



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
OFFICE OF THE SECRETARY
Manila

097.13 DPWH

10-24-2008

OCT 23 2008

DEPARTMENT ORDER)
No. **58**)
Series of 2008 **10-24-08**)

SUBJECT: **Procedural Flow and Guidelines on
the Processing of Extraordinary
Claims**

In order to facilitate the processing of extraordinary claims, which include, among others, unbooked claims, idle equipment/personnel claims, VAT Differential, and interests due to delayed payment of progress billings of contractors, the following procedural flow is hereby prescribed:

1. All extraordinary claims shall be submitted by contractors to the concerned Implementing Office. The claim shall include the following:
 - a) The letter of the contractor duly signed by the authorized representative stating the specific details and legal basis of the extraordinary claim.
 - b) The supporting documents as enumerated in the checklist of requirements (See Checklist corresponding to claim in Annexes A to D).
 - c) The computation of the money claim prepared by the contractor in accordance with the prescribed format (See format corresponding to claim in Annexes E to J).
2. The Implementing Office shall evaluate the submitted claim and recommend payment or non-payment thereof to the Extraordinary Claims Review Committee (ECRC).
3. The ECRC, after deliberation, shall submit its recommendation to the Secretary, through a Resolution, for his approval.

In evaluating the claims, the Implementing Office and the ECRC shall adhere to the attached Guidelines, whichever is appropriate to the claim, as shown in Annexes K to N, which are likewise prescribed in this Order.

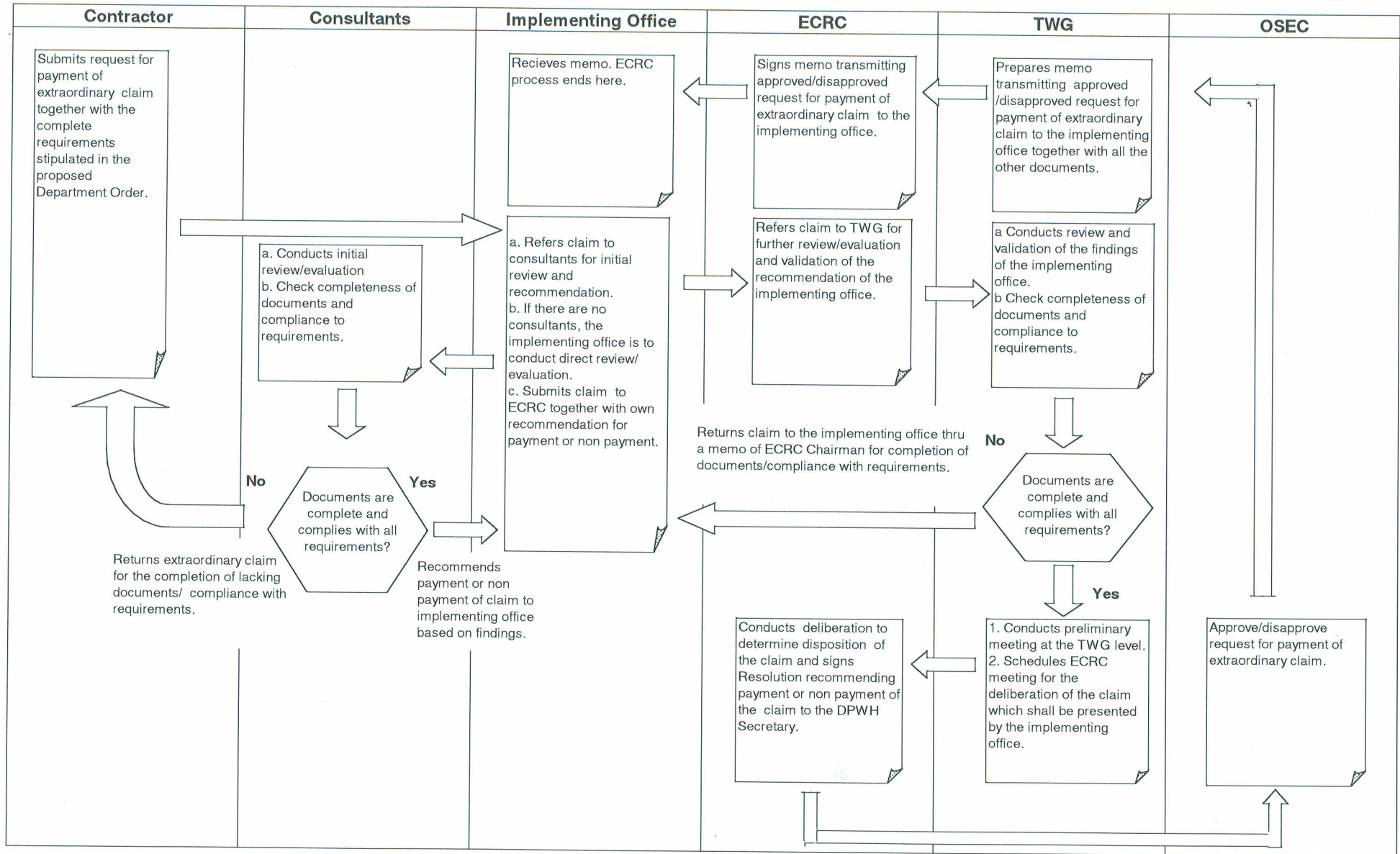
This Order shall take effect immediately.

