



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF AGRICULTURE
BUREAU OF AGRICULTURAL RESEARCH
RDMIC Bldg., Elliptical Road corner Visayas Avenue,
Diliman, Quezon City 1104

Reference No. 2023-06- 46
June 22, 2023

MEMORANDUM FOR THE DIRECTOR

THRU : **JOELL H. LALES** 6/29
Assistant Director

FROM : **RAYMOND PATRICK L. CABRERA** – Acting Head, PDD
ANTHONY B. OBLIGADO, PhD – Head, PMED
ROBERTO S. QUING, JR. – Head, Accounting Section
MARILOU C. OREN – Head, Budget Section

SUBJECT : **RECOMMENDED PENALTY CLAUSE IN R4D PROJECT'S
MEMORANDUM OF AGREEMENT (MOA)**

This refers to the recommended penalty clause to be incorporated in the R4D project's Memorandum of Agreement (MOA) between DA-BAR and partner implementing agencies (IAs). We would like to inform you that we had a discussion meeting and agreed upon the following comments:


- Mentioning penalties in MOA is meant to discourage non-compliance but it is not always necessary to include it in the contract. Sometimes, a contract would state that if one party fails to perform its obligations, the other party can terminate the contract. Article 3 Section 10 in BAR's MOA already stipulates that BAR reserves the right to terminate the project for non-compliance of IAs. Also, Article 3 Section 9 states that BAR has the right to withhold fund releases for delays, non-compliance and failures.
- A penalty clause states that "one contracting party is required to give something, usually money, to the other party if he or she breaches the contract¹". Although monetary penalty of the party in default is not specified in BAR's MOA, Article 7 Section 2 provides that BAR shall institute legal action against IAs in case of failure to complete the project or for material violation of the provisions of MOA. BAR can always ask the proper court to order the defaulting party to perform its obligations. In some cases, the court will even impose penalties and/or damages, even if none are included in the contract².

- In line with Article 3 Section 9 on withholding of fund releases, the specific details are reflected in the M&E guidelines not in the MOA as provided by the Project Monitoring, Evaluation and Linkaging Division (formerly RCD).
- MOA is a contract executed when the details have already been agreed upon by the parties (provisions must be mutually agreed by both parties). Incorporating penalties in MOA might result to disagreement of other parties (IAs), hence avoiding to render their service as implementers.
- Penalties may be more appropriate in the contract of procurement of goods, infrastructure projects, consulting services, etc. and not for granting of funds to implement research activities. This is to strengthen the coercive force of the obligation by the threat of greater responsibility in the breach of contract and insure performance of a bidder or contractor³. The nature of procurement differs from grants as the former requires the bidder to deliver service/goods for use of the client while the latter awards financial assistance to support/stimulate accomplishment of a public purpose.

Based on the above statements, we find the Penalty Clause more appropriate to be cited in the Monitoring Guidelines of the Project Monitoring, Evaluation, and Linkaging Division as an internal policy of the Bureau and not in the MOA.

For your consideration and further instructions.

Thank you.


ANTHONY B. OBLIGADO, PhD
 Head, PMED


ROBERTO S. QUING, JR.
 Head, Accounting Section


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