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NHQ-PCG/CG-4

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CIRCULAR
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**IMPOSITION OF LIQUIDATED DAMAGES FOR THE PROCUREMENT OF PCG
GOODS, INFRASTRUCTURE PROJECTS AND CONSULTING SERVICES**

I. AUTHORITY:

- A) Articles 2226- 2228, Civil Code of the Philippines;
- B) Section 68 (Liquidated Damages) of Rule XXII of the 2016 Revised Implementing Rules and Regulations (IRR) of the Republic Act (R.A.) No. 9184;
- C) Item 3 "Liquidated Damages" of the 2016 Revised IRR of R.A. 9184;
- D) Item 9 "Liquidated Damages" of the 2016 Revised IRR of R.A. 9184;
- E) GPPB Resolution No. 07-2019: Approving amendments to Item III A(1)(a), (b) and (c) of Annex "I" of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184, clauses 23.1 until 23.5 of the General Conditions of the Contract, Philippine Bidding Documents for the Procurement of Goods and clause on Liquidated Damages of the General Conditions of the Contract, Philippine Bidding Documents for the Procurement of Goods, Infrastructure Projects and Consulting Services;
- F) GPPB Resolution No. 02-2020: 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; and
- G) Volume II of the Second (2nd) Edition of the Generic Procurement Manual-Manual of Procedures for the Procurements of Goods;
- H) Volume III of the Second (2nd) Edition of the Generic Procurement Manual-Manual of Procedures for the Procurements of Infrastructure Projects; and
- I) Volume IV of the Second (2nd) Edition of the Generic Procurement Manual-Manual of Procedures for the Procurements of Consulting Services;
- J) NHQ-PCG/CGLSC Cir Nr 03-19 dated 05 March 2019 "Designation of Project Implementation Officer (PrIO);"
- K) NHQ-PCG/CGLSC Cir Nr 03-19 Addendum 01-19 dated 21 May 2019.

II. PURPOSE:

The purpose of this Circular is to provide guidelines on the imposition of Liquidated Damages for the procurement of PCG goods, infrastructure projects and consulting services.

III. SCOPE:

This Circular applies to all PCG units who are engaged in procurement activities such as CG Districts / Major Commands / Operational Commands / Functional Commands / Special Units.

IV. DEFINITION OF TERMS:

- a. **Consulting Services** - refer to services for infrastructure projects and other types of projects or activities of the GoP requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the GoP to undertake such as, but not limited to: (i) advisory and review services; (ii) preinvestment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.
- b. **End-user Unit** – refers to any PCG unit that needs and uses the goods, infrastructure project, or consulting services procured.
- c. **Goods** - refer to all items, supplies, materials and general support services, except Consulting Services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the Procuring Entity for such services. The term “related” or “analogous services” shall include, but is not limited to, lease of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity.
- d. **Implementing Unit** – refers to the PCG Unit or Command that implements the project or contract, for which the goods, infrastructure project, or consulting service procured; for purposes of this Circular, the Implementing Unit is not necessarily the End-User Unit.
- e. **Infrastructure Projects** – include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government.
- f. **Liquidated Damages** – refers to the damages agreed upon by parties to a contract, to be paid in case of breach thereof. For the procurement of Goods, Infrastructure Projects and Consulting Services, the amount of the liquidated

damages agreed upon or at least one-tenth of one percent (1/10 of 1%) of the cost of the unperformed portion for every day of delay.

- g. **Procurement** - refers to the acquisition of goods, consulting services, and the contracting for infrastructure projects by the Procuring Entity. In case of projects involving mixed procurements, the nature of the procurement, i.e., Goods, Infrastructure Projects or Consulting Services, shall be determined based on the primary purpose of the contract. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of R.A. 10752 and other applicable laws, rules and regulations.
- h. **Procuring Entity** – refers to the Commandant, Commanders of Procuring Unit or his duly authorized Coast Guard Districts, Major Commands, or PCG Units where the procurement is decentralized, the Head of each decentralized unit or the Commander of PCG Units shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the Commandant, PCG.
- i. **Project Implementation Officer (PrIO)** – refers to the Commanding Officer of the Implementing Unit who effectively managing a specific project of the PCG, including keeping track of its progress and ensuring activities' completion.

