



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

097.7 DPWH
66.07.2020

June 1, 2020

DEPARTMENT MEMORANDUM)
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CIRCULAR NO. 43)
Series of 2020 June 06.07.2020)

FOR / TO : **Undersecretaries**
Assistant Secretaries
Service Directors
Bureau Directors
Regional Directors
Heads of UPMOs
District Engineers
BAC Chairpersons and Members
This Department

For information and guidance, attached is a copy of **GPPB RESOLUTION No. 02-2020**, re: **"HARMONIZING THE RULES ON IMPOSITION OF LIQUIDATED DAMAGES PROVIDED UNDER ANNEXES "D" AND "E" OF THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184 WITH GPPB RESOLUTION NO. 07-2019."**

A copy of said Resolution may also be downloaded from the **DPWH website**: <http://dpwhweb>. If an office cannot access the DPWH website, a hard copy may be obtained from the Records Management Division, HRAS, upon request.

For dissemination to all concerned.

MARICHU A. PALAFOX, CESO III
Assistant Secretary for Support Services

Encl: GPPB Resolution No. 02-2020

Cc: Office of the Secretary

12.1.1 CGSC/EDY/MNC/MVSG

HARMONIZING THE RULES ON IMPOSITION OF LIQUIDATED DAMAGES PROVIDED UNDER ANNEXES "D" AND "E" OF THE 2016 REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184 WITH GPPB RESOLUTION NO. 07-2019

WHEREAS Republic Act (RA) No. 9184 otherwise known as the "Government Procurement Reform Act" took effect on 26 January 2003, while its 2016 Revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

WHEREAS, Section 63 of RA No. 9184 and its 2016 revised IRR authorizes the Government Procurement Policy Board (GPPB) to formulate and amend public procurement policies, rules and regulations, and its IRR, whenever necessary;

WHEREAS, during the 2nd Regular Meeting of the IATWG on 28 February 2019, the GPPB-TSO presented the proposed amendments to Item III(A)1(a), (b) and (c) of Annex "I" of the 2016 revised IRR of RA No. 9184 and Clauses 23.1 until 23.5 of the General Conditions of the Contract (GCC), 5th Edition of the Philippine Bidding Documents (PBD) for the Procurement of Goods;

WHEREAS, the amendments were proposed to address the request of the Department of Education to reconcile Section 68 of the 2016 revised IRR and the provisions of Annex "I" providing for the Guidelines on Termination of Contract;

WHEREAS, during that same meeting, the GPPB-TSO likewise proposed amendment to Clauses on Liquidated Damages of the GCC, 5th Edition of the PBDs for the Procurement of Goods, Infrastructure Projects and Consulting Services removing the threshold of ten percent (10%) as the maximum amount of liquidated damages;

WHEREAS, during the 2nd Regular Meeting of the GPPB, the Board approved the amendments and issued GPPB Resolution No. 07-2019 dated 08 March 2019;

WHEREAS, the provisions on imposition of liquidated damages in Annexes "D" and "E" of the 2016 revised IRR of RA No. 9184 which provides for the Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials and Contract Implementation Guidelines for the Procurement of Infrastructure Projects, respectively, were not included in the proposed amendments;

WHEREAS, in order to harmonize the rules relevant to the imposition of liquidated damages, the GPPB-TSO, during the 2nd Regular Meeting of the IATWG held on 13 February 2020 proposed to amend Item 3.2 of Annex "D" and Item 8.5 of Annex "E" of the 2016 revised IRR to harmonize the provisions on liquidated damages with GPPB Resolution No. 07-2019;

WHEREAS, the GPPB-TSO, during the 2nd Regular Meeting of the IATWG last 13 February 2020, presented the proposed amendments to the provision of Annexes "D" and "E" and after careful review and consideration, the IATWG resolved to recommend, for approval of the Board, the proposed amendments to Annexes "D" and "E" of the 2016 revised IRR of RA No. 9184;

WHEREAS, during the 2nd Regular Meeting of the GPPB last 27 February 2020, the GPPB-TSO presented the proposed amendments to Annexes "D" and "E" of the 2016 revised IRR of RA No. 9184 as endorsed by the IATWG;

WHEREAS, during the same meeting, the GPPB-TSO proposed further that additional provisions to highlight that procuring entities, in the implementation of infrastructure projects, must apply the calibrated measures adopted to address negative slippage as provided for in GPPB Circular No. 03-2019;¹

WHEREAS, after careful review and consideration, the Board resolved to adopt the proposed amendments to Annexes "D" and "E" of the 2016 revised IRR of RA No. 9184.

