

Department of Budget and Management  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**

**NPM No. 73-2013**

5 August 2013

**MS. FE B. BASS**

*City Government Department Head*

**QUEZON CITY GENERAL PROCUREMENT OFFICE**

7<sup>th</sup> Floor, Quezon City Hall, Elliptical Road,  
Diliman, Quezon City

**Re: Force Majeure in Infrastructure Contracts**

Dear Ms. Bass:

We write in response to your letter dated 21 May 2013, seeking our opinion on the possible inclusion of *force majeure* in the Terms of Reference for infrastructure project contracts specifically with a 5 year and 15 year warranty/coverage. Per our inquiry with Ms. Ludivina Semana of your office, your request for clarification pertains to whether it is possible to include *force majeure* within the coverage of the warranty against structural defects of fifteen (15) years for permanent structures and five (5) years for semi-permanent structures in the Terms of Reference for infrastructure contracts.

Section 62(b) of Republic Act (RA) No. 9184 expressly provides that for the procurement of infrastructure projects, the contractor shall assume full responsibility for the work from the time project construction commenced up to a reasonable period after final acceptance as defined in the revised Implementing Rules and Regulations (IRR) taking into consideration the scale and coverage of the project and shall be held responsible for any damage or destruction of works **except those occasioned by *force majeure***. Furthermore, Section 62.1.1(a) of the revised IRR of RA 9184 provides that from the time project construction commenced up to final acceptance, the contractor shall assume full responsibility for any damage or destruction of the **works except those occasioned by *force majeure***. The Philippine Bidding Documents (PBDs) for the Procurement of Infrastructure Projects state that a fortuitous event or *force majeure* shall be interpreted to mean an event which the Contractor 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 Contractor.<sup>1</sup>

The foregoing provisions have likewise been incorporated under Clause 12.1 of the General Conditions of Contract of the PBDs for the Procurement of Infrastructure Projects<sup>2</sup>. Moreover, Clause 12.5, Section IV, General Conditions of Contract, expressly provides that the warranty against Structural Defects/Failures, **except those occasioned on *force majeure***.

<sup>1</sup> Clause 20.1, Section IV, General Conditions of Contract Philippine Bidding Documents for the Procurement of Infrastructure Projects, Fourth Edition, December 2010.

<sup>2</sup> Fourth Edition, December 2010.

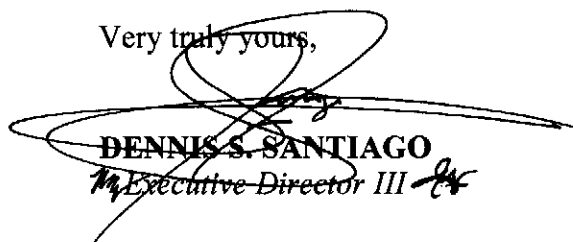
shall cover the period specified in the Special Conditions of Contract reckoned from the date of issuance of the Certificate of Final Acceptance by the Procuring Entity (PE).

It is a fundamental rule that contracts, once perfected, bind both contracting parties and a contract freely entered into should be respected since a contract is the law between the parties. However, it must be understood that contracts are not the only source of law that govern the rights and obligations of the parties. More specifically, no contractual stipulation may contradict law, morals, good customs, public order or public policy. The principle of party autonomy in contracts is not an absolute principle. The rule in Article 1306 of the Civil Code is that the contracting parties may establish such stipulations as they may deem convenient provided they are not contrary to law, morals, good customs, public order or public policy. Thus, counter-balancing the principle of autonomy of contracting parties is the equally relevant rule that provisions of applicable laws, especially those relating to matters affecting public policy, are deemed incorporated into the contract. Elsewise put, the governing principle is that parties may not contract away applicable provisions of law, especially peremptory provisions dealing with matters heavily impressed with public interest.<sup>3</sup>

In view of the foregoing, while the Local Government of Quezon City could freely stipulate the terms and conditions in contracts that it enters into, no contractual stipulation therein should be contradictory to law, morals, good customs, public order or public policy. Considering that RA 9184<sup>4</sup> and its revised IRR<sup>5</sup> and the PBDs for Infrastructure Projects clearly provide that the contractor shall neither be liable for damage or destruction of works occasioned by *force majeure* nor shall the contractor's warranty cover Structural Defects/Failures occasioned by *force majeure*, then the Local Government of Quezon City could not include provisions in the Terms of Reference for infrastructure contracts that are contrary to the provisions of law - to do so would be a wanton violation of RA 9184 and its revised IRR.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*My Executive Director III*

Uto  
//sds

<sup>3</sup>Power Sector Assets and Liabilities Management Corporation vs. Pozzolanac Philippines Incorporated, G.R. No. 183789, 24 August 2011.

<sup>4</sup> Section 62 (b) For the procurement of infrastructure projects, the contractor shall assume full responsibility for the contract work from the time project construction commenced up to a reasonable period as defined in the IRR taking into consideration the scale and coverage of the project from its final acceptance by the government and shall be held responsible for any damage or construction of works except those occasioned by *force majeure*...

<sup>5</sup> Section 62.2.3.2 The warranty against Structural Defects and Failures shall cover the following periods from final acceptance, except those occasioned by *force majeure*...