



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

097.13 DPWH
10-08-2020

OCT 06 2020

DEPARTMENT ORDER)

90)

NO. _____)

Series of 2020)

**SUBJECT : GUIDELINES AND PROCEDURES IN
TERMINATING CONTRACTS DUE TO
THE FAULT OF THE CONTRACTOR FOR
LOCALLY FUNDED INFRASTRUCTURE
PROJECTS**

Pursuant to the provisions of Annex I of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184 entitled "Guidelines on Termination of Contract", and in order to establish a uniform processing thereof, the following guidelines and procedures in terminating contracts due to the fault of the contractor for locally funded infrastructure projects is hereby issued.

I. RATIONALE

This policy aims to ensure compliance of the Implementing Offices in executing the process of terminating contracts as provided in Annex I of the 2016 Revised IRR (RIRR) of Republic Act (RA) No. 9184 and to prevent any violation of the Implementing Office which may nullify the approved Contract Termination. Further, this policy will address the confusion on who should approve the Contract Termination and the common lapses committed by the Implementing Offices such as, but not limited to, non-attachment of the Verified Report in issuing to the contractor the Notice to Terminate Contract, repeated issuance of the Notice to Terminate Contract, lack of proof to establish that the Notice to Terminate Contract was duly received by the Contractor.

II. SCOPE AND APPLICATION

This guidelines and procedures shall be applicable only for termination of contracts that are locally funded (LFP) as implemented by the Central, Regional or District Engineering Office.

This DO shall likewise be applicable only for termination of contracts due to the fault of the contractor for grounds provided in Item III(A)(2) of Annex I of the 2016 Revised IRR of RA 9184, except for Section III hereof, Delegated Authority, which shall be applicable with all other grounds for termination of contract.

Termination of foreign funded contracts and/or for grounds other than the default of the contractor shall be governed by the provisions of their contract, prevailing laws, rules and regulations as may be applicable.

III. DELEGATED AUTHORITY

The authority to approve the termination of contract for the grounds provided in item II hereof, and other grounds for termination as provided in *Section III Annex I of the 2016 Revised IRR of RA 9184*, irrespective of the amount, are hereby delegated as follows:

- A. For Central (UPMO/Bureau) Projects** – the Undersecretary for UPMO and/or Technical Services;
- B. For Regional Projects** – The incumbent Regional Director for those contracts entered by the Regional Office; and
- C. For District Projects** – The incumbent District Engineer for those contracts entered by the DEO

The above-stated DPWH Official shall be considered as the Head of the IO for purposes of this D.O.

IV. PROCEDURE FOR TERMINATION

A. Duty of the Project Engineer

It shall be the duty of the Project Engineer to prepare a written report (Annex 6) informing the Head of the Implementing Office of the existence of a ground for termination with a recommendation for the issuance of a Notice to Terminate Contract against the contractor, citing reasons thereto and complete submission of the supporting documents within the period as stated hereunder.

1. For Default due to Negative Slippage of 15% while the Project is On-going - Upon reaching the terminal stage (Negative Slippage of 15%) as provided in D.O. 193 S. 2016 but *prior* to the issuance of the Terminal Stage (Notice to Terminate) and submission of documents in Annex 7 hereof;
2. Due to the Contractor's Fault and after the contract time expired, it incurred a negative slippage of ten percent (10%) or more in the completion of the work, – Within three (3) calendar days after reaching 10% negative slippage and upon submission of documents in Annex 7 hereof;
3. Contractor 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 – Within three (3) calendar days after such act of the contractor has been discovered and upon submission of documents provided in Annex 7 hereof;
4. Contractor does not actually have on the project site the minimum essential equipment listed on the Bid necessary to prosecute the Works in accordance with the approve work plan and equipment deployment schedule as required for the project – Within three (3) calendar days after lapse of the period provided by the Project Engineer in the Site Instruction or in the letter of the

Head of IO to provide the minimum essential equipment, and upon submission of documents provided in Annex 7 hereof;

5. Contractor does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations in the contract – Within three (3) calendar days after lapse of the period provided by the Project Engineer in the Site Instruction or in the letter of the Head of IO to execute the works in accordance with the contract, and upon submission of documents provided in Annex 7 hereof;
6. Contractor neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable – Within three (3) calendar days after the lapse of the period provided by the Project Engineer in the Site Instruction or in the letter of the Head of IO to remove materials or to perform a new work that has been rejected as defective or unsuitable, and upon submission of documents provided in Annex 7 hereof;
7. Contractor sub-lets any part of the contract works without the approval by the Procuring Entity – Within three (3) calendar days after such act of the contractor has been discovered and upon submission of documents provided in Annex 7 hereof.

B. Duty of the Implementing Unit/Inspectorate Team

1. Upon receipt of the Project Engineer's written report recommending the issuance of a Notice to Terminate, or upon its own initiative, the Head of IO shall instruct the Implementing Unit/Inspectorate Team to verify within seven (7) calendar days the existence of such ground/s and thereafter and submit a notarized Verified Report (use form provided in Annex 5), together with all the relevant supporting documents thereof (Annex 7);
2. The Head of Implementing Unit/Inspectorate Team shall set forth in the Verified Report its findings as to the existence of grounds or causes for termination and explicitly stating its recommendation for the issuance of a Notice to Terminate Contract.
3. If the Verified Report recommends the issuance of a Notice to Terminate against the contractor, it shall be submitted to the Head of the IO together with the complete supporting documents required in Item A hereof.

