

 <p>LBP RESOURCES AND DEVELOPMENT CORPORATION 24TH Floor LBP Plaza 1598 M.H Del Pilar cor. Dr. J. Quintos St. Malate Manila</p>	PROCUREMENT MANUAL	Class Code: D
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A. General Guidelines

1. Contract implementation covers the following:
 - a. Effectivity of the contract
 - b. Contractor's performance of its contractual obligations, as specified in the contract
 - c. Final acceptance or project sign-off
 - d. All other related activities
 - e. Payment by the Procuring Entity
2. A contract becomes effective either on the date of the receipt by the winning bidder of the Notice to Proceed (NTP) or on the effectivity date provided in the NTP.
3. Failure to Enter into Contract and Post Performance Security
 - a. If the bidder with the Lowest Calculated Responsive Bid or the bidder with the Single Calculated Responsive Bid, fails, refuses or unable to make good its bid by entering into contract with the procuring entity or post the required Performance Security within the period stipulated in the bidding documents, the bid security shall be forfeited and the appropriate sanctions shall be imposed, except where such failure, refusal or inability is through no fault of the said bidder.
 - b. The BAC shall disqualify the said bidder who failed or refused to enter into contract and post the required Performance Security and initiate and complete the post-qualification process on the bidder with the second Lowest Calculated Bid. This procedure shall be repeated until the Lowest Calculated and Responsive Bid is determined for award.
 - c. If no bidder passes post-qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement.

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4. Warranty

- a. In order to assure that manufacturing defects shall be corrected by the supplier, a warranty shall be required from the contract awardee for a minimum period of three (3) months, in the case of supplies, and one (1) year, in the case of equipment, after the acceptance by the Procuring Entity of the goods and/or equipment.
- b. The obligation for the warranty shall be covered by either retention money in an amount equivalent to at least ten percent (10%) of every progress payment, or a special bank guarantee (subject to approval of BAC concerned) equivalent to ten percent (10%) of the contract price.
- c. The said amounts shall be released only after the lapse of the warranty period provided that the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met.

5. Amendment to Order

Amendment to Order may be issued by the Procuring Entity concerned subject to the conditions set forth below:

- a. If any such order increases or decreases the cost of, or the time required for executing any part of the work under the original contract, an equitable adjustment in contract price and/or delivery schedule shall be mutually agreed upon between the parties concerned and the contract shall be modified in writing.
- b. In the event that necessary adjustments within the general scope of the contract in any one or more of the following is required in order to fully meet the requirements of the project:
 - i. Drawings, design or specifications, if the goods to be furnished are to be specifically manufactured for the Government in accordance therewith
 - ii. Method of shipment or packing

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iii. Place of delivery

- c. Where there are additional items needed and necessary for the protection of the goods, which were not included in the original contract.

Payments for these additional items shall be based on the unit prices in the original contract for items of goods similar to those in the original contract. If the contract does not contain any rate applicable to the additional items, then suitable prices shall mutually be agreed upon between the parties.

Request for payment by the supplier for any additional items shall be accompanied by a statement with the approved supporting forms, giving a detailed accounting and record of amount for which it claims payment. The contract time shall likewise be extended if the acquisition of such additional item so warrants.

- d. Under no circumstances shall a supplier proceed to commence work under any amendment to order unless the same has been approved by the Head of the Procuring Entity concerned or his duly authorized representative.

As an exception to the rule, the Head of the Procuring Entity concerned or his duly authorized representative may authorize the immediate start of work under any amendment to order in the event of emergencies to avoid detriment to public service, damage to life and/or property or when time is of the essence; provided, however, that the same is valid only on items up to the point where the cumulative increase in the contract cost which has not yet been duly fully approved by the Head of the Procuring Entity concerned or his duly authorized representative does not exceed five percent (5%) of the original contract cost; provided, further, that the corresponding amendment to order shall immediately be prepared and submitted for approval to the Head of the Procuring Entity concerned or his duly authorized representative.