HERMOGENES E. EBDANE, JR.
Secretary



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PROCEDURAL FLOWCHART EXTRAORDINARY CLAIM DOCUMENT





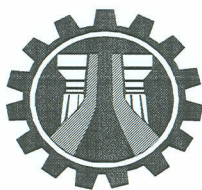
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DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
TECHNICAL WORKING GROUP
EXTRAORDINARY CLAIMS REVIEW COMMITTEE
Bonifacio Drive, Port Area, Manila

ANNEX A

CHECKLIST
(Unbooked Claim)

Project/Location :
Contractor :

1. Endorsement letter of the Implementing Office addressed to the Hon. Secretary, Attn: Chairman, ECRC, stating their position and recommendation of the subject claim of the contractor
2. Letter request of the contractor duly signed by the authorized representative
3. Plans
4. Approved POW/Detailed Estimates
5. Contract Agreement
6. Approved As-Built Plans
7. Statement of Work Accomplished
8. Photographs (Before/During/After)
9. Inspectorate Team Report
10. Field Logbook of the DPWH and Contractor
11. Equipment Information
 - a. List of Equipment
 - Owned
 - Leased
 - b. Contract Leased
 - c. Certificate of Registration
 - d. Detailed information of individual equipment
 - Make
 - Model
 - Serial No.
 - Chassis No.
 - Plate No.
12. COA Validated Report/Court Order
13. Other supporting documents



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ANNEX B

CHECKLIST

(Claim for Payment of Idle Time of Equipment /Personnel)

Project/Location :

Contractor :

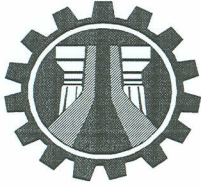
1. Endorsement letter of the Implementing Office addressed to the Hon. Secretary, Attn: Chairman, ECRC, stating their position and recommendation of the subject claim of the contractor
2. Letter request of the contractor duly signed by the authorized representative
3. Evaluation and Recommendation of the Consultant and the Implementing Office in Matrix Form
4. Copy of the Specific Provision of the Conditions of Contract that entitles the Contractor to claim the cost incurred due to standby of equipment, manpower & etc as a result of the project suspension
5. Copy of the Approved Suspension Order and Resume Order
6. Copy of the Approved PERT/CPM, Bar Chart with S-Curve prior to the Suspension Order together with the corresponding Approved Monthly Equipment and Manpower Utilization Schedule
7. Copy of the Approved Revised PERT/CPM, Bar Chart with S-Curve incorporating the Suspension Order and Time Extension together with the corresponding Equipment and Manpower Utilization Schedule
8. Straight Line Diagram showing the effectivity Date, Original & Revised expiry dates, Suspension period and Time Extension granted to the contractor
9. Copy of the Approved Time Extensions
10. List of the operational equipment that was brought to the project site adopting the sample Table below with the proof of actual mobilization such as **(for Foreign Contractor)**:
 - 10.1 Contractor's request for the importation of equipment, exemption from duties and taxes for the exclusively use of the project
 - 10.2 DPWH endorsement to Department of Finance (DOF)
 - 10.3 Re-export Bond of the equipment
 - 10.4 Bill of Lading; and any valuable documentary evidence of mobilization