C. Issuance of Notice to Terminate

1. Within three (3) calendar days upon receipt of the Verified Report and the required supporting documents, the Head of the IO shall issue a Notice to Terminate Contract to the concerned contractor (Annex 1).
2. The Notice to Terminate shall state the following:
 - a. the contract is being terminated for any of the ground/s aforementioned, and a statement of the acts that constitute the ground/s constituting the same;

- b. the extent of termination, whether in whole or in part;
 - c. an instruction to the Contractor to show cause as to why the contract should not be terminated;
 - d. the contractor shall submit its verified position paper within seven (7) calendar days upon the receipt of the Notice to Terminate together with pertinent evidence to support its claim and that failure to do so shall cause the issuance of the termination of contract;
 - e. to show cause why the erring contractor should not be suspended and/or blacklisted in accordance with Appendix 17 of the RIRR;
 - f. the Verified Report is attached in this Notice and
 - g. special instructions, if any.
3. The **Notice to Terminate shall always be accompanied by the notarized Verified Report of the Implementing Unit/ Inspectorate Team.** The Records Section of the IO or the Project Engineer shall forward the said Notice to Terminate to the concerned contractor on its official business address as indicated in the contract agreement personally or through any legitimate courier. Likewise, the Records Section/ Project Engineer shall secure a proof of delivery from the said courier who delivered the aforesaid notice or shall execute a proof of service if forwarded personally;

D. Show Cause

Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Contractor shall submit to the Head of Implementing Office a verified position paper together with pertinent evidence stating why the contract should not be terminated.

If the Contractor fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of Implementing Office shall immediately issue an order terminating the contract.

E. Rescission of Notice to Terminate

The Head of the Implementing Office may withdraw the issued Notice to Terminate to the contractor, at any time, before receipt of the latter's Verified Position Paper, if it is determined that the grounds for the termination of contract is extinguished as recommended by the Chief of Implementing Unit. A letter (Annex 3) should be forwarded to the contractor informing the same that the Notice to Terminate Contract has been rescinded.

F. Decision

1. Upon receipt of the contractors verified position paper or after the lapse of the period prescribed in the Notice to Terminate, the Head of the IO shall return the records together with the verified position paper of the contractor, if any, to the Chief of Implementing Unit with an instruction to submit within seven (7) calendar days therefrom a Decision as provided in Annex 4 hereof;

2. The Decision shall provide the Head of the Implementing Unit's recommendation as to whether the DPWH shall terminate the contract due to the fault of the contractor based on the evidences provided thereto;
3. The Head of the Implementing Unit shall also ensure that the supporting documents required in item A hereof are attached in the Decision including the following documents:
 - a. Notice to Terminate Contract duly received by the contractor or its authorized representative and the proof of delivery if delivered thru a courier; and
 - b. Verified Position Paper of the contractor and all its supporting documents, if there's any;
4. Within a non-extendable period of three (3) calendar days from receipt of the Decision, the Head of the Implementing Office shall decide to ~~adopt~~ the recommendation provided in the Decision and/or proceed with the termination of contract.

V. NOTICE OF DECISION

Upon approval of the termination of the contract (Decision), the Implementing Unit shall prepare the Notice of Decision to Terminate Contract (Annex 2-A) and attach the approved Decision which shall be forwarded to the contractor and the said Notice shall include an instruction to the contractor to *"appear before the Implementing Office within seven (7) calendar days upon the receipt of the said notice, for the joint inventory of its accomplishment, and that failure to do so shall constitute a waiver on their part for any protest to the inventory conducted by the implementing office"*.

A certified true copy of the proof of delivery in issuing the Notice to Terminate to the contractor shall be attached in the Notice of Decision.

The Records Section/Project Engineer shall secure a proof of delivery from the courier stating that the Notice of Decision was sent and duly received by the contractor in its official business address as indicated in the contract agreement or shall execute proof of service if forwarded to the contractor personally.

VI. CONTRACT TERMINATION REVIEW COMMITTEE (CTRC)

The Head of Implementing Office may create a committee to assist him in the discharge of his functions under these guidelines. All decisions recommended by the CTRC shall be subject to the approval of the Head of Implementing Office.

VII. BLACKLISTING OF THE CONTRACTOR

If warranted and immediately after the Notice of Decision to Terminate Contract has been duly received by the contractor, the Head of Implementing Office shall facilitate

the Suspension and/or Blacklisting of the erring contractor¹. The Head of IO shall prepare a memorandum addressed to the Secretary (thru the concerned Undersecretary for Regional Operations for Regional/DEO contracts) and attach pertinent supporting documents together with its recommendation for the blacklisting of the contractor.


