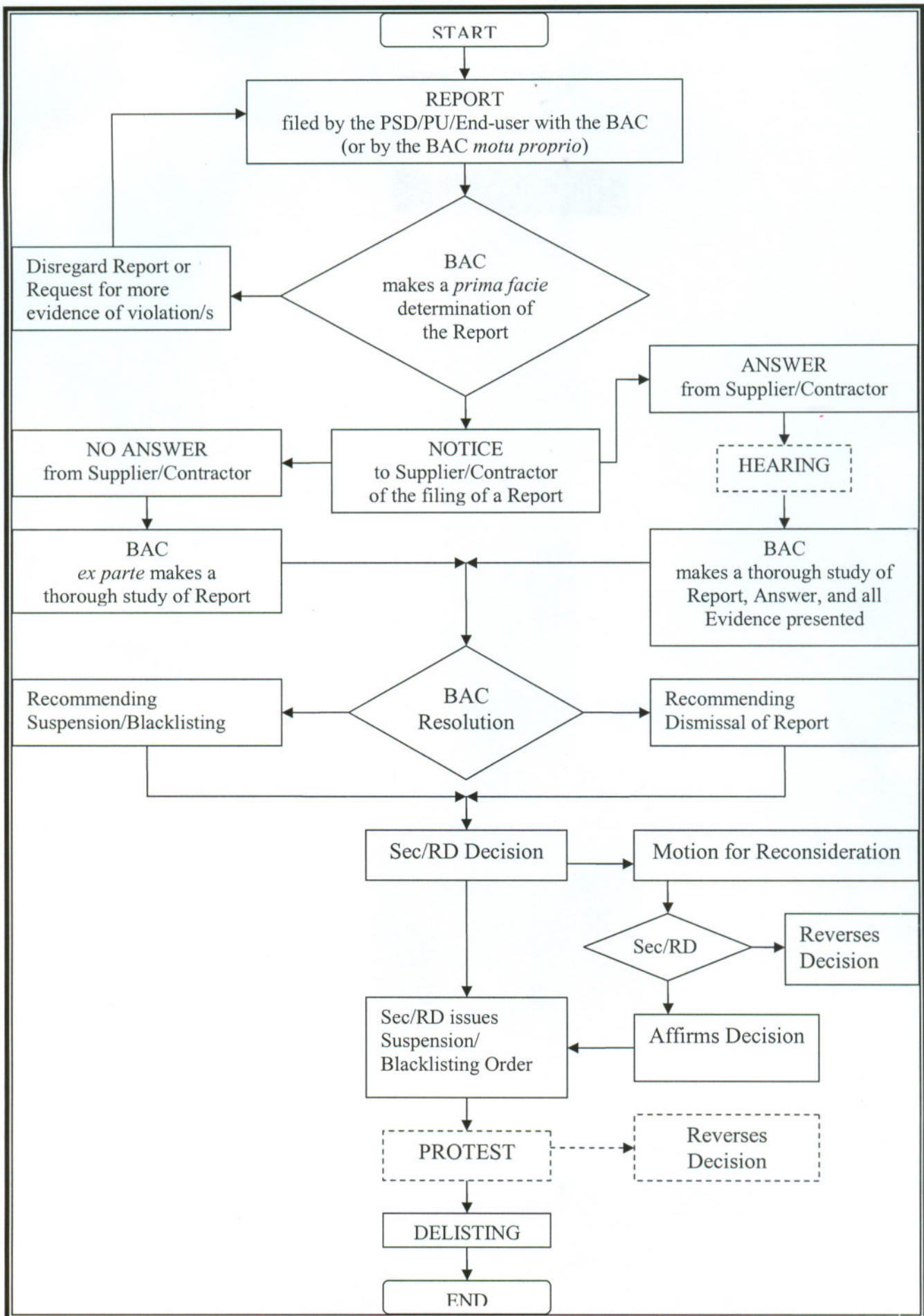
This Memorandum Circular supersedes DSWD orders inconsistent herewith.

VIII. EFFECTIVITY:

This Memorandum Circular shall take effect immediately.

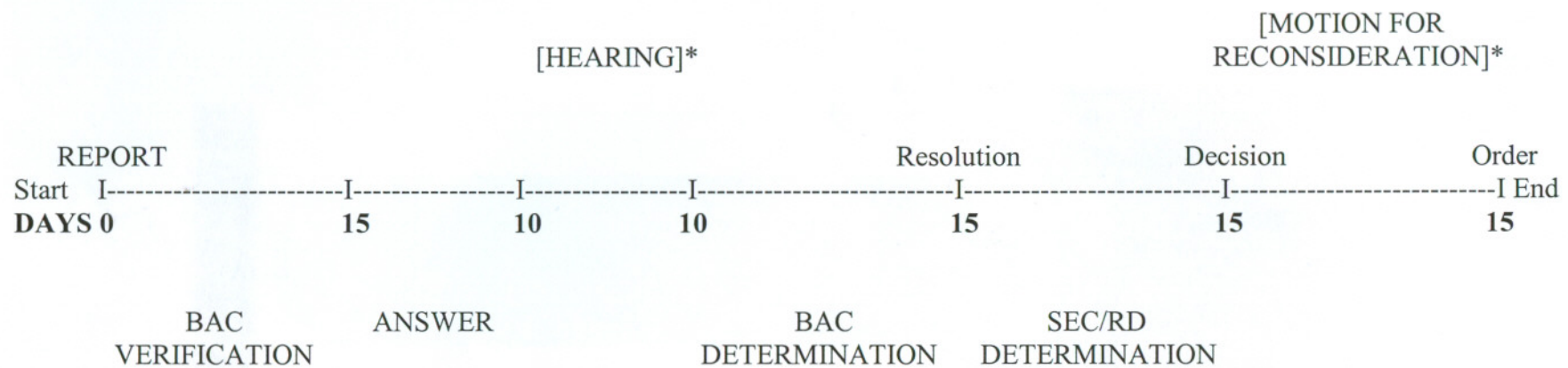
Issued this 30th day of July 2007


ESPERANZA I. CABRAL
Secretary
Department of Social Welfare and Development




TIMELINE: GUIDELINES FOR SUSPENSION/BLACKLISTING

ANNEX "B"



* OPTIONAL