LIST OF EQUIPMENT (Type of Equipment to be arranged as listed in the Approved Utilization of Equipment to include the Leased Equipment, if any)						Re-Export Bond # for Owned or Lease	Bill of Lading Number	Actual Arrival at Site
Type	Assigned No.	Make	Year	Capacity	Engine/ Chassis/ Serial Number			

11. Monthly list of the Mobilized Equipment in matrix format in Table below corresponding only to the equipment programmed for utilization in the Approved PERT/CPM covering the period of claim, duly signed by the consultant and the Implementing Office

ACTUAL EQUIPMENT IN THE PERT/CPM AND S-CURVE APPROVED FOR UTILIZATION				Daily Utilization to mark1 for each working day excluding Sundays, Holidays & Predetermined unworkable days			TOTAL	
Type	Assigned Number	Capacity	ACEL/ Bid Rental	1	to	15	Days	Amount
				16	to	31		

12. Monthly Equipment and Manpower Report covering the period of claim, duly signed by the consultant and the Implementing Office
13. Inventory of Equipment and Manpower before and after the Suspension Order
14. Certified true copy by the PMO of the Leased Agreement of Equipment exclusively for use of the project duly notarized and received by the Implementing Office, if any
15. Xerox copy of the Contractors Field Logbook covering the period of claim duly signed by the consultant and the Implementing Office representative
16. Contractual Data & Latest Status/Progress Report duly signed by the Consultant and Implementing Office
17. Billing and Official receipt for water, electric, telephone consumption and etc.
18. Site photographs before and during Suspension period
19. Copy of the Contractor's Project Organizational Chart
20. List of Employees in the in the Contractor's company indicating their monthly salary and signature and involvement in the project
21. Certified true copies of the Appointment/Contract Agreement between the contractor and regular and unskilled/skilled personnel employees of the contractor
22. Certified photocopies of monthly payrolls and remittances of premiums received by SSS covering the period of the claim
23. Justification/Clarification why laborer's employment were not terminated during the project suspension
24. Certified true copy by PMO of the Sub-Contracting Agreement duly notarized and received by the Implementing Office, if any
25. For documents from abroad, it should be duly authenticated/certified by the Philippine Embassy
26. Copy of the Computation/Table of Predetermine Unworkable days and actual monthly weather report
27. Other supporting documents



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EXTRAORDINARY CLAIMS REVIEW COMMITTEE
Bonifacio Drive, Port Area, Manila

ANNEX C

CHECKLIST
(Claim for Payment of VAT Differential)

Project/Location :
Contractor :

1. Endorsement letter of the Implementing Office addressed to the Hon. Secretary, Attn: Chairman, ECRC, stating their position and recommendation of the subject claim of the contractor.
2. Letter request of the contractor duly signed by the authorized representative
3. Tabulated computation of VAT Differential in prescribed format
4. Copy of Original Bill of Quantities
5. Copy of Approved Variation Orders
6. Copy of Contract Agreement
7. Copy of Contractor's Unit Price Analysis of Items of Work in the Original bill of Quantities and Unit Price Analysis of New Items of Work in the Approved Variation Orders
8. Copy of Approved Statement of Work Accomplished and Monthly Certificate of Payment of Progress Billing
9. Copy of Approved Disbursement Vouchers of Progress Billing
10. Copy of Instructions to Bidders
11. Original Proposal Book containing the pro-forma of Detailed Unit Price Analysis Form
12. Resolution of Award
13. Monthly Value Added Tax Declaration (BIR Form No. 2550M)
14. Certificate of Creditable Tax Withheld at source (BIR Form No. 2307)
15. Certification from the Implementing Office stating that no works was undertaken thru sub-contract works
16. Affidavit of the contractor stating that no works was undertaken thru sub-contract works
17. Affidavit that the signing individual making the VAT Differential claim is the authorized representative of the contractor
18. Other supporting documents