Pursuant to DO 192 Series of 2016, the concerned Undersecretary for Operations shall, in turn, approve or disapprove the imposition of blacklisting by way of administrative sanction on the contractor thru a memorandum addressed to the Secretary. Subsequently, the Secretary shall confirm the approved blacklisting thru the issuance of the corresponding Department Order.

The standard form for Notice to Terminate Contract, Notice of Decision to Terminate Contract, and Notice of Decision Not to Terminate Contract is attached herewith as Annexes 1, 2-A and 2-B, respectively.

Failure of the concerned DPWH personnel to implement the provisions of this Order shall, after due process, make them liable to the penalties prescribed for violation of reasonable office rules and regulation in Rule 10, Administrative Offenses and Penalties of the 2017 Rules on Administrative Cases in the Civil Service dated 03 July 2017.

The Head of Implementing Office shall submit within thirty (30) calendar days upon the effectivity of Contract Termination, a certified true copy of the approved Contract Termination together with all supporting documents to the Bureau of Construction for the updating in PCMA. Likewise, the official Inventory Report on the Physical Accomplishment of the contractor should be attached.

This Order shall take effect immediately and amends pertinent provisions of D.O. 54 Series of 2011, D.O. 192 Series of 2016 and D.O. 193 Series of 2016. This Order shall also amend or supersede any issuances to the contrary.



MARK A. VILLAR
Secretary

6.1.2.RMC/RAE/TCA/ECG/EAA

Department of Public Works and Highways
Office of the Secretary



WINOW02169

¹ D.O. 39 Series of 2015 consistent with GPPB Resolution No. 40-2017



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
IMPLEMENTING OFFICE
(Address)

(Date of Issuance)

Mr./Ms. FULL NAME

Position

Company/Firm

Complete Address

SUBJECT : NOTICE TO TERMINATE CONTRACT

Dear Mr./Ms. (Last Name):

This refers to the contract (Name of Project) in the amount of ₱ (Contract Amount). Pursuant to Section IV.2 Annex I of the 2016 Revised IRR of RA 9184, this notice is hereby issued to terminate the contract (choose one - wholly or partly) for (state the ground/s for termination e.g. Default, Convenience, Insolvency, Unlawful Acts) as stipulated under Section III.A.2 Annex I of the 2016 Revised IRR of RA 9184 which was caused by (state the circumstances which leads to the ground/s for termination e.g. Negative Slippage of 15% or more, etc.). The existence of the aforementioned ground/s for termination was/were duly verified by the Implementing Unit/Inspectorate Team as indicated in the notarized Verified Report.

In view hereof, you are hereby ordered to submit, within seven (7) calendar days upon receipt of this notice, a duly notarized position paper stating why the contract should not be terminated. Likewise, substantiate your claim/reasons with acceptable supporting documents.

Failure to submit a verified position paper within the prescribed period shall cause this Office to issue the Order to Terminate the Contract pursuant to Section IV.3 Annex "I" of the 2016 Revised IRR of RA 9184.

Attached herewith is the notarized Verified Report as required under Section IV.2 Appendix I of the 2016 Revised IRR of RA 9184.

For your information, guidance and compliance.

Very Truly Yours,

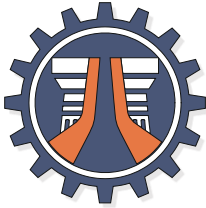
HEAD OF IMPLEMENTING OFFICE

Position

Office Code (e.g. RX.4.AAA/BBB)
(File Name)

Note: Use this Notice if the Head of IO approved the Executive Summary (Contract Termination)

Annex 2-A



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
IMPLEMENTING OFFICE
(Address)

_____(Date of Issuance)_____

Mr./Ms. FULL NAME

Position

Company/Firm

Complete Address

SUBJECT : NOTICE OF DECISION TO TERMINATE CONTRACT

Dear Mr./Ms. (Last Name):

This refers to your contract (Name of Project) in the amount of ₱ (Contract Amount). Pursuant to Section IV.5 Annex I of the 2016 Revised IRR of RA 9184, this Notice is hereby issued to inform your firm that the contract has been **TERMINATED** (choose one - wholly or partly), effective (upon receipt of this notice/or specify a date), for (state the ground/s for termination e.g. Default, Convenience, Insolvency, Unlawful Acts), as stipulated under Section III.A.2 Annex I of the 2016 Revised IRR of RA 9184 which was caused by (state the circumstances which leads to the ground/s for termination e.g. Negative Slippage of 15% or more, etc.), as indicated in the approved Contract Termination, as hereto attached.

In view hereof, you are hereby ordered to appear before this Office, within seven (7) days upon receipt of this notice, for a joint inventory of your accomplishment. Failure to do so shall constitute a waiver on your part for any protest on the inventory report prepared and approved by this Office.

A corresponding Blacklisting Order will be issued in accordance with Appendix 17 of the 2016 Revised IRR of RA 9184 as amended by GPPB Resolution No. 40-2017 if warranted.

Compliance is hereby enjoined.

