

GOVERNMENT PROCUREMENT POLICY BOARD

RESOLUTION NO. 018-2004

APPROVING THE GUIDELINES ON TERMINATION OF CONTRACTS

WHEREAS, Republic Act No. 9184 (R.A. 9184), otherwise known as “Government Procurement Reform Act”, and its Implementing Rules and Regulations Part A (IRR-A) took effect on January 26, 2003 and October 8, 2003 respectively;

WHEREAS, the Government Procurement Policy Board (GPPB) shall protect the national interest in all matters affecting public procurement and shall formulate public procurement polices, rules and regulations, and amend, whenever necessary under Section 65 of R.A. 9184;

WHEREAS, in line with the said mandate, the GPPB sees the need to formulate guidelines for termination of contracts in relation to procurement contracts entered into by the government;

WHEREAS, the GPPB tasked the GPPB-Technical Support Office (GPPB-TSO) to make an initial draft of the said guidelines to be submitted and reviewed by the GPPB;

WHEREAS, the first draft of the Guidelines on Termination of Contracts was submitted by the GPPB-TSO to the Inter-Agency Technical Steering Committee (IATSC) of the GPPB on October 12, 2004 for its initial review and evaluation;

WHEREAS, during the aforesaid meeting, members of the IATSC gave comments and suggestions, and the GPPB-TSO made the changes and revisions according to the agreement and resolution of the committee;

WHEREAS, after the review by the IATSC, the draft Guidelines on Termination of Contracts was presented by the GPPB-TSO during the 7th GPPB meeting held on November 22, 2004, wherein the GPPB gave some comments and suggestions, and tasked the GPPB-TSO to revise the guidelines accordingly;

WHEREAS, the GPPB reviewed the final draft of the Guidelines on Termination of Contracts submitted by the GPPB-TSO during its 8th meeting held on December 22, 2004, at Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City, a copy of which is attached hereto as Annex “A” to form an integral part hereof;

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NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested in **US** by law, hereby **RESOLVE**, to confirm, adopt and approve, as **WE** hereby confirm, adopt and approve the Guidelines on Termination of Contracts attached hereto as Annex "A".

This resolution shall take effect immediately.

APPROVED this 22nd day of December, 2004 at Pasig City, Philippines

EMILIA T. BONCODIN

Secretary
Department of Budget and Management

ROMULO L. NERI

Director General
National Economic and Development
Authority

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

**DEPARTMENT OF NATIONAL
DEFENSE**

DEPARTMENT OF EDUCATION

DEPARTMENT OF HEALTH

**DEPARTMENT OF INTERIOR AND
LOCAL GOVERNMENT**

DEPARTMENT OF ENERGY

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

DEPARTMENT OF FINANCE

GOVERNMENT PROCUREMENT POLICY BOARD

RESOLUTION NO. 018-2004

**DEPARTMENT OF TRADE AND
INDUSTRY**

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

PRIVATE SECTOR REPRESENTATIVE

Attested by:

JOSE MARTIN C. SYQUIA
Board Secretary, GPPB
Executive Director, GPPB-TSO

GUIDELINES ON TERMINATION OF CONTRACTS

I. PURPOSE, SCOPE, AND APPLICATION

These guidelines aim to promote fairness in the termination of procurement contracts and to prescribe contract conditions and measures to enable government to protect its interests. For this purpose, policies and procedures relating to the whole or partial termination of government procurement contracts of goods, infrastructure projects, and consulting services are herein established.

II. DEFINITION OF TERMS

1. **Coercive Practice** means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
2. **Collusive Practice** means a scheme or arrangement including practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels to prevent free and open competition.
3. **Corrupt Practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution. It also means entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profits or will profit thereby; and similar acts as provided in Republic Act 3019.
4. **Fraudulent Practice** means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Procuring Entity.
5. **Head of the Procuring Entity** refers to: (i) the head of the agency or his duly authorized official, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned and/or controlled corporations; or (iii) the local chief executive, for local government units. Provided, that in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency.
6. **Implementing Unit** refers to the unit or office having direct supervision or administration over the implementation of the contract such as the Project Management Office or the End-User Unit.
7. **Termination in Part** means the termination of a part but not all, of the work that has not been completed and accepted under a contract.
8. **Termination in Whole** means the termination of all of the work that has not been completed and accepted under a contract.

9. **Show Cause** refers to a notice which the Procuring Entity is required to issue prior to terminating a contract. The purpose of a show cause notice is to enable the contractor to present its position why the contract should not be terminated.
10. **Verified Report** refers to the report submitted by the Implementing Unit to the Head of the Procuring Entity setting forth 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.

III. GROUNDS FOR TERMINATION OF CONTRACTS

A. Termination for Default

1. In contracts for Goods:

The Procuring Entity shall terminate a contract for default when any of the following conditions attend its implementation:

- a) Outside of *force majeure*, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contact price;
- b) As a result of *force majeure*, the Supplier is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of *force majeure* is deemed to have ceased; or
- c) The Supplier fails to perform any other obligation under the Contract.