V. GUIDELINES AND PROCEDURES:

A. Imposition of Liquidated Damages for the Procurement of Goods, Supplies and Materials

1. When the supplier fails to satisfactorily deliver goods under the contract within the specified delivery schedule, inclusive of duly granted time extensions, if any, the supplier shall be liable for damages for the delay and shall pay Liquidated Damages to the PCG Districts / Major Commands / Operational Commands / Special Units, being the Procuring Entity, not by way of penalty, an amount equal to one-tenth of one percent (1/10 of 1%) of the cost of the goods that are required to be provided for every day of delay until such goods are finally delivered and accepted by the procuring entity concerned. The PCG Districts / Major Commands / Operational Commands / Special Units need not prove that it has incurred actual damages to be entitled to liquidated damages. Such amount shall be deducted from any money due or which may become due to the supplier or collected from any securities or warranties posted by the suppliers, whichever is convenient to the procuring entity concerned.
2. In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units concerned may rescind the contract and impose appropriate sanctions over and above the liquidated damages to be paid.

B. Imposition of Liquidated Damages for the Procurement of Infrastructure Projects

1. The PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units shall ensure the timely implementation of infrastructure projects by monitoring the performance of the contractors.
2. When the contractor incurs negative slippage during the contract duration, the PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units shall implement the calibrated measures in response to delays in the implementation of infrastructure projects are hereby adopted.

2.1 Negative slippage of five percent (5%)

The contractor shall be given a warning and be required to:

- 2.1.1 Submit a detailed "catch-up" program every two weeks in order to eliminate the slippage and to restore the project to its original schedule;
- 2.1.2 Accelerate work and identify specific physical targets to be accomplished over a definite period of time; and
- 2.1.3 Provide additional input resources such as the following: money, manpower, materials, equipment, and management, which shall be mobilized for this action.

The PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units shall exercise closer supervision and meet the contractor every other week to evaluate the progress of work and resolve any problems and bottlenecks.

2.2 Negative slippage of ten percent (10%)

The contractor shall be issued a final warning and be required to come-up with a revised detailed "catch-up" program with weekly physical targets together with the required additional input resources.

The PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units shall intensify on-site supervision and evaluation of the project performance to at least once a week and prepare contingency plans for a possible termination of the contract or take-over of the work by administration or contract.

2.3 Negative Slippage of fifteen percent (15%)

The implementing unit shall initiate termination of the contract or take-over of the work by administration or contract in accordance with section 53.3 of the 2016 revised IRR of RA No. 9184 and the

Revised Guidelines for the Implementation of Infrastructure Projects by Administration. It shall likewise take proper transitory measures to minimize work disruptions, e.g., take over by administration while negotiation or rebidding is on-going.”

3. Once the contract duration expires, including any time extension duly granted, and the contractor refuses or fails to satisfactorily complete the work, the PCG Districts / Major Commands / Operational Commands / Special Units shall impose upon the contractor in default liquidated damages. Liquidated damages is an amount equal to at least one tenth of one percent (1/10 of 1%) of the cost of the unperformed portion of the works for every day of delay.
4. In computing for liquidated damages, the PCG Districts / Major Commands / Operational Commands / Special Units shall determine the usability of the project. A project or a portion thereof may be deemed usable when it starts to provide the desired benefits as certified by the targeted end-users and the concerned PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units.
5. To be entitled to such liquidated damages, the PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units 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.
6. In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units has the following options:
 - 6.1 Terminate the contract pursuant to the Guidelines on Termination of Contract and forfeit the erring contractor's performance security. After termination, the PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units 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
 - 6.2 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 PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units in resorting to Termination of Contract under Annex I of the 2016 revised IRR of RA No. 9184.

