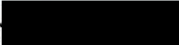


NPM No. 98-2015

13 October 2015



Re : Computation of Liquidated Damages (LD)

Dear 

This refers to your letter dated 13 July 2015, requesting our opinion on the correctness and validity of your computation as regards the liquidated damages you imposed to the contractor of ISTU's project.

As represented, ISTU imposed LD to the contractor from 1 July 2014 to 12 January 2015 for its infrastructure project, which was not completed and delivered as scheduled. However, there were questions raised in your computation. Thus, you would like to be clarified if your computation is valid and correct based on the following data:


Contract Amount	PhP 109,556,711.71
End of Contract Duration	30 June 2014
Accomplishment as of 30 June 2014	83.43%
Unperformed Works	16.57%

- Cost of unperformed Works = (PhP 109,556,711.71) (16.57%) = PhP 18,153,547.13
- Liquidated Damages = (PhP 18, 153, 547.13) (1/10) (1%) = PhP 18, 153.55 per day
- Total Number of Delays from 1 July 2014 to 12 January 2015 = 196 days
- Total penalty from 1 July 2014 to 12 January 2015 = (PhP 18, 153.55) (196 days)

Total Liquidated Damages = **PhP 3, 558, 095.80**

We wish to note that, as the procuring entity, the determination of the specific amount of the LD to be imposed to the contractor shall be the sole responsibility of ISTU, and must be computed in accordance with Section 68 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, which provides that:

... [F]or 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 (0.1%) of the cost of the unperformed portion for every day of delay...**(Emphasis supplied)

Accordingly, the determination of the correctness and validity of the computation, relative to the penalty of liquidated damages, rest with the procuring entity using the available data from 

the procurement project, and applying the formula provided for under Section 68 of the IRR of RA 9184. Consequently, based on the correctness and reliability of the data and information available and known to the procuring entity as regards the number of days the contractor has been in default or delay; the actual amount for everyday of delay, which must be computed accurately; and the computation provided under the rules, *i.e.*, one-tenth of one percent (0.1%) of the cost of the unperformed portion for every day of delay, the procuring entity may arrive at the appropriate LD imposition.

Please note, however, under Section 8.5 of the *Contract Implementation Guidelines for the Procurement of Infrastructure Projects*,¹ the totality of the LD should not exceed the actual contract cost for the project, otherwise the contract shall be subject to "rescission"², thus:

8.5. In no case however, shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the contract shall automatically be taken over by the procuring entity concerned or award the same to a qualified contractor through negotiation and the erring contractor's performance security shall be forfeited. The amount of the forfeited performance security shall be aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of this clause and impose other appropriate sanctions.

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.)



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Executive Director V &

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¹ Annex E, IRR of RA 9184.

² Pursuant to Section 68, IRR of RA 9184.