

GOVERNMENT PROCUREMENT POLICY BOARD

CIRCULAR No. 02-2003

December 1, 2003

TO: Heads of Departments, Bureaus, Officers and Agencies of the National Government; Government-Owned or Controlled Corporations (GOCCs), Including State Universities and Colleges (SUCs) and Government Financial Institutions (GFIs); Local Government Units (LGUs); and All Others Concerned

SUBJECT: Clarification/Correction of Section 3.2 of Annex “D” of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184)

1.0 Purpose and Coverage

This circular is issued to inform the members of the Bids and Awards Committee (BAC), BAC Secretariat, Technical Working Group (TWG), and all other procurement officials concerned of all departments, bureaus, offices and agencies of the National Government, GOCCs, SUCs, GFIs, and LGUs, including all Auditors, of the clarification/correction on the maximum allowable liquidated damages on Annex “D” (Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials), of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184), otherwise known as “Government Procurement Reform Act.”

2.0 Clarification/Correction of Section 3.2 of Annex “D” of the IRR-A of R.A. 9184

2.1. Section 68 of the IRR-A of R.A. 9184 provides for the allowable cumulative amount of liquidated damages, as follows:

All contracts executed in accordance with the Act and this IRR-A shall contain a provision on liquidated damages which shall be payable in case of breach thereof. For the procurement of goods and consulting services, the amount of the liquidated damages shall be at least equal to one-tenth of one percent (0.1%) of the cost of the unperformed portion for every day of delay. For the procurement of infrastructure projects, the amount of the liquidated damages shall be in accordance with

Annex “E.” Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the procuring entity shall rescind the contract, without prejudice to other courses of action and remedies open to it.

- 2.2. Section 3.2, Annex “D” (Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials), of IRR-A of R.A. 9184 provides for the total sum of liquidated damages allowed before a procuring entity shall terminate a contract and impose sanctions, to wit:

The procuring entity 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 supplier, whichever is convenient to the procuring entity concerned. In no case shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price, in which event the procuring entity concerned shall automatically terminate the contract and impose appropriate sanctions over and above the liquidated damages to be paid.

- 2.3. Considering the apparent conflict between Section 68 of IRR-A and Section 3.2 of its Annex “D” on the percentage cap of the allowable liquidated damages before rescission of contract shall be resorted to by a procuring entity; particularly, where the former only provides for a limit of ten percent (10%) of the amount of the contract, while the latter allows up to fifteen percent (15%) of the contract price, it is hereby deemed necessary to clarify that Section 68 of IRR-A prevails over Section 3.2 of its Annex “D”.

3.0 Section 3.2 of Annex “D” of IRR-A of R.A. 9184

- 3.1. In view of the foregoing, this is to inform all concerned that the allowable total sum of liquidated damages for the procurement of goods provided under Section 3.2, Annex “D,” IRR-A of R.A. 9184 shall be understood to mean as not exceeding ten percent (10%) of the total contract price, in accordance with Section 68 of IRR-A. As such, this provision is hereby clarified/corrected to read as follows:

The procuring entity 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 supplier, whichever is convenient to the procuring entity concerned. 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 shall automatically **rescind** the contract and impose appropriate sanctions over and above the liquidated damages to be paid.

Please be guided accordingly.

(Sgd)

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