



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

897.13 DPWH
12.05.2012

DEC 05 2012

DEPARTMENT ORDER	)	SUBJECT: IMPOSITION OF SANCTIONS ON
	)	CONTRACTORS AND DPWH
NO. 88	)	IMPLEMENTING OFFICIALS
Series of 2012	)	FOR FAILURE TO UNDERTAKE
	)	REPAIR WORKS FOR ANY
	)	DAMAGE TO THE PROJECT
	)	WITHIN THE DEFECTS
	)	LIABILITY PERIOD PRIOR TO
	)	ISSUANCE OF CERTIFICATE OF
	)	ACCEPTANCE

It has been observed that in the implementation of infrastructure projects, some contracts which were issued certification of completion yet were not issued the Certificate of Acceptance even after the one year defects liability period had lapsed. This is because of the failure of the contractor to undertake the repair/corrective works of the defect(s)/damage(s) to the infrastructure projects within the defects liability period on account of the use of inferior quality of materials or substandard works.

Henceforth, in order to correct this malpractice, and for an effective implementation of DPWH infrastructure projects, the provisions of RA 9184 under Section 62-Warranty, is hereby stressed. Under Subsection 62.2.2.1, to quote "***The contractor shall undertake the repair works, at his own expense, of any damage to the infrastructure on account of the use of materials of inferior quality, within ninety (90) days from the time the Head of the Procuring Entity has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the procuring entity shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand***" unquote. Subsection 62.2.2.2, to quote "***The defects liability period shall be covered by the Performance Security of the contractor required in Section 39.1 of this IRR, which shall guarantee that the contractor performs his responsibilities stated in the immediately preceding Section. If the contractor fails to comply with its obligations under Section 62.2.2.1 of this IRR, the procuring entity shall forfeit its performance security, subject its property(ies) to attachment or garnishment proceedings, and perpetually disqualify it from participating in any public bidding. All Payables of the GOP in his favor shall be offset to recover the costs.***" unquote.

Further, all Implementing Offices of the Department shall undertake the following:

- a. Review and list all contracts of infrastructure projects under their office that were already issued a Certificate of Project Completion yet were not issued the Certificate of Acceptance;
- b. Determine the contractor for the project that were already issued a notice to repair works but have not undertaken the works after the defects liability period and after the lapse of ninety days (90) from the time the procuring entity issued such notice;
- c. For contractors who have not complied with the undertaking in under Item b, forfeit the performance security posted by the contractor for the project, and undertake the repair works by administration;
- d. Submit the List of the contractors who did not comply with the above cited provision, to the DPWH Central Office POCW so that they will not be qualified/made eligible to participate in any future biddings.

Likewise, penalty shall be meted to the concerned DPWH Officials who are responsible/answerable for such non-compliance which is considered a less grave offense under Item D.1 – Simple Neglect of Duty as provided in the Revised Rules on Administrative Cases in the Civil Service and shall be punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense.

This Order takes effect immediately.


ROGELIO L. SINGSON
Secretary



Revised Rules on Administrative Cases in the Civil Service



Section 39. Issuance of Subpoena. – The hearing officer may issue *subpoena ad testificandum* to compel the attendance of witnesses and subpoena duces tecum for the production of documents or things:

If a party desires the attendance of a witness and/or the production of documents, he/she shall make a request for the issuance of the necessary *subpoena ad testificandum* and/or *subpoena duces tecum*, at least seven (7) days before the scheduled hearing.

Section 40. Record of Proceedings. – Records of the proceedings during the formal investigation may be taken in shorthand or stenotype or any other means of recording.

Section 41. Filing of Pleadings. – All pleadings filed by the parties with the disciplining authority shall be copy furnished the other party with proof of service. Any pleadings sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case and in case of personal delivery, the date stamped thereon by the disciplining office.

Section 42. Effects of the Pendency of an Administrative Case. – Pendency of an administrative case shall not disqualify respondent from promotion and other personnel actions or from claiming maternity/paternity benefits.

