



## 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**

**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 authorized the Government Procurement Policy Board (GPPB) to formulate public procurement policies, and rules and regulations, and amend, whenever necessary, its IRR;

**WHEREAS**, Section 42 of RA No. 9184 provides that the rules and guidelines for the implementation and termination of contracts awarded pursuant to the provisions of the Act shall be prescribed in the IRR;

**WHEREAS**, Annex “I” of the 2016 revised IRR of RA No. 9184 prescribes the *Guidelines on Termination of Contract* (Guidelines for brevity);

**WHEREAS**, under the Guidelines, Procuring Entities are mandated to terminate existing contracts should the supplier incur delay the value of which amounts to at least ten percent (10%) of the contract price;

**WHEREAS**, on 07 November 2018, the GPPB-Technical Support Office (TSO) received a letter from the Department of Education (DepEd) requesting for a review of the provisions of Annex “I” or the Guidelines on Termination of Contract and Section 68 of the 2016 revised IRR or RA No. 9184 to properly guide implementing units during contract implementation;

**WHEREAS**, after careful study and review, the GPPB-TSO prepared its recommendation for presentation to the Inter-Agency Technical Working Group (IATWG) of the GPPB;

**WHEREAS**, during the 2<sup>nd</sup> Regular Meeting of the IATWG last 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), 5<sup>th</sup> Edition of the Philippine Bidding Documents (PBD) for the Procurement of Goods;

**WHEREAS**, during the same meeting, the GPPB-TSO likewise proposed amendment to Clauses on Liquidated Damages of the GCC, 5<sup>th</sup> 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**, after due consideration, the IATWG resolved to recommend to the GPPB the proposed amendments to Annex "I" of the 2016 revised IRR of RA No. 9184 and PBDs for the Procurement of Goods, Infrastructure Projects and Consulting Services;

**WHEREAS**, during the 2<sup>nd</sup> Regular Meeting of the GPPB held on 08 March 2019, the GPPB- TSO presented the proposed amendments to Items III(A)1(a),(b) and (c) of Annex "I" of the 2016 revised IRR of RA No. 9184, Clauses 23.1 until 23.5 of the GCC, PBDs for the Procurement of Goods, and Clauses on Liquidated Damages of the GCC of the PBDs for the Procurement of Goods, Infrastructure Projects and Consulting Services as approved by the IATWG;

**WHEREAS**, after careful review and due deliberations, the Board approved the recommendation of the IATWG;

**NOW, THEREFORE**, for and in view of all the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the amendments to Annex "I" of the 2016 revised IRR or RA No. 9184 or the *Guidelines on Contract Termination*, Clauses 23.1 until 23.5 of the GCC of the PBDs for the Procurement of Goods and Clause on Liquidated Damages of the GCC of the PBDs for the Goods, Infrastructure Projects and Consulting Services, a copy of which is attached as Annex "A", and made an integral part hereof.

This Resolution shall take effect immediately.

**APPROVED** this 8<sup>th</sup> day of March 2019 in Manila City, Philippines.

(SGD)

---

**DEPARTMENT OF BUDGET AND  
MANAGEMENT**

(SGD)

---

**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

(SGD)

---

**DEPARTMENT OF EDUCATION**

(SGD)

---

**DEPARTMENT OF ENERGY**

---

**DEPARTMENT OF FINANCE**

---

**DEPARTMENT OF HEALTH**

---

**DEPARTMENT OF INFORMATION AND  
COMMUNICATION TECHNOLOGY**

---

**DEPARTMENT OF INTERIOR AND LOCAL  
GOVERNMENT**

(SGD)

---

**DEPARTMENT OF NATIONAL  
DEFENSE**

(SGD)

---

**DEPARTMENT OF PUBLIC WORKS AND  
HIGHWAYS**

(SGD)

---

**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

---

**DEPARTMENT OF TRADE AND INDUSTRY**

(SGD)

---

**DEPARTMENT OF TRANSPORTATION**

---

**PRIVATE SECTOR REPRESENTATIVE**

**Annex “I” of the 2016 revised IRR of RA No. 9184 or  
 Guidelines on Termination of Contract**

Original	Amendment
<b><i>Item III(A). Termination for Default</i></b>	
<p><u>1. In contracts for Goods</u></p> <p>The Procuring Entity shall terminate a contract for default when any of the following conditions attend its implementation:</p> <p>a) Outside 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 contract price;</p> <p>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</p> <p>c) The Supplier fails to perform any other obligation under the Contract.</p>	<p><u>1. In contracts for Goods</u></p> <p><b><u>The following are ground for termination of contract for default:</u></b></p> <p>a) <b><u>Pursuant to Sec. 68 of the 2016 revised IRR, the Procuring Entity may terminate the contract when</u></b> outside 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 contract price;</p> <p>b) <b><u>Pursuant to Sec. 68 of the 2016 revised IRR, the Procuring Entity may terminate the contract when,</u></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</p> <p>c) <b><u>The Procuring Entity shall terminate the contract when</u></b> the Supplier fails to perform any other obligations under the Contract.</p>