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the amendments to Annexes "D" and "E" of the 2016 revised IRR of RA No. 9184 providing for the Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials and Contract Implementation Guidelines for the Procurement of Infrastructure Projects, respectively, hereto attached as **Annex "A"**.

This Resolution shall take effect immediately.

APPROVED this 27th day of February 2020 at City of Manila, Philippines.

¹ Issued through GPPB Resolution No. 05-2019 dated 08 March 2019

(SGD)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(SGD)

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

(SGD)

DEPARTMENT OF FINANCE

DEPARTMENT OF HEALTH

(SGD)

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

(SGD)

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

(SGD)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

DEPARTMENT OF TRADE AND INDUSTRY

(SGD)

DEPARTMENT OF TRANSPORTATION

PRIVATE SECTOR REPRESENTATIVE

**2016 REVISED IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT
(RA) NO. 9184**

Annex "D" - Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials	
ORIGINAL	AMENDMENT
<p>3. Liquidated Damages</p> <p>3.1 Xxx</p> <p>3.2 In no case shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the procuring entity concerned may rescind the contract and impose appropriate sanctions over and above the liquidated damages to be paid.</p>	<p>3. Liquidated Damages</p> <p>3.1 Xxx</p> <p>3.2. In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the Procuring Entity concerned may rescind the contract and impose appropriate sanctions over and above the liquidated damages to be paid.</p>

Annex “E” - Contract Implementation Guidelines for the Procurement of Infrastructure Projects	
ORIGINAL	AMENDMENT
<p>8. LIQUIDATED DAMAGES</p> <p>8.1. Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the procuring entity for liquidated damages, and not by way of penalty, an amount, as provided in the conditions of contract, equal to at least one tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for every day of delay.</p> <p>8.2. A project or portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned procuring entity.</p> <p>8.3. To be entitled to such liquidated damages, the procuring entity does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or collect such liquidated damages from the retention money or other securities posted by the contractor whichever is convenient to the procuring entity.</p> <p>8.4. In case that the delay in the completion of the work exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the contractor, the procuring entity concerned may rescind the contract, forfeit the contractor's performance security and takeover the prosecution of the project or award the same to a qualified contractor through negotiated contract.</p> <p>8.5. In no case however, shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the contract shall automatically be taken over by the procuring entity concerned or award the same to a qualified contractor through negotiation and the erring contractor's performance security shall be forfeited.</p> <p>8.6. For terminated contracts where negotiation shall be undertaken, the procedures prescribed in IRR shall be adopted.</p>	<p>8. NEGATIVE SLIPPAGE</p> <p>The Procuring Entity shall ensure the timely implementation of infrastructure projects by monitoring the performance of the contractors.</p> <p>When the contractor incurs negative slippage during the contract duration, the Procuring Entity shall implement the calibrated measures provided under GPPB Circular No. 03-2019 dated 8 March 2019, entitled “Guidance on Contract Termination Due to Fifteen Percent (15%) Negative Slippage by the Contractor in Infrastructure Projects.” (New)</p>
	<p>9. LIQUIDATED DAMAGES (<i>revised and renumbered</i>)</p> <p>9.1. Once the contract duration expires, including any time extension duly granted, and</p>

	<p>the contractor refuses or fails to satisfactorily complete the work, the Procuring Entity shall impose upon the contractor in default liquidated damages. Liquidated damages is an amount equal to at least one tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for every day of delay.</p> <p>9.2. In computing for liquidated damages, the Procuring Entity determines the usability of the project. A project or portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned Procuring Entity.</p> <p>9.3. To be entitled to such liquidated damages, the Procuring Entity does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the contractor under the contract or collect such liquidated damages from the retention money or other securities posted by the contractor, or a combination thereof, whichever is convenient to the Procuring Entity.</p> <p>9.4. In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the Procuring Entity has the following options:</p> <p>9.4.1. Terminate the contract pursuant to the Guidelines on Termination of Contract and forfeit the erring contractor's performance security. After termination, the Procuring Entity may either (i) take over the contract or (ii) resort to any of other alternative methods of procurement provided under R.A. No. 9184 and its 2016 revised Rules and Regulations; or</p> <p>9.4.2. Allow the contractor to continue the works without prejudice to the continued imposition of liquidated damages until the works have been completed. This does not, however, preclude the Procuring Entity in resorting to Termination of Contract under Annex "I" of the 2016 revised IRR of RA No. 9184.</p>
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