ANNEX D

C H E C K L I S T

(Claim for Interest Payment Due To Delayed Payment Of
Progress Billings)

Project/Location :

Contractor :

1. Endorsement letter of the Implementing Office addressed to the Hon. Secretary, Attn: Chairman, ECRC, stating their position and recommendation of the subject claim of the contractor
2. Letter request of the contractor duly signed by the authorized representative
3. Computation of the Interest claim duly signed by the Implementing Office
4. Copy of the Contract Agreement
5. Copy of NTP
6. Copy of the specific provisions in the Conditions of Contract that entitles the Contractor to the Interest Payment due to the delayed payment of progress billing
7. Certification of the Bureau Directors on the date of required documents for every progress billing were completed/complied by the contractor
8. Clear/legible copy of approved Disbursement Vouchers for every progress billings showing the D.V. No. and respective dates received at the Accounting Division
9. Proof of receipt of payment showing its date
10. Copy of SWA for every progress billing
11. Copy of Advice/Authority to Debit Accounts/Payments of D.V.
12. Copy of latest approved Project Status Report
13. Reasons for the delay in the payment of progress billing
14. Other supporting documents

**SUMMARY OF CLAIM FOR INCURRED LOSSES DUE TO
STANDBY EQUIPMENT & MANPOWER
AS A RESULT OF PROJECT SUSPENSION**
(Covered Period)

ANNEX E

PROJECT NAME :
LOCATION :
IMPLEMENTING OFFICE :
CONTRACTOR :

A). STANDBY COST OF EQUIPMENT

ITEM NO.	TYPE OF EQUIPMENT/CAPACITY	NO OF UNITS	TYPE/MADE/ MODEL	AS SUBMITTED BY THE CONTRACTOR			AS RECOMMENDED BY THE I.O.		
				TIME	UNIT RATE	AMOUNT	TIME	UNIT RATE	AMOUNT
1									
2									
3									
4									
5									
6									
7									
8									
9									

Prepared by

Checked by :

Verified by :

Recommending Approval :

Approved :

Contractor's Authorized
Representative

Head, Implementing Office

Head, TWG-ECRC

Vice Chairman, ECRC

Chairman, ECRC

B). STANDBY COST OF MANPOWER

ITEM NO.	NAME OF PERSON	DESIGNATION	AS SUBMITTED BY THE CONTRACTOR			AS RECOMMENDED BY THE I.O.		
			TIME	UNIT RATE	AMOUNT	TIME	UNIT RATE	AMOUNT
1								
2								
3								
4								
5								
6								
7								
8								
9								

Prepared by

Checked by :

Verified by :

Recommending Approval :

Approved :

Contractor's Authorized
Representative

Head, Implementing Office

Head, TWG-ECRC

Vice Chairman, ECRC

Chairman, ECRC

**CLAIM OF INCURRED LOSSES DUE TO
STANDBY OF EQUIPMENT & MANPOWER
AS A RESULT OF PROJECT SUSPENSION**
(Monthly Period)

ANNEX F

PROJECT NAME :
LOCATION :
IMPLEMENTING OFFICE :
CONTRACTOR :

A). STANDBY COST OF EQUIPMENT

ITEM NO.	TYPE OF EQUIPMENT/CAPACITY	NO. OF UNITS	TYPE/MADE/MODEL	AS SUBMITTED BY THE CONTRACTOR			AS RECOMMENDED BY THE I.O.		
				TIME	UNIT RATE	AMOUNT	TIME	UNIT RATE	AMOUNT
1									
2									
3									
4									
5									
6									
7									
8									
9									

Prepared by

Checked by :

Verified by :

Recommending Approval :

Approved :