For this purpose, a pending administrative case shall be construed as such when the disciplining authority has issued a formal charge or a notice of charge/s to the respondent.

Section 43. Formal Investigation Report. – Within fifteen (15) days after the conclusion of the formal investigation, a report containing a narration of the material facts established during the investigation, the findings and the evidence supporting said findings, as well as the recommendations, shall be submitted by the hearing officer to the disciplining authority. The complete records of the case shall be attached to the report of investigation.

The complete records shall be systematically and chronologically arranged, indexed and securely bound to prevent loss. A table of contents shall be prepared.

DECISION

Section 44. When Case is Decided. – The disciplining authority shall decide the case within thirty (30) days from receipt of the Formal Investigation Report.

Section 45. Finality of Decisions. – A decision rendered by the disciplining authority whereby a penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days' salary is imposed, shall be final, executory and not appealable unless a motion for reconsideration is seasonably filed. However, the respondent may file an appeal when the issue raised is violation of due process.

If the penalty imposed is suspension exceeding thirty (30) days, or fine in an amount exceeding thirty (30) days' salary, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed.

PENALTIES

SCHEDULE OF PENALTIES

Section 46. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

1. Serious Dishonesty;
2. Gross Neglect of Duty;
3. Grave Misconduct;
4. Being Notoriously Undesirable;

5. Conviction of a crime involving moral turpitude;
 6. Falsification of official document;
 7. Physical or mental incapacity or disability due to immoral or vicious habits;
 8. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws;
 9. Contracting loans of money or other property from persons with whom the office of the employee has business relations;
 10. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his/her official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his/her office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature;
 11. Nepotism; and
 12. Disloyalty to the Republic of the Philippines and to the Filipino people.
- B. The following grave offenses shall be punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense:

1. Less serious dishonesty;
2. Oppression;
Disgraceful and immoral conduct;

4. Inefficiency and incompetence in the performance of official duties;
5. Frequent unauthorized absences, or tardiness in reporting for duty, loafing from duty during regular office hours;
6. Refusal to perform official duty;
7. Gross insubordination;
8. Conduct prejudicial to the best interest of the service;
9. Directly or indirectly having financial and material interest in any transaction requiring the approval of his/her office. Financial and material interest is defined as pecuniary or proprietary interest by which a person will gain or lose something;
10. Owning, controlling, managing or accepting employment as officer, employee, consultant, counsel, broker, agent, trustee, or nominee in any private enterprise regulated, supervised or licensed by his/her office, unless expressly allowed by law;
11. Disclosing or misusing confidential or classified information officially known to him/her by reason of his/her office and not made available to the public, to further his/her private interests or give undue advantage to anyone, or to prejudice the public interest;
12. Obtaining or using any statement filed under the Code of Conduct and Ethical Standards for Public Officials and Employees for any purpose contrary to morals or public policy or any commercial purpose other than by news and communications media for dissemination to the general public; and
13. Recommending any person to any position in a private enterprise which has a regular or pending official transaction with his/her office, unless such recommendation or referral is mandated by (1) law, or (2) international agreements, commitment and obligation, or as part of the function of his/her office.

C. The grave offense of Inefficiency and Incompetence in the performance of official duties is punishable by Demotion. In this case, the guilty person shall be appointed to the next lower position to which he/she is qualified in the plantilla of the agency. In case there is no such next lower position available, he/she shall suffer diminution in salary corresponding to the next lower salary grade.

