



PAMBANSANG PUNONGHIMPILAN TANOD BAYBAYIN NG PILIPINAS
(National Headquarters Philippine Coast Guard)
139 25th Street, Port Area
1018 Manila

NHQ-PCG / CG-4

10 November 2022

MEMORANDUM CIRCULAR
NUMBER.....09-22

**GUIDELINES ON THE TERMINATION OF CONTRACTS OF ALL PCG
PROJECTS**

I. REFERENCES:

- A) The 2016 Revised IRR of RA. 9184 Annex "I"
- B) DPWH Department Order No 90 "Guidelines and Procedures in Terminating Contracts due to the Fault of the Contractor for Locally Funded Infrastructure Projects"

II. BACKGROUND:

This Memorandum Circular prescribes the general policies and procedures relating to the whole or partial termination of Philippine Coast Guard (PCG) procurement contracts of goods, infrastructure projects and consulting services.

III. PURPOSE:

These guidelines aim to promote fairness in the termination of procurement contracts and to prescribe contract conditions and measures to enable the PCG to protect its interests.

IV. SCOPE:

This Memorandum Circular applies to all PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units which are procuring units that may require the termination of contract relative to the procurement of goods, infrastructure projects and consulting services.

V. DEFINITION OF TERMS:

- a. **Coercive Practice** – refers to 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.

- b. **Collusive Practice** – refers to a scheme or arrangement including practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels to prevent free and open competition.
- c. **Corrupt Practice** – refers to 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 refers to 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 RA 3019.
- d. **Fraudulent Practice** – refers to a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Procuring Entity
- e. **End-User Unit** – refers to any PCG Unit that needs and uses the goods, infrastructure project or consulting services procured. End-User is indicated in the Annual Procurement Plan (APP).
- f. **Implementing Unit** – refers to the central staff of the End-User Unit expressly identified by the HoPE as the program director of a procurement project, unless the HoPE identifies a unit other than a central staff to be the Implementing Unit due to technicalities.
- g. **Head of Procuring Entity (HoPE)** – refers to the Commandant, PCG as Head of the Agency or his duly authorized official as the head of decentralized units subject to the limitations and authority delegated by Head of the Agency.
- h. **Procuring Unit** – refers to the procuring entity which the Commandant or his duly authorized Coast Guard Districts, Major Commands, Functional Commands, Special Units or PCG Units where the procurement is decentralized, the Commander of PCG Units shall be considered as the Procuring Entity subject to the limitations and authority delegated by the Commandant, PCG.
- i. **Project Implementation Officer (PrIO)** – refers to the Head of Implementation Units.
- j. **Show Cause** – refers to a notice which the Implementing Unit 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.
- k. **Slippage** – referred to delays by the Contractor in implementation of the contract.
- l. **Termination in Part** – refers to the termination of a part but not all of the work that has not been completed and accepted under a contract.

- m. **Termination in Whole** – refers to the termination of all of the work that has not been completed and accepted under a contract.
- n. **Verified Report** – refers to the report submitted by the Implementing Unit to the CPCG/HoPE 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.

VI. GUIDELINES AND PROCEDURES:

GROUNDINGS FOR TERMINATION OF CONTRACTS:

A. Termination for Default

1. In contracts for **Goods**:

The following are grounds for termination of contract for default:

- a) Pursuant to Sec 68 of the 2016 revised IRR, the Procuring Units may terminate the contract when outside *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 Unit 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) Pursuant to Sec 68 of the 2016 revised IRR, the Procuring Units may terminate the contract when 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 Units stating that the circumstance of *force majeure* is deemed to have ceased; or
- c) The Procuring Units shall terminate the contract when the Supplier fails to perform any other obligation under the Contract.

2. In contracts for **Infrastructure Projects**:

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

- a) 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;
- a.1) To ensure the timely implementation of infrastructure projects and effective management of the performance of contractors, the following calibrated actions in response to delays in the implementation of infrastructure projects are hereby adopted:

a.1.1) Negative slippage of five percent (5%) –

The contractor shall be given a warning by the Implementing unit and be required to:

a.1.1.1 Submit a detailed "catch-up" program every two weeks in order to eliminate the slippage and to restore the project to its original schedule;

a.1.1.2 Accelerate work and identify specific physical targets to be accomplished over a definite period of time; and

a.1.1.3 Provide additional input resources such as the following: money, manpower, materials, equipment and management which shall be mobilized for this action.