2. In contracts for Infrastructure Projects:

The Procuring Entity shall terminate a contract for default when any of the following conditions attend its implementation :

- a) Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870 ;
- b) Due to the Contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work; or
- c) The Contractor:
 - i. 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;

- ii. 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;
- iii. does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
- iv. neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
- v. sub-lets any part of the contract works without approval by the Procuring Entity.

3. In contracts for Consulting Services:

The Procuring Entity shall terminate a contract for default when any of the following conditions attend its implementation:

- a) Outside of *force majeure*, the Consultant fails to deliver or perform the Outputs and Deliverables within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Consultant prior to the delay;
- b) As a result of *force majeure*, the Consultant is unable to deliver or perform a material portion of the Outputs and Deliverables for a period of not less than sixty (60) calendar days after the Consultant's receipt of the notice from the Procuring Entity stating that the circumstance of *force majeure* is deemed to have ceased; or
- c) The Consultant fails to perform any other obligation under the contract.

B. Termination for Convenience

The Procuring Entity may terminate the Contract, in whole or in part, at any time for its convenience. The Head of the Procuring Entity may terminate a contract for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.

C. Termination for Insolvency

The Procuring Entity shall terminate the contract if the Supplier/Contractor/Consultant is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Supplier/Contractor/Consultant, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Supplier/Contractor/Consultant.

D. Termination for Unlawful Acts

The Procuring Entity may terminate the contract in case it is determined *prima facie* that the Supplier/Contractor/Consultant has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

- a) Corrupt, fraudulent, collusive and coercive practices;
- b) Drawing up or using forged documents;
- c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- d) Any other act analogous to the foregoing.

E. Termination by Contractor/Consultant

1. In contracts for Infrastructure Projects:

The Contractor may terminate its contract with the Procuring Entity if the works are completely stopped for a continuous period of at least sixty (60) calendar days through no fault of its own, due to any of the following reasons:

- a) Failure of the Procuring Entity to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of the contract; or
- b) The prosecution of the work is disrupted by the adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of National Defense.

2. In contracts for Consulting Services:

The Consultant may terminate its agreement with the Procuring Entity if the latter is in material breach of its obligations pursuant to the contract and has not remedied the same within sixty (60) calendar days following its receipt of the Consultant's notice specifying such breach.

IV. PROCEDURES FOR TERMINATION OF CONTRACTS

1. Verification. Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached.

2. Notice to Terminate. Upon recommendation by the Implementing Unit, the Head of the Procuring Entity shall terminate contracts only by a written notice to the Supplier/Contractor conveying the termination of the contract. The notice shall state:

- a) that the contract is being terminated for any of the ground(s) afore-mentioned, 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 Supplier/Contractor/Consultant to show cause as to why the contract should not be terminated; and
- d) special instructions of the Procuring Entity, if any.

The Notice to Terminate shall be accompanied by a copy of the Verified Report.

3. Show Cause. Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier/Contractor/Consultant shall submit to the Head of the Procuring Entity a verified position paper stating why the contract should not be terminated.

If the Supplier/Contractor/Consultant fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Procuring Entity shall issue an order terminating the contract.

4. Rescission of Notice of Termination. The Procuring Entity may, at anytime before receipt of the Supplier's/Contractor's/Consultant's verified position paper to withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's/Contractor's/Consultant's receipt of the notice.

5. Decision. Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the Procuring Entity shall decide whether or not to terminate the contract. It shall serve a written notice to the Supplier/Contractor/Consultant of its decision and, unless otherwise provided, the Contract is deemed terminated from receipt of the Supplier/Contractor/Consultant of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate.

6. Contract Termination Review Committee (CTRC). The Head of the Procuring Entity may create a committee to assist him in the discharge of his function under these Guidelines. All decisions recommended by the CTRC shall be subject to the approval of the Head of the Procuring Entity.

7. Take-over of Contracts. If a Procuring Entity terminates the contract due to default, insolvency, or for cause, it may enter into a negotiated procurement pursuant to Section 53(c) of R.A. 9184 and its IRR-A.

8. Procuring Entity's Options in Termination for Convenience in Contracts for Goods. The goods that have been performed or are ready for delivery within thirty (30) calendar days after the Supplier's receipt of Notice to Terminate shall be

accepted by the Procuring Entity at the contract terms and prices. For goods not yet performed or ready for delivery, the Procuring Entity may elect:

- a) to have any portion delivered or performed and paid at the contract terms and prices; and/or
- b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed or performed goods and for materials and parts previously procured by the Supplier .

If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for the Procuring Entity which cannot be sold in open market, it shall be allowed to recover partially from the contract, on a *quantum meruit* basis. Before recovery may be made, the fact of loss must be established under oath by the Supplier to the satisfaction of the Procuring Entity before recovery may be made.

9. Notice by Contractor/Consultant. The Contractor/Consultant must serve a written notice to the Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The Contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

V. AMENDMENTS

1. In the implementation of these Guidelines, the Government Procurement Policy Board (GPPB) may introduce modifications hereto through the amendment of its specific provisions as the need arises.
2. Any amendment to these Guidelines shall be applicable to government projects advertised for bid after the effectivity of the said amendment.

VI. EFFECTIVITY

These Guidelines or any amendments thereof shall take effect immediately after fifteen (15) days following the publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these Guidelines.