Very Truly Yours,

HEAD OF IMPLEMENTING OFFICE

Position

Office Code (e.g. RX.4.AAA/BBB)
(File Name)

Note: Use this Notice if the Head of IO disapproved the Executive Summary (Contract Termination)

Annex 2-B



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
IMPLEMENTING OFFICE
Address

____ (Date of Issuance) ____

Mr./Ms. FULL NAME

Position

Company/Firm

Complete Address

SUBJECT : NOTICE OF DECISION NOT TO TERMINATE THE CONTRACT

Dear Mr./Ms. (Last Name):

This refers to your contract (Name of Project) in the amount of ₱ (Contract Amount). Pursuant to Section IV.5 Annex I of the 2016 Revised IRR of RA 9184, this Notice is hereby issued to inform your firm that this Office decided **Not to Terminate the Contract** (choose one – wholly or partly), (state reason for not terminating the contract), per Executive Summary dated _____.

In view hereof, you are hereby ordered to continue with the implementation of the project in accordance with the Contract.

Please be informed that based on the approved schedule, your firm has ____ () calendar days remaining to complete the project. Or (Please be informed that based on the approved schedule, the contract duration has already expired, as such, this Office will apply the liquidated damages.)

Compliance is hereby enjoined.

Very Truly Yours,

HEAD OF IMPLEMENTING OFFICE

Position

Office Code (e.g. RX.4.AAA/BBB)
(File Name)



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
IMPLEMENTING OFFICE
(Address)

Annex 3

____ (Date of Issuance) _____

Mr./Ms. FULL NAME

Position

Company/Firm

Complete Address

SUBJECT : NOTICE TO RESCIND THE ISSUED NOTICE TO TERMINATE THE CONTRACT

Dear Mr./Ms. (Last Name):

This refers to your contract (Name of Project) in the amount of ₱ (Contract Amount). Pursuant to Section IV.4 Annex I of the 2016 Revised IRR of RA 9184, this Notice is hereby issued to inform your firm that the Notice to Terminate Contract (choose one – wholly or partly) is hereby rescinded since the (state the reason for rescinding the issued Notice to Terminate the Contract – e.g. it is determined that the items or works subject of the notice had been completed, delivered, or performed before the Contractor's receipt of the Notice to Terminate).

In view hereof, you are hereby ordered to continue with the implementation of the project in accordance with the plans and specifications.

Please be informed that your firm has ____ () calendar days remaining to complete the project.

Compliance is hereby enjoined.

Very Truly Yours,

HEAD OF IMPLEMENTING OFFICE

Position

Office Code (e.g. RX.4.AAA/BBB)
(File Name)

Note: For DEO-implemented
infrastructure projects

Annex 4-A



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
IMPLEMENTING OFFICE
(Address)

(Date Prepared)

EXECUTIVE SUMMARY

(Proposed Termination of Contract for [State Grounds for Termination e.g. Default])

FOR : District Engineer (FULL NAME)
____ District Engineering Office
Office Address

**SUBJECT : Proposed Contract Termination (choose one – Wholly or Partly)
for (State Grounds for Termination e.g. Default, Convenience,
Unlawful Acts, etc) for the Project: (Name of Project)**

1. Action Recommended :
2. Implementing Unit :
3. Contractor :
4. Reason for this Proposed Contract Termination:
 - ✓ State the circumstances which caused the proposed termination of the contract wholly or partly
 - ✓ State the action taken by the implementing unit e.g. issuance of Calibrated Action, Site Instruction, Coordination Meetings, forwarding letter/correspondence to the contractor
 - ✓ State the action taken by the contractor, if there's any, to address the existence of ground/s for termination based on the issuances of the implementing unit/office, or the inaction of the contractor on the Site Instructions/Notices issued to them
 - ✓ State the findings and recommendation of the Implementing Unit/Inspectorate Team based on the notarized Verified Report
5. Contractual Data :
 - Original Contract Amount :
 - Original Contract Duration:
 - Effectivity of Contract :
 - Original Expiry Date :
 - V.O. No. 1 : Revised Contract Amount and Duration (if there's any)
 - Contract Time Extension : (Duration and Covering Period) if there's any
 - Revised Expiry Date :

Physical Accomplishment : As of _____

Planned Accomplishment : __%

Actual Accomplishment : __%

Slippage : __%

6. Items of work subject of the Notice to Terminate Contract

(For partial termination of the contract, enumerate the items of work to be terminated)

6.1. Item XXX

6.2. Item YYY

6.3. Item ZZZ . . .

(For whole termination of the contract, indicate "All Items of Work")

7. Remarks :

- ✓ Discuss the reasons/justifications of the contractor stated in the Verified Position Paper
- ✓ State the confirmation/refutation of the IO on the reasons/justifications of the contractor as stated in the Verified Report
- ✓ State the recommendation of the Implementing Unit based on all available documents
- ✓ State the legal basis of the Implementing Unit for the action being recommended and explicitly stating the existence of grounds to terminate the contract as mentioned in the Verified Report of the Implementing Unit/ Inspectorate Team.

