

[GPPB RESOLUTION NO. 018-2004, December 22, 2004]

APPROVING THE GUIDELINES ON TERMINATION OF CONTRACTS

WHEREAS, Republic Act No. 9184 (R.A. 9184), otherwise known as "Government Procurement Reform Act" and its Implementing Rules and Regulations Part A (IRR-A) took effect on January 26, 2003 and October 8, 2003 respectively;

WHEREAS, the Government Procurement Policy Board (GPPB) shall protect the national interest in all matters affecting public procurement and shall formulate public procurement policies, rules and regulations, and amend, whenever necessary under Section 65 of R.A. 9184;

WHEREAS, in line with the said mandate, the GPPB sees the need to formulate guidelines for termination of contracts in relation to procurement contracts entered into by the government;

WHEREAS, the GPPB tasked the GPPB-Technical Support Office (GPPB-TSO) to make an initial draft of the said guidelines to be submitted and reviewed by the GPPB;

WHEREAS, the first draft of the Guidelines on Termination of Contracts was submitted by the GPPB-TSO to the Inter-Agency Technical Steering Committee (IATSC) of the GPPB on October 12, 2004 for its initial review and evaluation;

WHEREAS, during the aforesaid meeting, members of the IATSC gave comments and suggestions, and the GPPB-TSO made the changes and revisions according to the agreement and resolution of the committee;

WHEREAS, after the review by the IATSC, the draft Guidelines on Termination of Contracts was presented by the GPPB-TSO during the 7th GPPB meeting held on November 22, 2004, wherein the GPPB gave some comments and suggestions, and tasked the GPPB-TSO to revise the guidelines accordingly;

WHEREAS, the GPPB reviewed the final draft of the Guidelines on Termination of Contracts submitted by the GPPB-TSO during its 8th meeting held on December 22, 2004, at Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City, a copy of which is attached hereto as Annex "A" to form an integral part hereof;

NOW, THEREFORE, for and in consideration of the foregoing, WE, the Members of the GOVERNMENT PROCUREMENT POLICY BOARD, by virtue of the powers vested in US by law, hereby RESOLVE to confirm, adopt and approve, as WE hereby confirm, adopt and approve the Guidelines on Termination of Contracts attached hereto as Annex "A".

This resolution shall take effect immediately.

Adopted: 22 Dec. 2004

(SGD.) EMILIA T. BONCODIN
Secretary
Department of Budget and Management

Also Signed by the Representatives of the following agencies:

NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY

DEPARTMENT OF HEALTH

DEPARTMENT OF EDUCATION

DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT

DEPARTMENT OF FINANCE

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

Attested by:

(SGD.) JOSE MARTIN C. SYQUIA
Board Secretary, GPPB
Executive Director, GPPB-TSO

ANNEX "A"

GUIDELINES ON TERMINATION OF CONTRACTS

I. PURPOSE, SCOPE AND APPLICATION

These guidelines aim to promote fairness in the termination of procurement contracts and to prescribe contract conditions and measures to enable government to protect its interests. For this purpose, policies and procedures relating to the whole or partial termination of government procurement contracts of goods, infrastructure projects, and consulting services are herein established.

II. DEFINITION OF TERMS

1. Coercive Practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.
2. Collusive Practice means a scheme or arrangement including practice among bidders (prior to or after bid submission) designed to established bid prices at artificial non-competitive levels to prevent free and open competition.
3. Corrupt Practice means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution. It also means entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profits or will profit thereby; and similar acts as provided in Republic Act 3019.
4. Fraudulent Practice means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the

Procuring Entity.

5. Head of the Procuring Entity refers to: (i) the head of the agency or his duly authorized official, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned and/or controlled corporations; or (iii) the local chief executive, for local government units. Provided, that in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency.

6. Implementing Unit refers to the unit or office having direct supervision or administration over the implementation of the contract such as the Project Management Office or the End-User Unit.

7. Termination in Part means the termination of a part but not all, of the work that has not been completed and accepted under a contract.

8. Termination in Whole means the termination of all of the work that has not been completed and accepted under a contract.

9. Show Cause refers to a notice which the Procuring Entity is required to issue prior to terminating a contract. The purpose of a show cause notice is to enable the contractor to present its position why the contract should not be terminated.

10. Verified Report refers to the report submitted by the Implementing Unit to the Head of the Procuring Entity setting forth its findings as to the existence of grounds or causes for termination and explicitly stating its recommendation for the issuance of a Notice to Terminate.

III. GROUNDS FOR TERMINATION OF CONTRACTS

A. Termination for Default

1. In contracts for Goods:

The Procuring Entity shall terminate a contract for default when any of the following conditions attend its implementation:

a. Outside of force majeure, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price;

b. As a result of force majeure, the Supplier is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased; or

c. The Supplier fails to perform any other obligation under the Contract.

2. In contracts for Infrastructure Projects: