



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 01-2012

4 January 2012

MR. TIRUVALANGADU R. MOHAN

President

GENDIESEL PHILIPPINES INC. (GPI)

6305 South Superhighway, Makati City

**Re: Computation of Liquidated Damages and
Net Amount of Retention Money**

Dear Mr. Mohan:

We refer to your letter dated 27 October 2011 requesting for assistance or guidance on the computation of the net amount of retention money approved by the Court of Tax Appeals (CTA) in connection with GPI's supply, delivery, and installation of one (1) generator set with automatic transfer switch (ATS) for the CTA Building II Project.

We understand from your letter that GPI is contesting the net retention money approved for reimbursement by the CTA's Cashier's Office amounting to Three Hundred Thirty Nine Thousand Eight Hundred Forty Four Pesos and Ninety Six Centavos (PhP 339,844.96). As stated in your letter to the CTA, the contract price is Six Million Five Hundred Thirty Five Thousand Four Hundred Eighty Pesos and Ninety Six Centavos (PhP 6,535,480.96). Thus, the ten percent (10%) retention money therefor is Six Hundred Fifty Three Thousand Five Hundred Forty Eight Pesos (PhP 653,548.00). Further to your letter, you mentioned that GPI was in delay for forty eight (48) days for the remaining services/provisions² amounting to Nine Hundred Ten Thousand Four Hundred Eighty Pesos (PhP 910,480.00). Thus, you argue that deducting the liquidated damages for forty eight days' delay, which is Forty Three Thousand Seven Hundred Three Pesos and Four Centavos (PhP 43,703.04)³, from the ten percent (10%) retention money should have a balance amounting to **Six Hundred Nine Thousand Eight Hundred Forty Four Pesos and Ninety Six Centavos (PhP 609,844.96)**, the remaining receivable for GPI.

We note that the point of discrepancy between the two computations is the formula used in computing for the liquidated damages. The CTA's Cashier's Office used one-tenth of one percent of the contract price for every day of delay, while GPI computed using one-tenth of one percent of the unperformed portion for every day of delay.

Section 68 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 provides that the amount of the liquidated damages shall be at least equal to **one-tenth of one percent**

² Represents the delay in supplying the ATS, mechanical installation, testing and permits from 24 April 2010 to 11 June 2010.

³ Computed as follows:

$$\begin{aligned} \text{Total Liquidated Damages} &= (0.001 \times \text{PhP } 910,480.00) \times 48 \text{ days} \\ &= \text{PhP } 43,703.04 \end{aligned}$$

(0.1%) of the cost of the unperformed portion for every day of delay for the procurement of goods, infrastructure projects, and consulting services.

A similar provision is found in Section 3.1 of Annex "D"⁶ of the same IRR, which states that "the supplier shall be liable for damages for the delay and shall pay the procuring entity liquidated damages, not by way of penalty, **in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of delayed goods scheduled for delivery for everyday of delay** until such goods are finally delivered and accepted by the procuring entity concerned." Section 3.2, on the other hand, provides that "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 line with these provisions, the General Conditions of Contract⁸ and Special Conditions of Contract⁹ for the project also provide that CTA shall deduct from the contract price the sum equivalent to **one tenth (1/10) of one percent of the cost of unperformed portion for every day of delay** as liquidated damages.

Based on the foregoing, the basis for the computation of liquidated damages is the cost of the unperformed portion or the cost of the delayed goods scheduled for delivery instead of the actual contract price.

Considering that the cost of the unperformed portion of the contract subject of delay is Nine Hundred Ten Thousand Four Hundred Eighty Pesos (PhP 910,480.00), we are of the view that the total amount of liquidated damages should be **Forty Three Thousand Seven Hundred Three Pesos and Four Centavos (PhP 43,703.04)**. Consequently, GPI is entitled to the reimbursement of a net retention money amounting to **Six Hundred Nine Thousand Eight Hundred Forty Four Pesos and Ninety Six Centavos (PhP 609,844.96)**¹² only.

We hope our advice sufficiently addresses your concerns. Note that this opinion is being rendered on the basis of the facts and particular circumstances as presented.

Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

Copy furnished:

HON. JUSTICE ERNESTO D. ACOSTA

Presiding Justice

COURT OF TAX APPEALS

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⁶ Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials.

⁸ See Attachment 6 of the Letter.

⁹ See Attachment 7 of the Letter.

¹² Computed as follows:

$$\begin{aligned} \text{Net Amount of Retention Money} &= \text{PhP } 653,548.00 - \text{PhP } 43,703.04 \\ &= \text{PhP } 609,844.96 \end{aligned}$$