

unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and National Government policies.

18.2 The Procuring Agency or the Servicing Agency may terminate this Contract if the other party causes a fundamental breach of this Contract.

18.3 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- a) The Servicing Agency stops work for fourteen (14) calendar days when no stoppage of work is shown on the current Program of Work and the stoppage has not been authorized by the Procuring Agency's Representative;
- b) The Procuring Agency's Representative instructs the Servicing Agency to delay the progress of the Works, and the instruction is not withdrawn within thirty (30) calendar days;
- c) The Procuring Agency shall terminate this Contract if the Servicing Agency 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 Servicing Agency, 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 Agency and/or the Servicing Agency. In the case of the Servicing Agency's insolvency, any Servicing Agency's Equipment which the Procuring Agency instructs in the notice is to be used until the completion of the Works;
- d) A payment certified by the Procuring Agency's Representative is not paid by the Procuring Agency to the Servicing Agency within forty five (45) working days from the date of the Procuring Agency Representative's certificate;
- e) The Procuring Agency's Representative gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Servicing Agency fails to correct it within a reasonable period of time determined by the Procuring Agency's Representative;
- f) The Servicing Agency does not maintain a Performance Security, which is required;
- g) The Servicing Agency has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the GCC Clause 9; and
- h) In case it is determined prima facie by the Procuring Agency that the Servicing Agency has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following:
 - i. corrupt, fraudulent, collusive, coercive, and obstructive



- practices unless otherwise specified in the SCC;
- ii. drawing up or using forged documents;
- iii. using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- iv. any other act analogous to the foregoing.

18.4 The Funding Source or the Procuring Agency, as appropriate, will seek to impose the maximum civil, administrative and/or criminal penalties available under the applicable law on individuals and organizations deemed to be involved with corrupt, fraudulent, or coercive practices.

18.5 When persons from either party to this Contract gives notice of a fundamental breach to the Procuring Agency's Representative in order to terminate the existing contract for a cause other than those listed under GCC Clause 18.3, the Procuring Agency's Representative shall decide whether the breach is fundamental or not.

18.6 If this Contract is terminated, the Servicing Agency shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

Clause 19: **PROCEDURES FOR TERMINATION OF CONTRACTS**

19.1 The following provisions shall govern the procedures for the termination of this Contract:

- a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Procuring Agency shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;
- b) Upon recommendation by the Procuring Agency, the Head of the Procuring Agency shall terminate this Contract only by a written notice to the Servicing Agency conveying the termination of this Contract. The notice shall state:
 - i. that this 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 Servicing Agency to show cause as to why this Contract should not be terminated; and
 - iv. special instructions of the Procuring Agency, if any.

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

- c) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Servicing Agency shall submit to the Head of the Procuring Agency a verified position paper stating why the contract should not be terminated. If the Servicing Agency fails to show cause after the lapse of the seven (7) day period, either by inaction or by



default, the Head of the Procuring Agency shall issue an order terminating the contract;

- d) The Procuring Agency may, at any time before receipt of the Servicing Agency's verified position paper described in item (c) above 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 Servicing Agency's receipt of the notice;
- e) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the Procuring Agency shall decide whether or not to terminate this Contract. It shall serve a written notice to the Servicing Agency of its decision and, unless otherwise provided in the said notice, this Contract is deemed terminated from receipt of the Servicing Agency of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and
- f) The Head of the Procuring Agency may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the Procuring Agency.

19.2 Pursuant to Section 69(f) of RA 9184 and without prejudice to the imposition of additional administrative sanctions as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the Procuring Agency shall impose on Servicing Agency after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

- a) Failure of the Servicing Agency, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to proceed ("NTP");
- b) Failure by the Servicing Agency to fully and faithfully comply with its contractual obligations without valid cause, or failure by the Servicing Agency to comply with any written lawful instruction of the Procuring Agency or its representative(s) pursuant to the implementation of the contract. For the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:
 - i. Employment of competent technical personnel, competent engineers and/or work supervisors;
 - ii. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
 - iii. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;



- iv. Deployment of committed equipment, facilities, support staff and manpower; and
- c) Assignment and subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the Procuring Agency.
- d) Poor performance by the Servicing Agency or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the Procuring Agency shall be applied. Any of the following acts by the Servicing Agency shall be construed as poor performance:
 - i. Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the Servicing Agency; and
 - ii. Quality of materials and workmanship not complying with the approved specifications arising from the Servicing Agency's fault or negligence.
- e) Willful or deliberate abandonment or non-performance of the project or contract by the Servicing Agency resulting to substantial breach thereof without lawful and/or just cause.

In addition to the penalty of suspension, the performance security posted by the Servicing Agency shall also be forfeited.