The PrIO shall exercise closer supervision and meet the contractor every other week to evaluate the progress of work and resolve any problems and bottlenecks.

a.1.2) Negative slippage of ten percent (10%) –

The contractor shall be issued a final warning by the Implementing Unit and be required to come-up with a revised detailed "catch-up" program with weekly physical targets together with the required additional input resources.

The PrIO shall intensify on-site supervision and evaluation of the project performance to at least once a week and prepare contingency plans for a possible termination of the contract or take-over of the work by administration or contract.

a.1.3) Negative slippage of fifteen percent (15%) –

The PrIO shall initiate termination of the contract or take-over of the work by administration or contract in accordance with Section 53.3 of the 2016 revised IRR of RA No. 9184 and the Revised Guidelines for the Implementation of Infrastructure Projects by Administration.

It shall likewise take proper transitory measures to minimize work disruptions, e.g., take-over by administration while negotiation or rebidding is on-going.

b) 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



c) The Contractor:

- i. abandons the contract works, refuses or fails to comply with a valid instruction of the Procuring Units or fails to proceed expeditiously and without delay despite a written notice by Procuring Units;
- ii. 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;
- iii. does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
- iv. neglects or refuses to remove materials or to perform a new work that has been rejected as defective or unsuitable; or
- v. sub-lets any part of the contract works without approval by the Procuring Units.

3. In contracts for **Consulting Services**:

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

- a) 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 the Procuring Units pursuant to a request made by the Consultant prior to the delay;
- b) 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's receipt of the notice from the Procuring Units stating that the circumstance of force majeure is deemed to have ceased; or
- c) The Consultant fails to perform any other obligation under the contract.

B. Termination for Convenience

The Procuring Units may terminate the Contract, in whole or in part, at any time for its convenience. Head of Procuring Entity (HoPE) may terminate a contract for the convenience of the PCG 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

The Procuring Units shall terminate the contract if the Supplier/Contractor/Consultant 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 Supplier/Contractor/Consultant, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Units and/or the Supplier/Contractor/Consultant.

D. Termination for Unlawful Acts

The Procuring Units may terminate the contract in case it is determined prima facie that the Supplier/Contractor/Consultant 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:

- a) Corrupt, fraudulent, collusive and coercive practices;
- b) Drawing up or using forged documents;
- c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- d) Any other act analogous to the foregoing.

E. Termination by Contractor / Consultant

1. In contracts for Infrastructure Projects:

The Contractor may terminate its contract with the Procuring Units 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:

- a) Failure of the Procuring Units 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
- b) 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.

2. In contracts for Consulting Services:

The Consultant may terminate its agreement with the Procuring Units if the latter is in material breach of its obligations pursuant to the contract and has not remedied the same within sixty (60) calendar days following its receipt of the Consultant's notice specifying such breach.

SPECIFIC GUIDELINES AND PROCEDURES FOR TERMINATION OF CONTRACTS:

1. The PrIO shall execute the termination of contract upon receipt of a written report of acts or causes which may constitute ground(s) for termination or upon its own initiative by verifying the existence of such grounds within seven (7) calendar days and thereafter submit a Verified Report 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. Further, the PrIO shall also prepare the initial draft of the Notice to Terminate which shall be signed and issued by the Head of Procuring Entity (HoPE) in case of his approval of PrIO's recommendation. The Verified Report and Notice to Terminate shall also be accompanied with all relevant evidence and documents. Lastly, a notarized affidavit of Verification must be signed and attached in the verified report. The aforementioned documents shall then be submitted by the PrIO to the PCG Central Staff;
2. The PCG Central Staff shall receive, process and review the verified report submitted by the PrIO including all attached documents. After the evaluation of the verified report and the recommendations of the PrIO, the PCG Central Staff prepare the Disposition Form based on the verified report of the PrIO for submission to HoPE for his approval or disapproval;
3. Upon receipt of the Disposition Form, the HoPE shall approve or disapprove the recommendations of the PrIO based on the grounds stated in the verified report and in consonance with the provisions set forth under the Annex "I" of the 2016 revised IRR of RA No. 9184
4. In case of approval, the HoPE shall issue the Notice to Terminate indicating the ground/s for termination, extent of termination, instruction to Supplier/Contractor/Consultant to show cause and other special instructions. Said notice shall be accompanied with the verified report previously submitted by the PrIO for the reference of the Supplier/Contractor/Consultant;
5. In case of disapproval, the Disposition Form from the PCG Central Staff and verified report from PrIO shall be endorsed by the HoPE to the Contract Termination Review Committee (CTRC) for latter's review and deliberation.