NAME OF THE CHIEF OF IMPLEMENTING UNIT

Position

APPROVED/DISAPPROVED:

NAME OF THE DISTRICT ENGINEER

Position

Office Code (e.g. R07.10.2/AAA/BBB/CCC)

(File Name)

Note: For RO-implemented
infrastructure projects

Annex 4-B



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
IMPLEMENTING OFFICE
(Address)

(Date Prepared)

EXECUTIVE SUMMARY

(Proposed Termination of Contract for [State Grounds for Termination e.g. Default])

FOR : Regional Director (FULL NAME)

Regional Office No. ____

Office Address

**SUBJECT : Proposed Contract Termination (choose one – Wholly or Partly)
for (State Grounds for Termination e.g. Default, Convenience,
Unlawful Acts, etc) for the Project: (Name of Project)**

1. Action Recommended :

2. Implementing Unit :

3. Contractor :

4. Reason for this Proposed Contract Termination:

- ✓ State the circumstances which caused the proposed termination of the contract wholly or partly
- ✓ State the action taken by the implementing unit e.g. issuance of Calibrated Action, Site Instruction, Coordination Meetings, forwarding letter/correspondence to the contractor
- ✓ State the action taken by the contractor, if there's any, to address the existence of ground/s for termination based on the issuances of the implementing unit/office, or the inaction of the contractor on the Site Instructions/Notices issued to them
- ✓ State the findings and recommendation of the Implementing Unit/Inspectorate Team based on the notarized Verified Report

5. Contractual Data :

Original Contract Amount :

Original Contract Duration:

Effectivity of Contract :

Original Expiry Date :

V.O. No. 1 : Revised Contract Amount and Duration (if there's any)

Contract Time Extension : (Duration and Covering Period) if there's any

Revised Expiry Date :

Physical Accomplishment : As of _____

Planned Accomplishment : __%

Actual Accomplishment : __%

Slippage : __%

6. Items of work subject of the Notice to Terminate Contract

(For partial termination of the contract, enumerate the items of work to be terminated)

6.1. Item XXX

6.2. Item YYY

6.3. Item ZZZ . . .

(For whole termination of the contract, indicate "All Items of Work")

7. Remarks :

- ✓ Discuss the reasons/justifications of the contractor stated in the Verified Position Paper
- ✓ State the confirmation/refutation of the IO on the reasons/justifications of the contractor as stated in the Verified Report
- ✓ State the recommendation of the Implementing Unit based on all available documents
- ✓ State the legal basis of the Implementing Unit for the action being recommended and explicitly stating the existence of grounds to terminate the contract as mentioned in the Verified Report of the Implementing Unit/ Inspectorate Team.

NAME OF THE CHIEF OF IMPLEMENTING UNIT

Position

APPROVED/DISAPPROVED:

NAME OF THE REGIONAL DIRECTOR

Position

Office Code (e.g. R07.2/AAA/BBB/CCC)
(File Name)

Note: For locally funded projects
implemented by the Central Office

Annex 4-C



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
IMPLEMENTING OFFICE
(Address)

(Date Prepared)

EXECUTIVE SUMMARY

(Proposed Termination of Contract for [State Grounds for Termination e.g. Default])

FOR : **Undersecretary AAA B. CCC**
For UPMO Operations/Technical Services

SUBJECT : **Proposed Contract Termination (choose one – Wholly or Partly)**
for (State Grounds for Termination e.g. Default, Convenience,
Unlawful Acts, etc) for the Project: (Name of Project)

1. Action Recommended :
2. Implementing Unit :
3. Contractor :
4. Reason for this Proposed Contract Termination:
 - ✓ State the circumstances which caused the proposed termination of the contract wholly or partly
 - ✓ State the action taken by the implementing unit e.g. issuance of Calibrated Action, Site Instruction, Coordination Meetings, forwarding letter/correspondence to the contractor
 - ✓ State the action taken by the contractor, if there's any, to address the existence of ground/s for termination based on the issuances of the implementing unit/office, or the inaction of the contractor on the Site Instructions/Notices issued to them
 - ✓ State the findings and recommendation of the Implementing Unit/Inspectorate Team based on the notarized Verified Report
5. Contractual Data :
 - Original Contract Amount :
 - Original Contract Duration:
 - Effectivity of Contract :
 - Original Expiry Date :
 - V.O. No. 1 : Revised Contract Amount and Duration (if there's any)
 - Contract Time Extension : (Duration and Covering Period) if there's any
 - Revised Expiry Date :

Physical Accomplishment : As of _____

Planned Accomplishment : __%

Actual Accomplishment : __%

Slippage : __%

6. Items of work subject of the Notice to Terminate Contract

(For partial termination of the contract, enumerate the items of work to be terminated)

6.1. Item XXX

6.2. Item YYY

6.3. Item ZZZ . . .

(For whole termination of the contract, indicate "All Items of Work")

7. Remarks :

- ✓ Discuss the reasons/justifications of the contractor stated in the Verified Position Paper
- ✓ State the confirmation/refutation of the IO on the reasons/justifications of the contractor as stated in the Verified Report
- ✓ State the recommendation of the Implementing Unit/Construction Supervision Consultant (if there's any) based on all available documents
- ✓ State the legal basis of the Implementing Unit for the action being recommended and explicitly stating the existence of grounds to terminate the contract as mentioned in the Verified Report of the Implementing Unit/ Inspectorate Team.

