



## TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

**NPM No. 16 -2010**

25 May 2010

**MR. BEN S. DUMALIANG**

*President*

**FIRST UNITED CONSTRUCTORS CORPORATION**

Quezon City Central Post Office

P.O. Box 2410-1164

NIA Road, Quezon City, Metro Manila

1100 Philippines

**Re: Single Largest Contract**

**Dear Mr. Dumaliang:**

We refer to your letters dated 16 April 2010 and 21 April 2010 seeking clarification on the correct interpretation of the term "completed contract" in relation to the eligibility requirements under the revised Implementing Rules and Regulations (IRR) of Republic Act 9184 (RA 9184).

We understand that First United Constructors Corporation (FUCC) entered into a contract with the National Housing Authority (NHA) for the Freedom Valley Resettlement (FVR) Project. Midway through the project, however, NHA terminated the contract for convenience (contractor not at fault) pursuant to the general conditions of its contract.

FUCC is now inquiring whether the accomplished part of the FVR Project may be considered as one of its completed contract to determine compliance with the eligibility criterion prescribed under Section 23.5.2.5 of the IRR, the relevant portion of which reads:

The prospective bidder must have an experience of having completed, within a period of ten (10) years from the date of submission and receipt of bids, at least one (1) contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the NSO consumer price indices, must be at least fifty percent (50%) of the ABC [Approved Budget for the Contract] to be bid. . .

The foregoing rule, commonly called the single largest contract requirement, intends to establish the bidder's competence and capability to successfully perform the contract. It

ensures that the bidder has the necessary track record to accomplish the works required under the contract being bid.<sup>1</sup>

Under the Philippine Bidding Documents (PBDs), a government agency, as procuring entity, may at any time terminate a contract, in whole or in part, for convenience.<sup>2</sup> Termination by convenience may be undertaken after the government 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.<sup>3</sup> If the procuring entity terminates the contract by convenience, it is bound to pay the contractor for the value of work done, materials ordered, and other reasonable costs.<sup>4</sup>

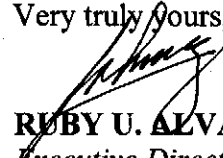
Thus, under the PBDs, termination for convenience is an option solely granted to the government, as procuring entity, and may only be exercised if contractor is not at fault. It recognizes that work has been done or successfully accomplished by the contractor by requiring the procuring entity to pay for such works.

From the foregoing, it is our considered opinion that accomplished works of a contract terminated by convenience may be considered in determining whether the bidder has complied with the single largest contract rule. Works accomplished, despite termination of the contract for convenience, illustrates the competence of the contractor to perform a specific undertaking. These works, therefore, should be properly considered as part of the contractor's track record.

It bears stressing, however, that only the value of works done, and not the total cost of the contract, should be considered in determining whether the terminated contract meets the prescribed 50% of the ABC of the contract to be bid. Furthermore, the procuring entity must carefully scrutinize whether (i) the contract was indeed terminated by convenience as defined under the PBDs and (ii) the Constructors Performance Evaluation System rating of the contractor and/or submitted certificate of completion and owner's acceptance of the contract is satisfactory as prescribed under Section 23.5.2.4 of the IRR.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
**RUBY U. ALVAREZ**  
*Executive Director III*

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<sup>1</sup> Please see GPPB Non Policy Opinion No. 159-2004 dated 20 December 2004, addressed to the Office of the President.

<sup>2</sup> Clause 18.1, General Conditions of Contract, Philippine Bidding Documents for Works, 3<sup>rd</sup> Edition

<sup>3</sup> *Id.*

<sup>4</sup> Clause 46.2, *Id.*