Contractor's Authorized
Representative

Head, Implementing Office

Head, TWG-ECRC

Vice Chairman, ECRC

Chairman, ECRC

B). STANDBY COST OF MANPOWER

ITEM NO.	NAME OF PERSON	DESIGNATION	AS SUBMITTED BY THE CONTRACTOR			AS RECOMMENDED BY THE I.O.		
			TIME	UNIT RATE	AMOUNT	TIME	UNIT RATE	AMOUNT
1								
2								
3								
4								
5								
6								
7								
8								
9								

Prepared by

Checked by :

Verified by :

Recommending Approval :

Approved :

Contractor's Authorized
Representative

Head, Implementing Office

Head, TWG-ECRC

Vice Chairman, ECRC

Chairman, ECRC

**CLAIM FOR INCURRED LOSSES DUE TO
STANDBY OF EQUIPMENT & MANPOWER
AS A RESULT OF PROJECT SUSPENSION**

(Monthly Period)

ANNEX G

PROJECT NAME :
LOCATION :
IMPLEMENTING OFFICE :
CONTRACTOR :

A) Monthly Equipment Utilization Report

Monthly Equipment Utilization Report				(Month)																															TOTAL				
Item No.	Type of Equipment	No. of Units	Type/Made / Model		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	PREV	THIS	TOTAL	
				O																																			
				S																																			
				R/B																																			
				O																																			
				S																																			
				R/B																																			
				O																																			
				S																																			
				R/B																																			
				O																																			
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				R/B																																			
				O																																			
				S																																			
				R/B																																			
				O																																			
				S																																			
				R/B																																			

Legend:
O - Operation
S - Standby
R/B - Repair/Breakdown

Prepared by :

Checked by :

Verified by :

Recommending Approval :

Approved :

Contractor's Authorized
Representative

Head, Implementing Office

Head, TWG-ECRC

Vice Chairman, ECRC

Chairman, ECRC

B) Monthly Manpower Utilization Report

By Monthly Manpower Utilization Report			(Month)																															TOTAL		
Item No.	Type of Equipment/Capacity	Designation																																PREV	THIS	TOTAL
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31			
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Legend:
W - Working
S - Standby

Prepared by :

Checked by :

Verified by :

Recommending Approval :

Approved :

Contractor's Authorized
Representative

Head, Implementing Office

Head, TWG-ECRC

Vice Chairman, ECRC

Chairman, ECRC

ANNEX H

PROJECT NAME :
LOCATION :
IMPLEMENTING OFFICE :
CONTRACTOR :

[illegible]

Prepared by :

Checked by :

Verified by :

Recommending Approval :

Approved :

Contractor's Authorized Representative

Head, Implementing Office

Head, TWG-ECRC

Vice Chairman, ECRC

Chairman, ECRC

ANNEX I

[illegible]

Approved :

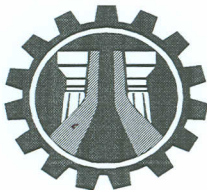
Chairman, ECRC

ANNEX J

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Approved :

Chairman, ECRC

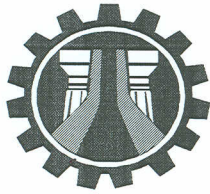


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DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
TECHNICAL WORKING GROUP
EXTRAORDINARY CLAIMS REVIEW COMMITTEE
Bonifacio Drive, Port Area, Manila

ANNEX K

GUIDELINES IN THE PROCESSING OF UNBOOKED CLAIMS
PINATUBO/EARTHQUAKE AND OTHER DPWH
INFRASTRUCTURE PROJECTS

1. All claims should be properly recommended/endorsed for payment by the concerned Regional Office
2. All claims should be part of the inventory of claims presently handled by the Extraordinary Claims Review Committee (ECRC)
3. Payments of all claims should be based on the principle of "QUANTUM Meruit" (No loss/ no gain), recommend for funding whichever is the lowest total cost.
4. The location of the project being processed shall be confined in the declared calamity areas, i.e. Region III for Pinatubo, Cordillera Administrative Region for Earthquake, and various calamity areas, as declared by the President of the Republic of the Philippines.
5. Only claims with complete documents, submitted in accordance with the checklist provide by the team, shall be processed.
6. COA validated claims should also be subjected to verification of the authenticity of the signatures of the authorized signatories to the documents.
7. Statement of Work Accomplishment (SWA) shall be subject to field inspection and verification, with the signatures of authorized signatories to the said document should also be authenticated.
8. For the Pinatubo claims, prepare comparative unit cost analysis using SWA vs. COA vs. MPR-PMO approved unit cost and recommended whichever is the lowest total cost.
9. Payment of unbooked claims, including that projects which are covered by court orders, shall only be effected after clearance from the Secretary has been secured.