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For an amendment to order involving a cumulative amount exceeding five percent (5%) of the original contract price, no work thereon shall be commenced unless the same has been approved by the Head of Procuring Entity concerned or his duly authorized representative.

6. Suspension of Work

- a. The Procuring Entity concerned may suspend the work wholly or partly by written order for a certain period of time, as it deems necessary due to force majeure or any fortuitous events as defined in the contract.

The supplier shall take all reasonable steps to minimize the costs allocable to the work covered by such order during work stoppage.

- b. Before the suspension order expires, the Procuring Unit concerned shall either lift such order or terminate the work covered by the same.

If the suspension order is lifted, or if the period of the order expires, the supplier shall have the right to resume work.

Appropriate adjustments shall be made in the delivery or contract schedule, or contract price, or both and the contract shall be modified accordingly.

7. Liquidated Damages

- a. 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 1/10 of 1% of the cost of the delayed good scheduled for delivery for every day of delay until such goods are finally delivered and accepted by the procuring entity concerned.
- b. The Procuring Entity need not prove that it has incurred actual damages to be entitled to liquidate damages.

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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 sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the Procuring Entity concerned shall automatically terminate the contract and impose appropriate sanctions over and above the liquidated damages to be paid.

8. Advance Payment

- a. Advance payment shall be made only after prior approval of LBPRDC President and shall not exceed fifteen percent of the contract amount, unless otherwise directed by the President. However, no prior approval by the President shall be necessary for the following cases:
 - i. A single advance payment not to exceed fifty percent (50%) of the contract amount shall be allowed for contracts entered into by a Procuring Entity for the following services where requirement of down payment is a standard industry practice:
 - Hotel and restaurant services
 - Use of conference/seminar and exhibit areas
 - Lease of office space
- b. Advance payment not to exceed fifteen percent (15%) of the contract amount for procurement of goods required to address contingencies arising from natural or man-made calamities in areas where a State of Calamity has been declared by appropriate authorities.
- c. All progress payments shall first be charged against the advance payment until latter has been fully exhausted, unless otherwise approved by LBRDC President.

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9. Grounds for Termination/Cancellation of Contract (Purchase Order)

a. In contracts for Good:

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

- i. Outside of force majeure, the Supplier fails to deliver or perform any or all of Goods within the period(s) specified in the contract, or within any extension thereof granted by LBRDC 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;
- ii. As a result of force majeure, the supplier is unable to deliver or perform any 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 LBRDC stating that the circumference of force majeure is deemed to have ceased; or
- iii. The Supplier fails to perform any other obligation under the Contract;
- iv. Defect in any product/not conforming the specified specification.
- v. Other conditions stated in Chapter V of the Reservation Clause
 - If the physical and economic conditions have significantly changed as to render the project no longer economically, financially or technically feasible as determined by the HoPE
 - If the project is no longer necessary as determined by the HoPE.

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- If the source of funds for the project has been withheld or reduced through no fault of the LBRDC.

b. In contracts for Infrastructure Projects:

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

- i. Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Degree 1870;
- ii. Due to the Contractor's fault and after the contract time has expired, it has incurred a negative slippage of ten percent (10%) or more in the completion of the work; or

The contractor:

- Abandons the contract works, refuses or fails to comply with a valid instruction of LBRDC or fails to proceed expeditiously and without delay despite a written notice by LBRDC;
- Does not actually have on the project site the minimum essential equipment listed on the Bid necessary to prosecute the works in accordance with the approved work plan and equipment deployment schedule as required for the project;
- Does not execute the works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
- Neglects or refuses to remove materials of to perform a new work that has been rejected as defective or unsuitable; or

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- Sub-lets any part of the contract works without approval by LBRDC.

c. In contracts for consulting Services:

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

- i. Outside of force majeure, the consultant fails to deliver or perform the outputs and deliverables within the period(s) specified in the contract, or within any extension thereof granted by LBRDC pursuant to a request made by the Consultant prior to delay;
- ii. As a result of force majeure, the consultant is unable to deliver or perform a material portion of the outputs and deliverables for a period of not less than sixty (60) calendar days after the consultant receipt of the notice from LBRDC stating that the circumstance of force majeure is deemed to have ceased; or
- iii. The consultant fails to perform any other obligation under the contract.