NAME OF THE BUREAU/PROJECT DIRECTOR

Position

APPROVED/DISAPPROVED:

HEAD OF IMPLEMENTING OFFICE

Position

Office Code (e.g. R07.2/AAA/BBB/CCC)

(File Name)

Note: For CO/RO/DEO

Annex 5-A



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
IMPLEMENTING OFFICE
(Address)

(Date Prepared)

MEMORANDUM

FOR : HEAD OF IMPLEMENTING OFFICE
CO/RO/DEO
Office Address

SUBJECT : VERIFIED REPORT for the Proposed Contract Termination (choose one – Wholly or Partly) for (State Grounds for Termination e.g. Default, Convenience, Unlawful Acts, etc) for the Project: (Name of Project)

Paragraph 1: Cite the instruction of the Head of IO to the Inspectorate Team to conduct the Verification on the Existence of Grounds for Termination.

Example:

In compliance with the memorandum dated July 1, 2019 of the Regional Director directing the Regional Inspectorate Team (RIT) to conduct verification on the existence of grounds for termination as reported by the Project Engineer in the memorandum dated June 28, 2019, the undersigned conducted the site inspection on July 3, 2019.

Paragraph 2: Discuss the background of the project (e.g. contractor, approval of contract, effectivity, duration, expiry, approved VO, approved WSO/WRO/CTE, revised expiry).

Paragraph 3: Discuss the grounds for termination as reported by the Project Engineer and cite the official records/documents which support the allegation/s of the Project Engineer on the existence of circumstances causing the grounds for termination

Example:

The Project Engineer, per report dated June 28, 2019, cited Section III.2.a Section III.2.c.ii Annex I of the 2016 Revised IRR of RA 9184 as the circumstances causing the existence of grounds for termination by default which was due to the contractor incurring a negative slippage of 15.5% as of June 27, 2019, and the non-provision of the minimum essential equipment as listed on the Bid. The Project Engineer presented as evidence the duly signed Statement of Work Accomplished as of June 27, 2019, Actual Monthly Equipment Utilization Report and the approved

Equipment and Manpower Utilization Schedule, which was further supported with the Project Logbook.

Paragraph 4: Discuss the actions taken by the implementing office or the Project Engineer on the circumstances leading to the grounds for termination (e.g. Calibrated Actions, Site Instructions, Letters, Coordination Meeting) and the response of the contractor, if any.

Example:

On the other hand, three (3) Site Instructions dated ____, ____, and ____, were issued by the Project Engineer and duly received by the contractor requesting the latter to provide the minimum essential equipment based on the Equipment and Manpower Utilization Schedule. Likewise, the Regional Director, per Calibrated Action for Early Warning Stage and ICU Stage, dated ____, and ____, informed the contractor of its incurred negative slippage, and requested for the submission of catch-up plan to eliminate or address the said negative slippage. The contractor responded to the letter of the Regional Director on ____ and ____ together with the catch-up plan. However, despite the submitted catch-up plan, the negative slippage was not eliminated.

Paragraph 5: Discuss point-by-point the observations of the inspectorate team whether the circumstances causing the ground for termination is existing.

Example:

On the issue on the non-provision by the contractor of the minimum essential equipment, it was observed by the inspectorate team during the site inspection/validation, that only three (3) dump trucks were provided instead of the minimum required six (6). Likewise, only 1 concrete mixer was observed to be in good working condition instead of the required three (3). Also, the required one (1) Concrete Paver was not provided by the contractor. It was also observed in the Monthly Equipment and Manpower Utilization Report that the minimum number of heavy equipment as indicated in the Bid was not provided by the contractor.

On the other hand, as per computation made by the inspectorate team on the actual accomplishment of the contractor, it was established and found to be correct that the actual accomplishment of the contractor is only 30.50% vs the scheduled accomplishment of 46.00% as verified in the approved Construction Schedule, thereby resulting to a negative slippage of 15.5%.

Paragraph 6: Discuss the recommendation of the Inspectorate Team

Example:

In view of the foregoing observations and discussions, the inspectorate finds and concludes that there is an existence of a Ground for Termination by Default thru the fault of the contractor after it has incurred a negative

slippage of 15.5% as of June 27, 2019 and the non-provision of the minimum essential equipment as listed in the bid which is one of the circumstances cited in Section III.2.a Section III.2.c.ii Annex I of the 2016 Revised IRR of RA 9184. As such, the inspectorate team hereby recommends to the Regional Director, to issue to the contractor – AAA Construction, the Notice to Terminate Contract, wholly.

Paragraph 7: Discuss the items of Work to be subjected to Termination

Example:

Hereunder are the Items of work subject of the Notice to Terminate Contract:

(For partial termination of the contract, enumerate the items of work to be terminated)

- 1.1. Item XXX
- 1.2. Item YYY
- 1.3. Item ZZZ . . .

(For whole termination of the contract, indicate "All Items of Work under the Contract will be subject of the Notice to Terminate the Contract")

MEMBER 1
Position

MEMBER 2
Position

MEMBER 3
Position

MEMBER 4
Position

MEMBER 5
Position

HEAD OF THE INSPECTORATE TEAM
Position

(S H O U L D B E N O T A R I Z E D)

Office Code (e.g. R07.2/AAA/BBB/CCC)
(File Name)

Note 1: This is a sample format only. The Inspectorate Team should include details which are not covered in this example.