Clause 20: **FORCE MAJEURE, RELEASE FROM PERFORMANCE**

- 20.1 For purposes of this Contract the terms "*force majeure*" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or *force majeure* shall be interpreted to mean an event which the Servicing Agency could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Servicing Agency.
- 20.2 If this Contract is discontinued by an outbreak of war or by any other event entirely outside the control of either the Procuring Agency or the Servicing Agency, the Procuring Agency's Representative shall certify that this Contract has been discontinued. The Servicing Agency shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all works carried out before receiving it and for any Work carried out afterwards to which a commitment was made.
- 20.3 If the event continues for a period of ninety (90) calendar days, either party may then give notice of termination, which shall take effect fourteen (14) calendar days after the giving of the notice.
- 20.4 After termination, the Servicing Agency shall be entitled to payment of the value of the Works completed and of the materials and plant reasonably



delivered to the Site, adjusted by the following:

- a) any sum to which the Servicing Agency is entitled to receive; and
- b) any sum to which the Procuring Agency is entitled.

20.5 The net balance due shall be paid or repaid within a reasonable time period from the time of the notice of termination.

Clause 21: RESOLUTION OF DISPUTES

21.1 If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of the contract covered by the Act and this IRR, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

21.2 If the Servicing Agency believes that a decision taken by the Procuring Agency's Representative was either outside the authority given to the Procuring Agency's Representative by this Contract or that the decision was wrongly taken, the decision shall be referred to the Arbiter indicated in the SCC within fourteen (14) calendar days of the notification of the Procuring Agency Representative's decision.

21.3 Any and all disputes arising from the implementation of this Contract covered by the R.A. 9184 and its IRR shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the " Arbitration Law" and Republic Act 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004": *Provided, however, That, disputes that are within the competence of the Construction Industry Arbitration Commission (CIAC) to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in this Contract that will be executed pursuant to the provisions of the Act and its IRR: Provided, further, That, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.*

Clause 22: SUSPENSION OF LOAN, CREDIT, GRANT OR APPROPRIATION

In the event that the Funding Source suspends the Loan, Credit, Grant, or Appropriation to the Procuring Agency, from which part of the payments to the Servicing Agency are being made:

- a) The Procuring Agency is obligated to notify the Servicing Agency of such suspension within seven (7) days of having received the suspension notice.
- b) If the Servicing Agency has not received sums due it for work already done within forty five (45) calendar days from the time the Servicing Agency's claim for payment has been certified by the Procuring Agency's Representative, the Servicing Agency may immediately issue a suspension of work notice in accordance with GCC Clause 45.2.



Clause 23: **PROCURING AGENCY'S REPRESENTATIVE DECISIONS**

- 23.1 Except where otherwise specifically stated, the Procuring Agency's Representative will decide contractual matters between the Procuring Agency and the Servicing Agency in the role representing the Procuring Agency.
- 23.2 The Procuring Agency's Representative may delegate any of his duties and responsibilities to other people, except to the Arbiter, after notifying the Servicing Agency, and may cancel any delegation after notifying the Servicing Agency.

Clause 24: **APPROVAL OF DRAWINGS AND TEMPORARY WORKS BY THE PROCURING AGENCY'S REPRESENTATIVE**

- 24.1 All Drawings prepared by the Servicing Agency for the execution of the Temporary Works, are subject to prior approval by the Procuring Agency's Representative before its use.
- 24.2 The Servicing Agency shall be responsible for design of Temporary Works.
- 24.3 The Procuring Agency's Representative's approval shall not alter the Servicing Agency's responsibility for design of the Temporary Works.
- 24.4 The Servicing Agency shall obtain approval of third parties to the design of the Temporary Works, when required by the Procuring Agency.

Clause 25: **ACCELERATION AND DELAYS ORDERED BY THE PROCURING AGENCY'S REPRESENTATIVE**

- 25.1 When the Procuring Agency wants the Servicing Agency to finish before the Intended Completion Date, the Procuring Agency's Representative will obtain priced proposals for achieving the necessary acceleration from the Servicing Agency. If the Procuring Agency accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Procuring Agency and the Servicing Agency.
- 25.2 If the Servicing Agency's Financial Proposals for an acceleration are accepted by the Procuring Agency, they are incorporated in the Contract Price and treated as a Variation.

Clause 26: **EXTENSION OF THE INTENDED COMPLETION DATE**

- 26.1 The Procuring Agency's Representative shall extend the Intended Completion Date if a Variation is issued which makes it impossible for the Intended Completion Date to be achieved by the Servicing Agency without taking steps to accelerate the remaining work, which would cause the Servicing Agency to incur additional costs. No payment shall be made for any event which may warrant the extension of the Intended Completion Date.
- 26.2 The Procuring Agency's Representative shall decide whether and by how much to extend the Intended Completion Date within twenty one (21)

