



CAAP MEMORANDUM CIRCULAR NO: 002-2023

TO : ALL CONCERNED

SUBJECT : **GUIDELINES ON TERMINATION OF CONTRACTS FOR
INFRASTRUCTURE PROJECTS**

DATE : 16 FEB 2023

CIVIL AVIATION AUTHORITY
OF THE PHILIPPINES
CERTIFIED PHOTOCOPY
(NOT VALID WITH ERASURE/ALTERATION)

 2-16-2023

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Records Officer II
Central Records and Archives Division

I. POLICY STATEMENT

These guidelines aim to promote fairness in the termination of Contract Agreements for infrastructure projects. It also aims to prescribe contract conditions and measures to enable the Civil Aviation Authority of the Philippines (CAAP) to protect its interests.

II. PURPOSE

These Guidelines, based on Annex "I" of the Revised Implementing Rules and Regulations of Republic Act 9184 (Revised IRR of RA 9184), were formulated by CAAP to provide policies, rules and procedures relative to the whole or partial termination of Contract Agreements for infrastructure projects.

III. SCOPE AND COVERAGE

These Guidelines shall apply to all Services, Departments, Divisions, Sections, Units and Airports of the CAAP.


IV. GENERAL GUIDELINES

The following are the grounds for the termination of Contract Agreements for infrastructure projects:

A. Termination for Default

CAAP shall terminate a Contract Agreement for default when any of the following conditions attend its implementation:

1. 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 Decree 1870;
2. 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

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3. The Contractor:

- a) abandons the contract Works, refuses or fails to comply with a valid instruction from CAAP or fails to proceed expeditiously and without delay despite a written notice by CAAP;
- b) does not actually have on the project site the minimum essential/required equipment listed on the Bid necessary to prosecute the Works in accordance with the approved Method of Working Plan and Equipment Utilization Schedule as required for the project;
- c) does not execute the Works in accordance with the Contract or persistently or flagrantly neglects to carry out its obligations under the Contract;
- d) neglects or refuses to remove materials or to perform a new Work that has been rejected as defective or unsuitable; or
- e) sub-contracts any part of the Contract Works without approval by CAAP.

B. Termination for Convenience

CAAP may terminate the Contract Agreement, in whole or in part, at any time for its convenience. The Head of the Procuring Entity may terminate a Contract Agreement for the convenience of CAAP if he has determined the existence of conditions that make project implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.

C. Termination for Insolvency

CAAP shall terminate the Contract Agreement if the Contractor is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to CAAP and/or the Contractor.

D. Termination for Unlawful Acts

CAAP may terminate the Contract Agreement in case it is determined prima facie that the Contractor has engaged, before or during the implementation of the Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

1. Corrupt, fraudulent, collusive and coercive practices;
2. Drawing up or using forged documents;
3. Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and

4. Any other act analogous to the foregoing.

E. Termination by Contractor

The Contractor may terminate its Contract Agreement with CAAP if the Works are completely stopped for a continuous period of at least sixty (60) calendar days through no fault of its own, due to any of the following reasons:

1. Failure of CAAP to deliver, within a reasonable time, supplies, materials, right-of-way, or other items it is obligated to furnish under the terms of the Contract; or
2. The prosecution of the Work is disrupted by the adverse peace and order situation, as certified by the Armed Forces of the Philippines Provincial Commander and approved by the Secretary of National Defense.

V. PROCEDURES

A. The Project In-Charge shall adhere the following in the preparation and submission of termination of Contract Agreements:

1. If the Project In-Charge determines that there is possible circumstance that may constitute ground(s) for termination as aforementioned during project implementation or upon receipt of a written report of acts or causes which may constitute the same, the Project In-Charge shall verify the existence of such ground(s) through the submission of a Verified Report with all relevant evidence attached therein within a period of seven (7) calendar days.
2. Upon recommendation by the Head of the Implementing Unit, the Head of the Procuring Entity shall terminate Contract Agreements by issuing a written notice to the Contractor conveying the termination of the Contract. The notice shall state:
 - a) that the Contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;
 - b) the extent of termination, whether in whole or in part;
 - c) an instruction to the Contractor to show cause as to why the Contract should not be terminated; and
 - d) special instructions of CAAP, if any.

▪ The Notice to Terminate shall be accompanied by a copy of the Verified Report.

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3. Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Contractor shall submit to the Head of the Procuring Entity a Verified Position Paper stating why the Contract should not be terminated.
 - If the Contractor fails to show cause after the lapse of the seven (7) calendar day period, either by inaction or by default, the Head of the Procuring Entity shall issue an order terminating the Contract.
 4. CAAP may, at any time before receipt of the Contractor'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 Contractor's receipt of the notice.
 5. Within a non-extendible period of ten (10) calendar days from receipt of the Contractor's Verified Position Paper, the Head of the Procuring Entity, upon the recommendation of the Head of the Implementing Unit, shall decide whether or not to terminate the Contract. It shall serve a written notice to the Contractor of its decision and, unless otherwise provided, the Contract is deemed terminated from receipt of the Contractor of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate.
 6. If CAAP terminates the contract due to default, insolvency, or for cause, it may enter into a Negotiated Procurement pursuant to Section 53(c) of Revised IRR of RA 9184.
- B. The Contractor must serve a written notice to CAAP of its intention to terminate the Contract at least thirty (30) calendar days before its intended termination. The Contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by CAAP.

VI. CONDITIONS

Any amendment to these Guidelines shall be applicable to CAAP projects advertised for bid after the effectivity of the said amendment.

VII. REPEALING CLAUSE

All other Guidelines which are inconsistent with the provisions of this CAAP Memorandum Circular are hereby repealed, modified or amended accordingly.

VIII. EFFECTIVITY CLAUSE

This Circular shall take effect immediately.

CAPTAIN MANUEL ANTONIO L. TAMAYO
Director General

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