Note 2: The signatories above is not the fixed number of members of an inspectorate team

Note 3: The sample being cited above is a project Implemented by the Regional Office

Note: For CO/RO/DEO

Annex 5-B

Republic of the Philippines)
_____) s.s.

JOINT VERIFICATION

We, _____, _____ and

After being sworn to in accordance with law, depose and states that: We have caused the preparation and issuance of a Verified Report for (Contract ID No. _____) (Contract Title) as stated in our memorandum to (concerned head of the implementing office) dated _____; That we have read and know that the contents thereof are true and correct; The Verified report is not made to harass as the contents therein have evidentiary support based on personal knowledge and/or authentic documents.

Member 1
Affiant

Member 2
Affiant

Member 3
Affiant

Member 4
Affiant

Member 5
Affiant

Head of the Inspectorate Team
Affiant

SUBSCRIBED and sworn to before me, in the city/municipality of _____, this _____ day of _____, 20____ by:

Name	Valid ID No.	Date and Place Issued
Member 1		
Member 2		
Member 3		
Member 4		
Member 5		
Head of the Inspectorate Team		

(Should be Notarized)



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
IMPLEMENTING OFFICE
(Address)

(Date Prepared)

MEMORANDUM

FOR : HEAD OF IMPLEMENTING OFFICE
CO/RO/DEO
Office Address

**SUBJECT : PROJECT ENGINEER'S REPORT ON THE EXISTENCE OF A
GROUND/S FOR TERMINATION OF CONTRACT FOR
(Project Name)**

Pursuant to Section IV.A of D.O. No. __ S. 2020 (DO on Termination), submitted herewith is the Written Report on the existence of a Ground/s for Termination for the above-mentioned project, under contract with _____.

Paragraph 2: Discuss the background of the project (e.g. contractor, approval of contract, effectivity, duration, expiry, approved VO, approved WSO/WRO/CTE, revised expiry).

Paragraph 3: Discuss the existence of a ground/s for termination and cite the official records/documents which support the allegation/s of the Project Engineer on the existence of circumstances causing the grounds for termination.

Example 1: (Due to negative slippage of 15%)

With reference to the approved Construction Schedule, as of _____, the Contractor has already incurred a negative slippage of 15.00%, which is a ground for Termination by Default as provided in Section III.A.2.a Annex I of the 2016 Revised IRR of RA 9184.

Example 2: (The contractor neglect or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable)

With reference to the issued Site Instruction No. __, dated __, the contractor was instructed to remove the PCCP at Km. __ to Km. __, which measures __ square meters, due to the presence of Longitudinal Cracks on the newly paved PCCP. The contractor was given __ days to remove all the defective PCCP. However, to date, the said instruction was not complied by the contractor. And the said action of the contractor is considered as a ground to terminate contract pursuant to Section III.A.2.c.iv Annex I of the 2016 Revised IRR of RA 9184.

Paragraph 4: Discuss the actions taken by the implementing office or the Project Engineer on the circumstances leading to the grounds for termination (e.g. Calibrated Actions, Site Instructions, Letters, Coordination Meeting) and the response of the contractor, if any.

Example: (Due to negative slippage of 15%)

On the other hand, three (3) Site Instructions dated ____, ____, and ____, were issued by the Project Engineer and duly received by the contractor requesting the latter to provide the minimum essential equipment based on the Equipment and Manpower Utilization Schedule. Likewise, the Regional Director, per Calibrated Action for Early Warning Stage and ICU Stage, dated ____, and ____, informed the contractor of its incurred negative slippage, and requested for the submission of catch-up plan to eliminate or address the said negative slippage. The contractor responded to the letter of the Regional Director on ____ and ____ together with the catch-up plan. However, despite the submitted catch-up plan, the negative slippage was not eliminated.

Paragraph 5: Discuss the recommendation of the Project Engineer

Example:

In view of the foregoing, the undersigned hereby recommends to the Regional Director, to issue to the contractor – AAA Construction, the Notice to Terminate Contract, wholly.

Paragraph 6: Discuss the items of Work to be subjected to Termination

Example:

Hereunder are the Items of work subject of the Notice to Terminate Contract:

(For partial termination of the contract, enumerate the items of work to be terminated)

- 1.4. Item XXX
- 1.5. Item YYY
- 1.6. Item ZZZ . . .

(For whole termination of the contract, indicate "All Items of Work under the Contract will be subject of the Notice to Terminate the Contract")

NAME OF THE PROJECT ENGINEER

Position

Project Engineer Designation

Office Code (e.g. R07.2/AAA/BBB/CCC)
(File Name)

Note 1: This is a sample format only. The Project Engineer should include details which are not covered in this example.

