NPM No. 05-2007

25 April 2007

MR. ROGER C. CHIO
Regional Executive Director
DEPARTMENT OF AGRICULTURE
Regional Field Unit XI
Davao City

Re   :   **Computation of Liquidated Damages**

Dear Mr. Chio:

This pertains to the request for clarification referred to the Government Procurement Policy Board (GPPB) through a letter of 1st Endorsement dated 18 December 2006. It seeks guidance on the proper computation of liquidated damages for infrastructure projects.

The facts are undisputed. Contractor Nirvana Construction and Enterprise incurred a 19-day delay in the construction of a farm-to-market road in Saranggani Province. Original contract period was set at 204 calendar days. The Office of the Provincial Engineer computed liquidated damages at P136,801.68, while the contractor computed it at P7,200.

The Contract Implementation Guidelines for the Procurement of Infrastructure Projects, attached as Annex E to the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184, prescribes the following formula for computing total liquidated damages in case of delay:

$$TLD = VUUP \times [(1+ OCC)^n - 1] \times K$$

$$VUUP = TCP - VCUP$$

Where:

TLD   =   Total Liquidated Damages

VUUP   =   value of the uncompleted and unusable portions of the contract work, as of the expiry date of the contract

TCP   =   Total Contract Price

VCUP =   value of the completed and usable portion of the contract work, as of the expiry date of the contract

OCC =   prevailing opportunity cost of capital for government projects set by NEDA, which is currently pegged at 15%

n =   total number of years that the contract work is delayed after the expiry date of the contract

K   =   adjustment factor to cover additional loses

      = $1 + C + (i \times n)$

Where: C = cost of construction supervision as a percentage, not exceeding 10%, of construction cost

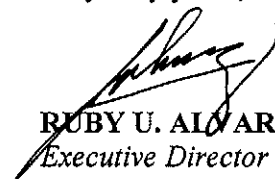 i = annual inflation rate as defined by NEDA

A comparison of the two differing computations indicates that the values used by both parties in the application of the foregoing formula are the same. Thus, both parties derived the same figure (P7,200). However, the Office of the Provincial Engineer further multiplied this amount with the total number of days in delay (P7,200 x 19 days) resulting to a higher figure of P136,801.68.

However, an examination of the prescribed formula reveals that the number of days in delay has already been factored in through the variable (n). Thus, further multiplying the resulting figure with the number of days the project is in delay becomes superfluous. More importantly, the intent of the formula is to compute the **total liquidated damages**, as can be seen in the meaning of TLD.

Consequently, we believe that the computation for liquidated damages submitted by the contractor is more in accord with the prescribed guidelines under the IRR-A of R.A. 9184.

We hope to have clarified the matter. Should you have any additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III