



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



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Re: Imposition of Liquidated Damages -

Dear Dr. Mateo:

This refers to your letter seeking clarification on the following:

1. What is the total amount of liquidated damages that a Procuring Entity may impose against the winning bidder (supplier)?
2. Is the collection of liquidated damages pegged at 10%? or is it possible to impose more than that amount, such as by computing the actual amount of liquidated damages as computed in the total number of days of delay?

The applicable rule under Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR) is Section 68, which provides that:

Section 68. Liquidated Damages

All contracts executed in accordance with this Act (RA No. 9184) and its IRR shall contain a provision on liquidated damages which shall be payable by the contractor in case of breach thereof. For the procurement of goods, infrastructure projects and consulting services, **the amount of the liquidated damages shall be at least equal to one-tenth of one percent (0.001) of the cost of the unperformed portion for every day of delay.** Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, the procuring entity may rescind or terminate the contract without prejudice to other courses of action and remedies available under the circumstances (Emphasis supplied)

The *Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials*¹ (Guidelines) echoed the above quoted provision, giving however more detailed rules on how liquidated damages may be imposed, to wit:

¹ Annex "D" of the 2016 revised IRR of RA 9184.

3. Liquidated Damages

- 3.1. When the supplier fails to satisfactorily deliver goods under the contract within the specified delivery schedule, inclusive of duly granted time extensions, if any, the **supplier shall be liable for damages for the delay and shall pay the procuring entity liquidated damages**, not by way of penalty, **an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed goods scheduled for delivery for everyday of delay until such goods are finally delivered and accepted by the procuring entity concerned.**
- 3.2. 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 may rescind the contract and impose appropriate sanctions over and above the liquidated damages to be paid. (Emphasis supplied)

The provision of the *Guidelines* clearly states that the total sum of liquidated damages arising from the breach of the supplier should not exceed ten percent (10%) of the total contract price. In fact, the Philippine Bidding Documents for Procurement of Goods likewise contains this rule that the **applicable rate for liquidated damages** is one tenth (1/10) of one (1) percent of the amount of the unperformed portion for every day of delay and the **maximum deduction shall be ten percent (10%) of the contract amount.**

Accordingly, the *Guidelines* is clear on the maximum amount of liquidated damages that may be imposed in case of breach of obligation by a supplier. Thus, the supplier who defaulted in the performance of its obligation shall be held liable only up to a maximum amount of ten percent (10%) of the total contract price.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

Executive Director V *MMH*

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