6. Upon endorsement of HoPE, the CTRC shall then convene and deliberate the completeness of the verified report and merits of the recommendations of the PrIO.

Should the CTRC deem the documents incomplete and unreasonable, it shall revert back to the PrIO its findings and the latter shall revise the verified report and re-submit the same to the CTRC for another round of deliberation;

7. If the verified report and recommendations of the PrIO are all in order, then the CTRC shall render its recommendation to HoPE on whether or not the contract shall be terminated;

Should the CTRC recommend the termination of contract, it shall prepare a CTRC Resolution and Notice to Terminate for submission to, and approval or disapproval of HoPE. In case of approval, the HoPE shall sign the Notice to Terminate and issue the same to the Supplier/Contractor/Consultant;

8. On the other hand, the Supplier/Contractor/Consultant, within seven (7) calendar days from receipt of the Notice to Terminate, shall submit to the HoPE a verified position paper specifying its position as to why the contract should not be terminated;
9. If the Supplier/Contractor/Consultant fails to show cause after the lapse of the seven (7) calendar day period, either by inaction or by default, the HoPE shall issue an order terminating the contract;
10. All verified position papers shall be directly submitted to HoPE. Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the HoPE shall decide whether or not to terminate the contract.

Meanwhile, the verified position papers for contracts to be terminated that were previously handled by the CTRC shall be coursed through to the CTRC for its review. Thereafter, the CTRC shall recommend to the HoPE on whether or not to terminate the contract based on the submitted verified position paper of the Supplier/Contractor/Consultant.

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

VII. DUTIES AND RESPONSIBILITIES:

1. Head of Procuring Entity (HoPE):

- a. Creates and designates members of the Contract Termination Review Committee to assist him in the discharge of his functions for contract termination;
- b. Approves the Disposition Form prepared and submitted by the concerned PCG Central Staff containing the recommendation of the PrIO for contract termination;
- c. Reviews and approves/disapproves the recommendation of the PrIO for contract termination;
- d. Issues Notice to Terminate to Suppliers/Contractors/Consultants and requests the same to show cause by submitting a verified position paper;
- e. Withdraws Notice to Terminate upon determination that the contractual obligations of the Suppliers/Contractors/Consultants have already been delivered, completed or performed prior receipt of the Notice to Terminate; and
- f. Approves and issues Termination Order.

2. Project Implementation Officer (PrIO) / Implementing Unit:

- a. Monitors the compliance of the contractors with their respective contractual obligations to ensure the timely and satisfactory accomplishment of the assigned projects; and
- b. Initiates the termination of contracts whenever deemed necessary through a preparation of verified reports indicating the facts, details and grounds for contract termination with a recommendation to CPCG/HoPE on whether or not to terminate the contract/s.

3. Contract Termination Review Committee:

- a. Provides assistance to the HoPE in the Termination of Contracts for all PCG Projects;
- b. Reviews the Disposition Form once disapproved by the HoPE and evaluates the merits of the submitted verified reports from the PrIO;
- c. Renders recommendation to HoPE on whether or not to subject a contract termination; and
- d. If the documents are not complete and reasonable, it will revert back to the PrIO for them to improve the preparation and finalization of a verified report and re-submit to CTRC for deliberation.

- e. Prepares Notice to Terminate and/or Termination Order.

4. PCG Central Staff:

- a. Review the submitted verified reports from the PrIO; and
- b. Prepares the Disposition Form with recommendations based on the submitted verified reports from the PrIO for approval/disapproval of CPCG.