C. Imposition of Liquidated Damages for the Procurement of Consulting Services

1. When the consultant fails to satisfactorily complete the services required under the contract within the specified period, inclusive of duly granted time extensions, if any, the consultant shall be liable for damages for the delay. Consequently, it will have to pay the procuring Entity liquidated damages in an amount equal to one-tenth (1/10 of 1%) of the cost of unperformed portion for every day delay.
2. In case the sum of liquidated damages reaches ten percent (10%) of the contract amount, the contract may be rescinded or terminated by the Procuring Entity, without prejudice to other courses of action and remedies available under the circumstances. In case the contract is rescinded or terminated, the Procuring Entity may take over the contract or award the same to a qualified consultant through negotiated procurement. In addition to the liquidated damages, the erring consultant's performance security shall also be forfeited.
3. In case the delay in the completion of the services exceeds ten percent (10%) of the specified contract time plus any time extension duly granted to the consultant, the Procuring Entity may rescind the contract. It then forfeits the consultant's performance security and takes over prosecution of the contract or award the same to a qualified consultant through negotiated procurement.

VI. DUTIES AND RESPONSIBILITIES:

1. Implementing Unit / Procuring Entity / Project Implementation Officer (PrIO):

- a. Responsible for managing, keeping track of progress and monitor the contract time schedule of the project.
- b. Responsible for informing the CG Procurement as Secretariat that there is delay in the delivery of procurement of goods, infrastructure projects or consulting services.
- c. Within a reasonable time from the first day of delay, shall write a letter to supplier/contractor/consultant informing that they are subject for liquidated damages in the amount equal to at least one tenth of one percent (1/10 of 1%) of the cost of the unperformed portion of the delivery, works and services for every day of delay

2. Coast Guard Procurement Service (Secretariat):

- a. Assists in computing the liquidated damages of the project which is the amount equal to at least one tenth of one percent (1/10 of 1%) of the cost of the unperformed portion of the delivery, works and services for every day of delay.

- b. Assists the Implementing Unit / Project Implementation Officer (PrIO) in the process of all PCG projects during progress billing or request for payment.
- c. Also monitors and track the progress of all the PCG Procurement projects and recommends to PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units to impose liquidated damages if the supplier/contractor/consultant refuses or fails to satisfactorily deliver goods, complete the work or performs within the specified delivery schedule including any granted time extensions.
- d. When the security is forfeited in favor of the PCG, CGPS or its designated Procurement Unit shall inform CGFS/FSU in writing and provide the necessary supporting documents that may be required by the bank or surety company.

3. Coast Guard Accounting Service Office:

- a. Check and arithmetical/computational errors of the amount of liquidated damages computed by Technical Inspection and Acceptance Committee (TIAC).
- b. Check if the liquidated damages reported by the TIAC is deducted to the Disbursement Voucher (DV) prepared by the requesting unit and/or deduct the liquidated damages reported by the TIAC to the retention money of the supplier/contractor/consultant.
- c. Record any securities or warranties collected by the CGFS.

4. Coast Guard Finance Service:

- a. CGFS or its designated FSU shall maintain the custody of bid, performance and warranty securities and other guarantees in the form of bank draft/guarantee or irrevocable letter of credit and surety bond.
- b. Securities shall be maintained untorn and unaltered until its validity period.
- c. Upon receipt of a written notice of forfeited security from CGPS/Procurement Unit, the CGFS/FSU through its bonded collecting officer shall collect the security as soon as possible.

5. Technical Inspection and Acceptance Committee (TIAC):

The TIAC shall note in the Inspection and Acceptance Report (IAR) the delay and the amount of liquidated damages to be imposed on the supplier/contractor.

VII. REPEALING CLAUSE:

All policies and regulations which are inconsistent with this Circular are hereby repealed and modified accordingly.


VIII. EFFECTIVITY:

This Circular shall take effect fifteen days after publication.

BY COMMAND OF COAST GUARD ADMIRAL ABU:

OFFICIAL:

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CG COMMO
Chief of Coast Guard Staff


JAYSIEBELL B FERRER
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