



NPM No. 005-2026

NON-POLICY MATTER OPINION

17 April 2026

[REDACTED]

Re : **Clarification on the Imposable Rate of Liquidated Damages for Procurement of Goods**

Dear [REDACTED]:

This refers to your letter requesting clarification on whether a Procuring Entity (PE) may validly stipulate a higher rate of liquidated damages (LD) in contracts for the procurement of goods, particularly drugs and medicines, under the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 12009 and the corresponding Philippine Bidding Documents (PBDs).¹

As represented, the PE is considering the imposition of higher liquidated damages on suppliers, particularly for drugs and medicines, in view of their critical nature as lifeline commodities requiring strict adherence to delivery schedules. In this regard, the PE is exploring whether higher rates, such as one-fourth (1/4) or one-half (1/2) of one percent (1%) of the cost of the delayed goods per day of delay may be stipulated upon agreement during the pre-bid conference, taking into consideration Section 97 of the IRR of RA No. 12009.

A careful reading of the provisions shows that Section 97 of the IRR sets the general rule by providing that liquidated damages shall be "*at least equal to one-tenth (1/10) of one percent (1%)*" of the cost of the unperformed portion for every day of delay, thereby suggesting a minimum rate. However, with respect to the procurement of Goods, Section 71.1.4 of the same IRR provides that the supplier shall be liable for liquidated damages "*in an amount equal to one-tenth (1/10) of one percent (1%)*" of the cost of the delayed goods for every day of delay. This same formulation is reflected in Clause 19.1 of the PBD for Goods.²

¹ DMS Reference No.: 2026-AD-0044336-LR

² Section IV. General Conditions of Contract of the Philippine Bidding Documents for the Procurement of Goods, Clause 19.1 on Liquidated Damages states that the Supplier shall be liable for liquidated damages in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed goods scheduled for delivery for every day of delay.



It bears stressing that statutory and regulatory provisions must be read and applied in a harmonious manner, with due regard to both general and specific provisions.

In this case, while Section 97 of the IRR establishes the general policy on the imposition of liquidated damages, Section 71.1.4 provides a more specific rule applicable to the procurement of goods. Notably, the latter provision employs the phrase "equal to," which prescribe a definite and fixed rate for such procurement modality.

This is further reinforced by the PBD for Goods² and Consulting Services³ which employs the more definite phrase "equal to," without qualification, unlike the Philippine Bidding Documents for Infrastructure Projects which use the phrase "at least,"⁴ thereby allowing flexibility in the rate.

Applying the principle of statutory construction, embodied in the maxim *generalia specialibus non derogant*, specific provisions prevail over general provisions covering the same subject matter. Thus, the specific rule governing procurement of Goods under Section 71.1.4 of the IRR and the applicable PBD clause, governs the determination of liquidated damages for goods procurement.

In view of the foregoing, the applicable provisions indicate that that rate of liquidated damages for goods procurement is intended to be fixed at one-tenth (1/10) of one percent (1%) per day of delay. Thus, a stipulating a higher rate, would not be consistent with the prescribed IRR provisions and the standard PBD.

While the preparation of bidding documents, including contract conditions, falls within the authority and responsibility of the Procuring Entity, such must be exercised in accordance with the applicable rules and prescribed standard forms.

Finally, please note that the foregoing opinion is rendered based on the facts and circumstances presented and may not be applicable given a different set of facts and circumstances.

We hope that we have sufficiently addressed the concern raised.

Very truly yours,

(sgd.)

ATTY. SOFIA C. YANTO-ABAD

Officer-in-Charge, GPPB-TSO

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³ Section IV. General Conditions of Contract of the Philippine Bidding Documents for the Procurement of Consulting Services provides that the Consultant shall be liable for liquidated damages in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay.

⁴ Section IV. General Conditions of Contract of the Philippine Bidding Documents for the Procurement of Infrastructure Projects states that the Contractor shall be liable for liquidated damages in an amount equal to at least one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion of the Works for every day of delay.