10. Procedure for Termination of Contracts

- a. **Verification** – Upon request of a written report of acts or cause which may constitute(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of Verified Report, with all relevant attached.
- b. **Notice to Terminate** – Upon recommendation by the Implementing Unit, the Head of the Procuring Entity shall terminate contacts only by a written notice to the Supplier/Contractor conveying the termination of the contact. The notice shall state:

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- i. That the contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;
 - ii. The extent of termination, whether in whole or in part;
 - iii. An instruction to the supplier/contractor/consultant to show cause as to why the contract should not be terminated; and
 - iv. Special instructions of LBRDC, if any
- c. **Show cause** – Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier/Contractor/Consultant shall submit to the Head of the Procuring Entity a verified position paper stating why the contract should not be terminated.
- If the supplier/contractor/consultant fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, LBRDC shall issue an order terminating the contract.
- d. **Rescission of Notice of Termination** – The Procuring Entity may, at any time before receipt of the Supplier’s/contractor/consultant’s verified position paper to withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier’s/Contractor’s/Consultant’s receipt of the notice.
- e. **Decision** – Within a non-extendible period of ten (10) calendar from receipt of the verified position paper, the Head of the Procuring Entity shall decide whether or not to terminate the contract. It shall serve a written notice to the supplier/contractor/consultant of its decision and unless otherwise provided, the Contract is deemed terminated from receipt of the supplier/contractor/consultant of the notice of

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decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate.

- f. **Contract Termination Review Committee (CTRC)**
– The Head of the Procuring Entity may create a committee to assist in the discharge of his function under these guideline. All decisions recommended by the CTRC shall be subject to the approval of the HoPE.
- g. **Take-Over of Contracts** – If a Procuring Entity terminates the contract due to default, insolvency, or for cause, it may enter into a Negotiated Procurement pursuant to Section 53 © of RA 9184 and 53.3 of its IRR.
- h. Procuring Entity’s Options in Termination for Convenience in Contracts for Goods. - The goods that have been performed or are ready for delivery within thirty (30) calendar days after the Suppliers receipt of Notice to terminate shall be accepted by the Procuring Entity at the contract terms and prices. For goods not yet performed or ready for delivery, the Procuring Entity may elect:
 - i. to have any portion delivered or performed and paid at the contract terms and prices, and/or
 - ii. To cancel the remainder and pay to the Supplier and agreed amount for partially completed or performed goods and for materials and parts previously procured by the supplier.

If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for the Procuring Entity which cannot be sold in open market, it shall be allowed to recover partially from the contract, on a quantum merit basis. Before recovery may be made, the fact of loss must be established under oath by the Supplier to the satisfaction of the Procuring Entity recovery may be made.

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- i. Notice by Contractor/Consultant – The Contractor/Consultant must serve a written notice to the Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The Contract is deemed terminated if it's not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

B. Other Rules and Guidelines

The rules and regulations for the other aspects of contract implementation shall be included in the manuals to be issued by the GPPB, such as, but not limited to, the following:

- Incidental Services
- Spare Parts
- Delays in the Supplier's Performance
- Purchaser's Responsibilities
- Prices
- Payment
- Taxes and Licenses
- Subcontracts
- Standards
- Packing
- Insurance
- Transportation
- Inspections and Tests
- Patent Rights
- Limitations of Liability
- Termination for Default
- Termination for Insolvency
- Termination for Convenience
- Assignment