D. The following less grave offenses are punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense:

1. Simple Neglect of Duty;
2. Simple Misconduct;
3. Discourtesy in the course of official duties;
4. Violation of existing Civil Service Law and rules of serious nature;
5. Insubordination;
6. Habitual Drunkenness;
7. Unfair discrimination in rendering public service due to party affiliation or preference;
8. Failure to file sworn statements of assets, liabilities and net worth, and disclosure of business interest and financial connections including those of their spouses and unmarried children under eighteen (18) years of age living in their households;
9. Failure to resign from his/her position in the private business enterprise within thirty (30) days from assumption of public office when conflict of interest arises, and/or failure to divest himself/herself of his/her shareholdings or interest in private business enterprise within sixty (60) days from assumption of public office when conflict of interest arises; Provided, however, that for those who are already in the service and conflict of interest arises, the official or employee must either resign or divest himself/herself of said interest within the periods hereinabove provided, reckoned from the date when the conflict of interest had arisen; and

10. Engaging directly or indirectly in partisan political activities by one holding non-political office.

E. The less grave offense of Simple Dishonesty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense; six (6) months and one (1) day to one (1) year for the second offense; and dismissal for the third offense.

F. The following light offenses are punishable by reprimand for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense:

1. Simple discourtesy in the course of official duties;
 2. Improper or unauthorized solicitation of contributions from subordinate employees and by teachers or school officials from school children;
 3. Violation of reasonable office rules and regulations;
 4. Frequent unauthorized tardiness (Habitual Tardiness);
 5. Gambling prohibited by law;
 6. Refusal to render overtime service;
 7. Disgraceful, immoral or dishonest conduct prior to entering the service;
 8. Borrowing money by superior officers from subordinates;
 9. Willful failure to pay just debts or willful failure to pay taxes due to the government;
- The term "just debts" shall apply only to:
- a. Claims adjudicated by a court of law, or
 - b. Claims the existence and justness of which are admitted by the debtor.

10. Lobbying for personal interest or gain in legislative halls and offices without authority;
11. Promoting the sale of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases, if there is no prior authority;
12. Failure to act promptly on letters and request within fifteen (15) working days from receipt, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees;
13. Failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees;
14. Failure to attend to anyone who wants to avail himself/herself of the services of the office, or act promptly and expeditiously on public transactions;
15. Engaging in private practice of his/her profession unless authorized by the Constitution, law or regulation, provided that such practice will not conflict with his/her official functions; and
16. Pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations.

Section 47. *Penalty of Fine.* – The following are the guidelines for the penalty of fine:

1. Upon the request of the head of office or the concerned party and when supported by justifiable reason/s, the disciplining authority may allow payment of fine in place of suspension if any of the following circumstances are present:
 - a. When the functions/nature of the office is impressed with national interest such as those involved in maintenance of peace and order, health and safety, education; or

- b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the personnel complement of the office is insufficient to perform such function; and
 - c. When the respondent committed the offense without utilizing or abusing the powers of his/her position or office.
2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day of suspension from the service to one (1) day fine; Provided, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance, the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (1) day suspension is deemed included therein.
 3. The maximum period to pay the fine shall not exceed one (1) year from the time the decision/resolution becomes final and executory. The conversion of suspension into fine is final and executory and, therefore, not subject of appeal or any other similar relief.
 4. The failure of the respondent to pay the fine or part thereof shall cause the reversion to the original penalty of suspension. As such, respondent shall serve the original penalty of suspension imposed, irrespective of the amount he/she has already paid.
 5. Fine may be paid in equal monthly installments subject to the following schedule of payment prescribed below:
 - a. Fine equivalent to one (1) month salary shall be paid within two (2) months;
 - b. Fine equivalent to two (2) months salary shall be paid within four (4) months;
 - c. Fine equivalent to three (3) months salary shall be paid within six (6) months;
 - d. Fine equivalent to four (4) months salary shall be paid within eight (8) months;

Revised Implementing Rules and Regulations

For purposes of this Section, "extraordinary circumstances" shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned.^(a)

- 61.4. All contracts shall be denominated and payable in Philippine currency, and this shall be stated in the Bidding Documents: *Provided, however,* That subject to the guidelines³⁹ issued by the GPPB, the procuring entity may provide in the Bidding Documents that obligations may be paid in foreign currency; *Provided, further,* That should the procuring entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening for purposes of bid comparison and evaluation.^(a)

Section 62. Warranty

- 62.1. For the procurement of goods, in order to assure that manufacturing defects shall be corrected by the supplier, a warranty security shall be required from the contract awardee for a minimum period of three (3) months, in the case of Expendable Supplies, or a minimum period of one (1) year, in the case of Non-expendable Supplies, after acceptance by the procuring entity of the delivered supplies.

The obligation for the warranty shall be covered by either retention money in an amount equivalent to at least ten percent (10%) of every progress payment, or a special bank guarantee equivalent to at least ten percent (10%) of the total contract price. The said amounts shall only be released after the lapse of the warranty period or, in the case of Expendable Supplies, after consumption thereof: *Provided, however,* That the supplies delivered are free from patent and latent defects and all the conditions imposed under the contract have been fully met.^(a)

- 62.2. For the procurement of infrastructure projects, the following warranties shall be made:

- 62.2.1. From the time project construction commenced up to final acceptance, the contractor shall assume full responsibility for the following:

- a) any damage or destruction of the works except those occasioned by *force majeure*; and
- b) safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work;^(a)

- 62.2.2. One (1) year from project completion up to final acceptance or the defects liability period.

- 62.2.2.1. The contractor shall undertake the repair works, at his own expense, of any damage to the infrastructure on account of the use of materials of inferior quality, within ninety (90) days from the time the Head of the Procuring Entity has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the procuring entity shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.

³⁹ Refer to Appendix 10 for the Guidelines on Procurements Involving Foreign-Denominated Bids, Contract Prices, and Payment Using Letters of Credit.

Revised Implementing Rules and Regulations

62.2.2.2. The defects liability period shall be covered by the Performance Security of the contractor required in Section 39.1 of this IRR, which shall guarantee that the contractor performs his responsibilities stated in the immediately preceding Section. If the contractor fails to comply with its obligations under Section 62.2.2.1 of this IRR, the procuring entity shall forfeit its performance security, subject its property(ies) to attachment or garnishment proceedings, and perpetually disqualify it from participating in any public bidding. All payables of the GOP in his favor shall be offset to recover the costs.^(a)

62.2.3. From final acceptance of the project up to the period prescribed in Section 62.2.3.2.

62.2.3.1. The following shall be held responsible for "Structural Defects", *i.e.*, major faults/flaws/deficiencies in one or more key structural elements of the project which may lead to structural failure of the completed elements or structure, or "Structural Failures", *i.e.*, where one or more key structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and/or endangering the safety of the users or the general public:

- a) Contractor – Where Structural Defects/Failures arise due to faults attributable to improper construction, use of inferior quality/substandard materials, and any violation of the contract plans and specifications, the contractor shall be held liable;
- b) Consultants – Where Structural Defects/Failures arise due to faulty and/or inadequate design and specifications as well as construction supervision, then the consultant who prepared the design or undertook construction supervision for the project shall be held liable;
- c) Procuring Entity's Representatives/Project Manager/Construction Managers and Supervisors – The project owner's representative(s), project manager, construction manager, and supervisor(s) shall be held liable in cases where the Structural Defects/Failures are due to his/their willful intervention in altering the designs and other specifications, negligence or omission in not approving or acting on proposed changes to noted defects or deficiencies in the design and/or specifications; and the use of substandard construction materials in the project;
- d) Third Parties - Third Parties shall be held liable in cases where Structural Defects/Failures are caused by work undertaken by them such as leaking pipes, diggings or excavations, underground cables and electrical wires, underground tunnel, mining shaft and the like, in which case the applicable warranty to such structure should be levied to third parties for their construction or restoration works.
- e) Users - In cases where Structural Defects/Failures are due to abuse/misuse by the end user of the constructed facility and/or non-compliance by a user with the technical design limits and/or