**5<sup>th</sup> Edition of the Philippine Bidding Documents for the Procurement of Goods**

Original	Amendment
<b>GCC Clause 23. Termination for Default</b>	
<p>23.1 The Procuring Entity shall terminate a contract for default when any of the following conditions attend its implementation:</p> <p>a) Outside 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 contract price;</p>	<p><b><u>23.1 The Procuring Entity may rescind or terminate a contract for default, without prejudice to other courses of action and remedies available under the circumstances when,</u></b> outside 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 contract price;</p>
<b>GCC Clause 23.2</b>	
<p>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</p>	<p><b><u>23.2 The Procuring Entity may terminate the contract when,</u></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;</p>
<b>GCC Clause 23.3</b>	
<p>c) The Supplier fails to perform any other obligation under the Contract.</p>	<p><b><u>23.3 The Procuring Entity shall terminate the contract when</u></b> the Supplier fails to perform any other obligations under the Contract.</p>
<b>GCC Clause 23.4</b>	
<p>23.2 In the event the Procuring Entity terminates this Contract in whole or in part for any of the reasons provided under GCC Clause 23 to 26, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Supplier shall</p>	<p><b><u>23.4</u></b> In the event the Procuring Entity terminates this Contract in whole or in part for any of the reasons provided under GCC Clause 23 to 26, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Supplier</p>

continue performance of this Contract to the extent not terminated.	shall continue performance of this Contract to the extent not terminated.
<b>GCC Clause 23.5</b>	
23.3 In case the delay in the delivery of the Goods and/or performance of the Services exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the Supplier, the Procuring Entity may terminate this Contract, forfeit the Supplier's performance security and award the same to a qualified Supplier.	<b>23.5</b> In case the delay in the delivery of the Goods and/or performance of the Services exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the Supplier, the Procuring Entity may terminate this Contract, forfeit the Supplier's performance security and award the same to a qualified Supplier.
<b>GCC Clause 19. Liquidated Damages</b>	
Subject to GCC Clauses 18 and 22, if the Supplier fails to satisfactorily deliver any or all of the Goods and/or to perform the Services within the period(s) specified in this Contract inclusive of duly granted time extensions if any, the Procuring Entity shall, without prejudice to its other remedies under this Contract and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay until actual delivery or performance. The maximum deduction shall be ten percent (10%) of the amount of contract. Once the maximum is reached, the Procuring Entity may rescind or terminate the Contract pursuant to GCC Clause 23, without prejudice to other courses of action and remedies open to it.	Subject to GCC Clauses 18 and 22, if the Supplier fails to satisfactorily deliver any or all of the Goods and/or to perform the Services within the period(s) specified in this Contract inclusive of duly granted time extensions if any, the Procuring Entity shall, without prejudice to its other remedies under this Contract and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay until actual delivery or performance. <del>The maximum deduction shall be ten percent (10%) of the amount of contract.</del> Once the maximum is reached <b><u>amount of liquidated damages reaches ten percent (10%)</u></b> , the Procuring Entity may rescind or terminate the Contract pursuant to GCC Clause 23, without prejudice to other courses of action and remedies open to it.

**5<sup>th</sup> Edition of the Philippine Bidding Documents for the Procurement of Infrastructure Projects**

Original	Amendment
<b>GCC Clause 9. Liquidated Damages</b>	
<p>Clause 9.1.</p> <p>The Contractor shall pay liquidated damages to the Procuring Entity for each day that the Completion Date is later than the Intended Completion Date. The applicable liquidated damages is at least one-tenth (1/10) of a percent of the cost of</p>	<p>Clause 9.1.</p> <p>The Contractor shall pay liquidated damages to the Procuring Entity for each day that the Completion Date is later than the Intended Completion Date. The applicable liquidated damages is at least one-tenth (1/10) of a percent of the cost of the unperformed</p>

<p>the unperformed portion for every day of delay. The total amount of liquidated damages shall not exceed ten percent (10%) of the amount of the contract. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of this Contract, the Procuring Entity may rescind or terminate this Contract, without prejudice to other courses of action and remedies available under the circumstances.</p>	<p>portion for every day of delay. <del>The total amount of liquidated damages shall not exceed ten percent (10%) of the amount of the contract.</del> The Procuring Entity <b><u>shall</u></b> deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of this Contract, the Procuring Entity may rescind or terminate this Contract, without prejudice to other courses of action and remedies available under the circumstances.</p>
---	--

**5<sup>th</sup> Edition of the Philippine Bidding Documents for the Procurement of Consulting Services**

<b>Original</b>	<b>Amendment</b>
<b><i>GCC Clause 56. Liquidated Damages on Delay</i></b>	
<p>If the Consultant fails to deliver any or all of the Services within the period(s) specified in this Contract, the Procuring Entity shall, without prejudice to its other remedies under this Contract and under the Applicable Law, deduct from the contract price, as liquidated damages, a sum equivalent to one-tenth of one percent of the price of the unperformed portion of the Services for each day of delay based on the approved contract schedule up to a maximum deduction of ten percent (10%) of the contract price. Once the maximum is reached, the Procuring Entity may consider termination of this Contract pursuant to GCC Clause 27.</p>	<p>If the Consultant fails to deliver any or all of the Services within the period(s) specified in this Contract, the Procuring Entity shall, without prejudice to its other remedies under this Contract and under the Applicable Law, deduct from the contract price, as liquidated damages, a sum equivalent to one-tenth of one percent of the price of the unperformed portion of the Services for each day of delay based on the approved contract schedule. <del>up to a maximum deduction of ten percent (10%) of the contract price.</del> Once the <del>maximum is reached</del> <b><u>amount of liquidated damages reaches ten percent (10%) of the total amount of contract</u></b>, the Procuring Entity may consider termination of this Contract pursuant to GCC Clause 27.</p>