5. Coast Guard Procurement Service (CGPS):

When a security is forfeited in favour of the PCG, CGPS or its designated Procurement Unit shall inform CGFS/FSU in writing and provide the necessary supporting documents that may be required by the bank or the surety company.

6. Coast Guard Finance Service (CGFS):

- a. CGFS or its designated Finance Service Unit (FSU) shall maintain the custody of bid, warranty and performance securities and other guarantees in the form of bank draft/guarantee or irrevocable letter of credit and surety bond.
- b. Securities shall be maintained untorn and unaltered until its validity period.
- c. Upon receipt of written notice of forfeited security from CGFS/Procurement Unit, the CGFS/FSU through its bonded collecting officer shall collect the securities as soon as possible.

7. Contractor / Supplier:

- a. Prepares and submits a verified position paper, upon receipt of Notice to Terminate from PCG, to present its position why the contract should not be terminated.
- b. Executes its intention to terminate its contract with the PCG through a written notice submitted to the PrIO at least thirty (30) calendar days prior to its intended effectivity of termination. The Contract is deemed terminated if delivery/works is not resumed within thirty (30) calendar days after the receipt of such notice by the PrIO.

VIII. DISSEMINATION:

NHQ-PCG/CG-4 shall be responsible for the proper dissemination of these Guidelines by conducting series of seminars/workshops and by disseminating it through proper Radio Message to all PCG Districts / Major Commands / Operational Commands / Functional Commands / Special Units which are procuring units that may require termination of contract relative to the procurement of goods, infrastructure projects and consulting services.



IX. REPEALING CLAUSE:

All policies and regulations which are inconsistent with this Memorandum Circular are hereby repealed and modified accordingly.

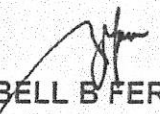
X. EFFECTIVITY:

This Memorandum Circular shall take effect fifteen days after publication.

BY COMMAND OF COAST GUARD ADMIRAL ABU:

OFFICIAL:

TITO ALVIN G ANDAL
CG COMMO
Chief of Coast Guard Staff


JAYSIEBELL B FERRER
CG CDR
Coast Guard Adjutant

Annex 1 – Sample of Notice to Terminate Contract

Annex 2-A – Sample of Notice of Decision to Terminate Contract (TERMINATED)

Annex 2-B – Sample of Notice of Decision to Terminate Contract (NOT TERMINATED)

Annex 3 – Sample of Notice to Rescind the Issued

Annex 4 – Contract Termination and Review Flowchart



PAMBANSANG PUNONGHIMPILAN TANOD BAYBAYIN NG PILIPINAS
(National Headquarters Philippine Coast Guard)
139 25th Street, Port Area, Manila

(Date of Issuance)

Mr./Ms. FULL NAME

Position

Company/Firm

Complete Address

SUBJECT : NOTICE TO TERMINATE CONTRACT

Dear Mr./Ms. (Last Name):

This refers to the contract (Name of Project) in the amount of ₱ (Contract Amount). Pursuant to Section IV.2 Annex I of the 2016 Revised IRR of RA 9184, this notice is hereby issued to terminate the contract (choose one - wholly or partly) for (state the ground/s for termination e.g. Default, Convenience, Insolvency, Unlawful Acts) as stipulated under Section III.A.2 Annex I of the 2016 Revised IRR of RA 9184 which was caused by (state the circumstances which leads to the ground/s for termination e.g. Negative Slippage of 15% or more, etc.). The existence of the aforementioned ground/s for termination was/were duly verified by the Implementing Unit/Inspectorate Team as indicated in the notarized Verified Report.

In view hereof, you are hereby ordered to submit, within seven (7) calendar days upon receipt of this notice, a duly notarized position paper stating why the contract should not be terminated. Likewise, substantiate your claim/reasons with acceptable supporting documents.

Failure to submit a verified position paper within the prescribed period shall cause this Office to issue the Order to Terminate the Contract pursuant to Section IV.3 Annex "I" of the 2016 Revised IRR of RA 9184.

Attached herewith is the notarized Verified Report as required under Section IV.2 Appendix I of the 2016 Revised IRR of RA 9184.

