

**Memorandum Circular  
No. 98 - 13  
September 02, 1998**

**SUBJECT : Guidelines in Entering into  
Contracts Between Contractors and  
the DENR.**

Pursuant to the provisions of **GENERAL ACCOUNTING AND AUDITING MANUAL (GAAM), VOLUME I** dated **JANUARY 2, 1992**, **SECTION 74** of **GENERAL APPROPRIATIONS ACT (GAA), FY 1998, IMPLEMENTING RULES AND REGULATIONS (IRR) OF EXECUTIVE ORDER (E.O.) NO. 302** dated **JUNE 17, 1996**, and in order to strengthen the internal control system as well as to promote efficiency and effectiveness in the preparation, processing and approval of contracts in the DENR, its Bureaus, Regional Offices, PENROs, FASPs, and Attached Agencies, the following policies are hereby promulgated/adopted:

- A. Section 526, GAAM, Volume I - Appropriation before entering into contract**
- i) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor;
  - ii) All contracts for capital projects and for supply of commodities and services including equipment maintenance contracts and other agreements requiring payments chargeable to agency current operating or capital expenditure fund, shall be signed by the agency head or his duly authorized representative only when there are available funds;

Henceforth, contracts must first be issued a Certificate of Availability of Funds (CAF) by the Department Chief Accountant, Bureau Accountant, Regional Accountant, PENRO Accountant, Project Accountant, and Attached Agencies Accountant **BEFORE THE SAME SHALL BE SIGNED BY THE AGENCY HEAD OR HIS DULY AUTHORIZED REPRESENTATIVE**, and the CAF shall form an integral part of the contract;

- iii) Likewise, the Department Chief Accountant, Bureau Accountant, Regional Accountant, PENRO Accountant, Project Accountant, and Attached Agencies Accountant shall sign/certify the availability of funds on the contract, and contracts without signature/certification of the Accountant concerned shall be considered **null and void**.

**B. Section 5.2, Paragraph 5.2.1, IRR of E.O. 302 - Performing Security**

- i) To guarantee the faithful performance of the contract awardee, he shall post a performance security whose form and amount are prescribed below, in favor of the Government within the time specified by the concerned agency **AFTER SIGNING OF CONTRACT**. Subject to the conditions of the contract, the performance security may be released after the issuance of the “Certificate of Acceptance” of goods provided that there are no claims filed against the awardee or the surety company:
  - a. Cash, manager’s check, cashier’s check, irrevocable letter of credit, bank draft - Five percent (5%) of the total contract price;

- b. Bank guarantee - Ten percent (10%) of the total contract price;
- c. Surety bond - Thirty percent (30%) of the total contract price.
- d. Any combination of the above - Proportionate to share of Form with respect to total amount of security

**C. Section 574, Paragraph (a) of GAAM, Volume I - Liquidated damages**

- i) Where the contractor refuses or fails to satisfactorily compete the work within the specified contract time, plus any time extension duly granted and is thereby in default under the contract, the contractor shall pay the Government for liquidated damages, and not by way of penalty, an amount **TO BE DETERMINED IN ACCORDANCE WITH THE FOLLOWING FORMULA** for each calendar day of delay, until the work is completed and accepted or taken over by the Government:

$$\mathbf{LD = \frac{0.75 \times CP}{CT}}$$

**WHERE:**

**LD** = Amount of liquidated damages for each calendar day of delay.

**CP** = Total contract price minus the value of the completed portions of the contract certified by the government office concerned as usable as of the expiration of the contract time, in pesos.

CT = Contract time plus any time extension duly granted to the contractor, in calendar days.

**D. Paragraph 5.10.1, IRR of E.O. NO. 302 (Penalty Clause)  
- Delay in the delivery of goods and services.**

- i) Delay in the delivery of goods and services shall be subject to a penalty of **ONE TENTH OF ONE PERCENT (1/10 OF 1%)** for each day of late delivery.

This Order shall take effect immediately and automatically revokes or amends accordingly all other previous issuance's inconsistent herewith.

**(Sgd.) ANTONIO H. CERILLES**  
Secretary