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EXTRAORDINARY CLAIMS REVIEW COMMITTEE
Bonifacio Drive, Port Area, Manila

ANNEX L

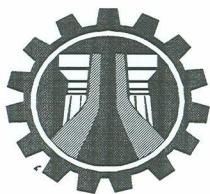
**GUIDELINES IN THE EVALUATION OF CLAIMS FOR STANDBY
EQUIPMENT AND MANPOWER RESOURCES AND ETC. DUE TO
SUSPENSION OF WORK**

I. LEGAL BASIS

- a. Copy of specific provision of the Conditions of Contract that entitles the Contract to claim the cost incurred due to standby of equipment manpower and etc. as a result of project suspension
- b. Legal Opinion

II. BASIS OF COMPUTATION

- a. **COVERAGE** – Actual Suspended period based on the approved Suspension/Resume Order with corresponding approved time extension.
- b. **STANDBY TIME OF EQUIPMENT** – D.O. 36 Series 2004 wherein a month to month term with a minimum of 120 hours a month (4.80 hours/day) shall be charged for equipment on standby. This excludes Sunday and Holidays
- c. **NUMBER OF EQUIPMENT** – The actual equipment mobilized and operational at site but not to exceed the equipment requirement as reflected in the approved monthly Equipment Utilization Schedule.
- d. **EQUIPMENT RENTAL RATE** – Bare Rental Rates from the applicable edition of the ACEL Guidebook, or bare Rental Rates of the contractor's existing contract for the project, whichever is lower.
- e. **NUMBER OF MANPOWER** - The actual manpower mobilized at site but not to exceed the manpower requirement as reflected in the approved monthly Manpower Utilization Schedule.
- f. **STANDBY TIME OF MANPOWER** – Actual time idle based from the approved payroll for the project.
- g. **RATE OF MANPOWER** – The contractor's manpower rate based from their existing contract for the project.
- h. **ELECTRIC/WATER/TELEPHONE BILLS** – the actual consumption during suspension of work based on the official bills and receipt of payment.
- i. **INDIRECT COST** – Actual site and overhead expenses incurred during the suspension of works.



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ANNEX M

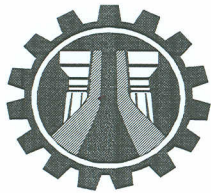
GUIDELINES IN THE EVALUATION OF VAT DIFFERENTIAL CLAIM

III. LEGAL BASIS

Legal Service opinion approved by the Honorable Secretary Hermogenes E. Ebdane, Jr. in their Memorandum dated May 23, 2005 under paragraph 3, which states that *“The Instructions to Bidders required the bidders to adopt the DPWH Detailed Unit Price Analysis (DUPA) Form which imposed the 10% VAT on equipment and labor costs only. Using the form, the total VAT under the Tax Code on the said project exceeds the amount provided by the contractor in its bid documents.”* and *“In the light of the above, the instant request may be given consideration inasmuch as while the Contractor passed on to DPWH only the equivalent of VAT as computed by the ITB (Instructions to Bidders), the Government continues to collect 10% VAT on the said projects.”*