For your information, guidance and compliance.

Very Truly Yours,

Head of Procuring Entity



PAMBANSANG PUNONGHIMPILAN TANOD BAYBAYIN NG PILIPINAS
(National Headquarters Philippine Coast Guard)
139 25th Street, Port Area, Manila

(Date of Issuance)

Mr./Ms. FULL NAME

Position

Company/Firm

Complete Address

SUBJECT : NOTICE OF DECISION TO TERMINATE CONTRACT

Dear Mr./Ms. (Last Name):

This refers to your contract (Name of Project) in the amount of ₱ (Contract Amount). Pursuant to Section IV.5 Annex I of the 2016 Revised IRR of RA 9184, this Notice is hereby issued to inform your firm that the contract has been **TERMINATED** (choose one - wholly or partly), effective (upon receipt of this notice/or specify a date), for (state the ground/s for termination e.g. Default, Convenience, Insolvency, Unlawful Acts), as stipulated under Section III.A.2 Annex I of the 2016 Revised IRR of RA 9184 which was caused by (state the circumstances which leads to the ground/s for termination e.g. Negative Slippage of 15% or more, etc.), as indicated in the approved Contract Termination, as hereto attached.

In view hereof, you are hereby ordered to appear before this Office, within seven (7) days upon receipt of this notice, for a joint inventory of your accomplishment. Failure to do so shall constitute a waiver on your part for any protest on the inventory report prepared and approved by this Office.

A corresponding Blacklisting Order will be issued in accordance with Appendix 17 of the 2016 Revised IRR of RA 9184 as amended by GPPB Resolution No. 40-2017 if warranted.

Compliance is hereby enjoined.

Very Truly Yours,

Head of Procuring Entity

[Handwritten signature]



PAMBANSANG PUNONGHIMPILAN TANOD BAYBAYIN NG PILIPINAS
(National Headquarters Philippine Coast Guard)
Address

(Date of Issuance)

Mr./Ms. FULL NAME

Position

Company/Firm

Complete Address

SUBJECT : NOTICE OF DECISION NOT TO TERMINATE THE CONTRACT

Dear Mr./Ms. (Last Name):

This refers to your contract (Name of Project) in the amount of ₱ (Contract Amount). Pursuant to Section IV.5 Annex I of the 2016 Revised IRR of RA 9184, this Notice is hereby issued to inform your firm that this Office decided **Not to Terminate the Contract** (choose one – wholly or partly), (state reason for not terminating the contract), per Executive Summary dated _____.

In view hereof, you are hereby ordered to continue with the implementation of the project in accordance with the Contract.

Please be informed that based on the approved schedule, your firm has _____ () calendar days remaining to complete the project. Or (Please be informed that based on the approved schedule, the contract duration has already expired, as such, this Office will apply the liquidated damages.)

Compliance is hereby enjoined.

Very Truly Yours,

Head of Procuring Entity



PAMBANSANG PUNONGHIMPILAN TANOD BAYBAYIN NG PILIPINAS
(National Headquarters Philippine Coast Guard)
Address

(Date of Issuance)

Mr./Ms. FULL NAME

Position

Company/Firm

Complete Address

SUBJECT : NOTICE TO RESCIND THE ISSUED NOTICE TO TERMINATE THE CONTRACT

Dear Mr./Ms. (Last Name):

This refers to your contract (Name of Project) in the amount of ₱ (Contract Amount). Pursuant to Section IV.4 Annex I of the 2016 Revised IRR of RA 9184, this Notice is hereby issued to inform your firm that the Notice to Terminate Contract (choose one – wholly or partly) is hereby rescinded since the (state the reason for rescinding the issued Notice to Terminate the Contract – e.g. it is determined that the items or works subject of the notice had been completed, delivered, or performed before the Contractor's receipt of the Notice to Terminate).

In view hereof, you are hereby ordered to continue with the implementation of the project in accordance with the plans and specifications.

Please be informed that your firm has ____ () calendar days remaining to complete the project.

Compliance is hereby enjoined.

Very Truly Yours,

Head of Procuring Entity

CONTRACT TERMINATION REVIEW FLOWCHART

Annex 4

