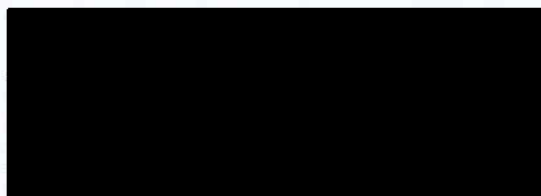


NPM No. 72-2015

13 October 2015



Re: Computation of Liquidated Damages

Dear

This refers to your letter seeking our opinion relative to the computation of Liquidated Damages (LD) to be imposed against defaulting contractors.

As represented, there are varying interpretations between the Project Engineers and the Accountant of DepEd Regional Office VI on the computation of LD. The value of the total LD based on the Project Engineers' computation is **One Hundred Seventy Three Thousand Five Hundred One Pesos and Forty Nine Centavos (Php 173,501.49)** while the Accountant's computation resulted in the amount of **Three Hundred Thirty Three Thousand Four Hundred Eighty One Pesos and Forty Two Centavos (Php 333,481.42)**.

The discrepancy exists because of the difference in the appreciation of the term "unperformed works". As stated in the letter, the first computation uses a diminishing methodology¹ whereby the value of the unperformed portion of the works diminishes because the monthly progress of work after the expiration of contract time was considered in the computation of LD. On the other hand, the second computation uses a straight methodology² in arriving at the total LD whereby the value of unperformed works upon the expiration of the contract time was used unchanged regardless of the monthly accomplishment after such expiration. Hence, this request for opinion.

Section 8.1 of the Contract Implementation Guidelines for the Procurement of Infrastructure Projects³ (Guidelines for brevity), in relation to Section 68 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) provides that where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted, and is hereby in default under the contract, the contractor

¹ Computed as follows:

$$\begin{aligned} \text{LD} &= \text{LD for June 2014} + \text{LD for July 2014} + \text{LD for August 2014} + \text{LD for September 2014} \\ &= \text{Php } 79,803.14 + 78,192.60 + 11,615.83 + 3,889.92 \\ &= \text{PhP } 173,501.49 \end{aligned}$$

² Computed as follows:

$$\begin{aligned} \text{LD} &= 1/10 \times 1\% \times \text{Unperformed Work upon Contract Expiry} \times \text{Contract Price} \times \text{No. of Days of Delay} \\ &= 1/10 \text{ of } 1\% \text{ of PhP } 4,137,912.30 \times 106 \text{ days} \\ &= \text{PhP } 333,481.82 \end{aligned}$$

³ Annex "E" of the IRR of RA 9184.

shall pay the Procuring Entity (PE) for liquidated damages, and not by way of penalty, an amount, as provided in the conditions of contract, equal to at least one tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for every day of delay. It can be inferred from this provision that the phrase "*unperformed portions of the works*" refers to that *portion which the contractor refuses or fails to satisfactorily complete within the specified contract time, plus any time extension duly granted.*

In connection with this, General Conditions of the Contract (GCC) Clause 9.1 of the Philippine Bidding Documents (PBDs) for the Procurement of Infrastructure Projects mandates that the Contractor shall pay liquidated damages to the PE for each day that the Completion Date is later than the Intended Completion Date in the amount of at least one-tenth (1/10) of a percent of the cost of the unperformed portion for every day of delay.

The Supreme Court, in the case of *J Plus Asia Development Corporation v. Utility Assurance Corporation*⁴ clarified that "[a] stipulation for LD is attached to an obligation in order to ensure performance and has a double function: (1) to provide for LD, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach; and the *amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project.*" (Emphasis supplied)

In relation to this, the fact that there are accomplished works after the expiration of contract time shall not be countenanced in the computation of LD as it does not relieve the contractor from being in default in the performance of its obligations. Once the contractor incurs delay, the PE suffers damage and continues to suffer until the completion of the project, thereby discounting any progress works accomplished by the contractor after the expiration of contract time. Consequently, from the moment of delay, the contractor shall be held liable for LD for such number of days that the actual Completion Date is later than the Intended Completion Date.

In this regard, it is our considered view that in computing LD, unperformed portions of the work shall be based on that portion which the contractor refuses or fails to satisfactorily complete within the specified contract time, plus any time extension duly granted, regardless of the progress of work accomplished after the expiration of contract time.

We hope 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

⁴ G.R. No. 199650 promulgated on June 26, 2013 citing *Atlantic Erectors, Inc. v. Court of Appeals*, G.R. No. 170732, October 11, 2012, 684 SCRA 55, 65, further citing *Philippine Charter Insurance Corporation v. Petroleum Distributors & Service Corporation*, G.R. No. 180898, April 18, 2012, 670 SCRA 166, 177, *Filinvest Land, Inc. v. Court of Appeals*, G.R. No. 138980, September 20, 2005, 470 SCRA 260, 269 and *H.L. Carlos Construction, Inc. v. Marina Properties Corporation*, 466 Phil. 182, 205 (2004).