IV. BASIS OF COMPUTATION

1. It was indeed mentioned that VAT should be 10% per provision of Section 108 of the 1997 Tax Code (Annex 8), to quote : “There shall be levied, assessed and collected, a value-added tax equivalent to ten (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.” unquote.
2. The DPWH is however using 8.5% and 5% as basis in the computation for VAT differential as these are in accordance with BIR Ruling No. 2-98 dated April 17, 1998 and BIR Ruling No.16-2005 dated September 1, 2005 which individually states that the rate and basis of creditable value added tax withheld for payments made to government public works contractors shall be 8.5% and 5% respectively since public works contractors in anyway allowed a presumptive input tax equivalent to 1½ % and 7% of the gross billings in lieu of actual input tax when they file their periodic VAT returns in accordance with R.A. No. 8241 and the New E-VAT Law.
3. Thus, the amount of VAT Differential is equivalent to the total amount of VAT withheld computed by getting the 8.5% or 5% amount of each contract pay item less the actual amount of VAT in the contract, per the accomplished Detailed Unit Price Analysis Form for each contract pay item.



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ANNEX N

**GUIDELINES IN THE EVALUATION OF INTEREST CLAIMS DUE
TO DELAYED PAYMENT OF NATIONAL ROADS IMPROVEMENT
AND MANAGEMENT PROJECT IMPLEMENTED BY
THE BUREAU OF MAINTENANCE**

I. LEGAL BASIS

1. CLAUSE 43.1 of the General Conditions of Contract for all NRIMP-Projects
2. Legal Opinion rendered by the Legal Service on the Validity of Claims for Interest Payments pursuant to Clause 43.1 of General Condition of the contract.

II. BASIS OF COMPUTATION FOR INTEREST PAYMENT

$$Ia = P \times Dd \times i / 365$$

Where:

Ia = Accumulated Interest Amount (in Pesos)

P = Net Amount Billed (in Pesos)

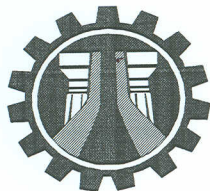
Dd = No. of days of delayed payment (c.d.)

i = Interest rate per annum (in percent)

365 = Number of days per year

III. PROCEDURE

1. The interest rate shall be fifteen percent (15%) per annum or the prevailing rate of interest for commercial borrowings at the time the delay in payment occurred, whichever rates is lower. Prevailing rate of interest for commercial borrowings shall be as issued by the Department of Economic Statistics of the Bangko Sentral ng Pilipinas.
2. The dates certifications were issued by the BOM Director for each progress billings plus the stipulated 28-day reglamentary period as stipulated in Clause 43.1 are used as the date progress billings are due for payment. In cases where the 28-day reglamentary period had lapsed prior to receipt at the Accounting Division of this Department, the date receipt of the progress billing plus 4 to 5 working days will be used as the due date for payment.
3. The dates NCA were released based on the certification issued by the OIC-Department Chief Accountant are used as the date late payments are made.



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EXTRAORDINARY CLAIMS REVIEW COMMITTEE
Bonifacio Drive, Port Area, Manila

ANNEX N

**GUIDELINES IN THE EVALUATION OF INTEREST CLAIMS
DUE TO DELAYED PAYMENTS FOR PMO-ADB/PMO-IBRD PROJECTS**

I. LEGAL BASIS

1. General Condition of Contracts/Conditions of Particular Applications and Appendix to Bid.
2. Legal Opinion rendered by the Legal Service on the validity of claims for interest.

II. BASIS OF COMPUTATION FOR INTEREST PAYMENT

(FORMULA FOR COMPOUNDED MONTHLY INTEREST):

$$I_a = P [(1 + i)^n - 1]$$

Where

- I_a = Accumulated interest
 P = Net amount billed
 i = Interest rate per annum compounded monthly
 n = Number of months payment was delayed

Note: for Uniformity of Computations:

- a. Adopt 6 digits for interest rate and the number of months delayed.
- b. Adopt 2 digits for amounts in pesos or for other currencies.
- c. Adopt 30.4375 days/month (average).

III. RECKONING DATES:

1. The date Disbursement Voucher was received by the Engineer plus the reglamentary/process period for payment as stipulated in the conditions of the contract shall be used as date progress billings are due for payment;
2. The date of Check/Debit Memorandum/NCA Released as Certified by the OIC Department Chief Accountant and/or Certificate from the Bank Branch Manager shall be used as date the payment was made.