Note 2: The sample being cited above is a project Implemented by the Regional Office

List of Documents to be Prepared by the Project Engineer (To be attached in the PE's Written Report) and for Review and Validation by the Inspectorate Team/Implementing Unit (To be attached in the Verified Report)

1. The Calibrated Actions (Early Warning Stage and ICU Stage) pursuant to D.O. 193 Series of 2016. It shall be duly received by the concerned contractor or his authorized representative. If delivered thru a courier, proof of delivery should be secured.
2. The duly signed Physical Accomplishment Report for each Calibrated Actions (Early Warning and ICU Stage) indicating the negative slippages thereof.
3. Letter reply of the contractor on the issued Calibrated Actions, including the catch-up plan, if there's any.
4. Contract Agreement and the Notice to Proceed
5. Approved Variation Order, if any
6. Approved Work Suspension Order, Continuance of Work Suspension Order, Work Resumption Order, Contract Time Extension, if any
7. Original PERT/CPM/PDM and revised (if any) together with the Monthly Equipment and Manpower Utilization Schedule
8. All approved Monthly Status Reports
9. Contractual Data/Project Profile
10. Physical Accomplishment Report duly signed by the Project Engineer (as of the date when the Project Engineer prepared the Written Report pursuant to Section IV.A hereof)
11. Pictures (Geotagged)
12. Other relevant documents deemed necessary to further support the report of the Project Engineer / Verified Report of the Inspectorate Team/Implementing Unit regarding the existence of the grounds for termination:
 - a. For Default due to Negative Slippage of 15% while the Project is On-going
 - Actual Monthly Equipment and Manpower Utilization Report
 - Relevant Site Instructions of the Project Engineer and duly received by the contractor/authorized representative (Instructing to provide the necessary resources at the project site, etc.)
 - Relevant Letter of the Implementing Office duly received by the Contractor (Requesting for meeting to discuss the slow progress/ Instructing to provide the necessary resources at the project site, etc.)
 - Letter reply of the Contractor to the issued Site Instruction/s and/or Letter of the IO, if there's any

- Certified copy of relevant pages in the Project Logbook (showing the available equipment and manpower at the project site)
- b. Due to the Contractor's Fault and after the contract time expired, it incurred a negative slippage of ten percent (10%) or more in the completion of the work
- Physical Accomplishment Report after the contractor incurred a negative slippage of 10% or more (After the expiry of the project and the contractor incurred a negative slippage of 10%)
- c. Contractor 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
- Copy of the Written Notice of the IO duly received by the Contractor to proceed works at the site expeditiously
 - Certified copy of relevant pages in the Project Logbook (Reporting that the contractor abandons the contract works/fails to show at the project site, refuses or fails to comply a valid instruction)
- d. Contractor does not actually have on the project site the minimum essential equipment listed on the Bid necessary to prosecute the Works in accordance with the approved work plan and equipment deployment schedule as required for the project
- Project Engineer's Report on the Mobilization of the Minimum Essential Equipment (Supporting document during the request of the contractor for the Advance Payment)
 - Actual Monthly Equipment and Manpower Utilization Report
 - Relevant Site Instructions of the Project Engineer and duly received by the contractor/authorized representative (Instructing to provide the necessary resources at the project site, etc.)
 - Relevant Letter/s of the Implementing Office duly received by the Contractor (Instructing to provide the necessary resources at the project site, etc.)
 - Letter reply of the Contractor to the issued Site Instruction/s and/or Letter of the IO, if there's any
 - Certified copy of relevant pages in the Project Logbook (which indicates the number of equipment available at the project site)
- e. Contractor does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations in the contract
- Relevant Site Instructions of the Project Engineer and duly received by the contractor/authorized representative (Notifying the contractor that the works performed is not in accordance with the contract, or its failure to carry out its obligations in the contract, etc.)
 - Relevant Letter/s of the Implementing Office duly received by the Contractor (Notifying the contractor that the works performed is not in accordance with the contract, or its failure to carry out its obligations in the contract, etc.)
 - Letter reply of the Contractor to the issued Site Instruction/s and/or Letter of the IO, if there's any

- Certified copy of relevant pages in the Project Logbook (reporting the incident)
- f. Contractor neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable
- Relevant Site Instructions of the Project Engineer and duly received by the contractor/authorized representative (Instructing to remove materials or perform works that has been rejected as defective or unsuitable, etc.)
 - Relevant Letter/s of the Implementing Office duly received by the Contractor (Requesting to remove materials/perform new work that has been rejected as defective or unsuitable, etc.)
 - Letter reply of the Contractor to the issued Site Instruction/s and/or Letter of the IO, if there's any
 - Certified copy of relevant pages in the Project Logbook (reporting the incident)
- g. Contractor sub-lets any part of the contract works without the approval by the Procuring Entity
- Geotagged Pictures of the personnel and equipment at the project site which are not connected to the contractor and no prior approval was issued by the IO
 - Copy of the official list of contractor's manpower for the project
 - Copy of the Organizational Chart of the Contractor
 - Copy of the list of equipment submitted by the contractor in its bid
13. Additional Supporting Documents to be attached/prepared by the Inspectorate Team/ Implementing Unit in Submitting the Verified Report
- Project Engineer's Report (Written Report)
 - Verified Report
 - Geotagged Pictures during the conduct of site inspection/validation of the Inspectorate Team/ Implementing Unit