



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

**NPM No. 93-2012**

30 July 2012

**HON. JOHN REYNALD M. TIANGCO**

*Mayor*

**CITY OF NAVOTAS**

The Navotas City Hall, M. Naval St.,

Sipac, Almacén, Navotas City

**Re: Termination for Convenience under the Guidelines on Termination of Contracts**

Dear Mayor Tiangco:

We respond to your letter dated 29 February 2012 seeking clarification on whether the City Government of Navotas (City Government) can terminate an existing contract pursuant to Section III(B) of the Guidelines on Termination of Contracts<sup>1</sup> (Guidelines) considering that conditions exist making the project implementation economically, financially or technically impracticable; and, whether the contractor may be paid for services it has so far rendered under the Memorandum of Agreement (MOA) and other documents on the basis of *quantum meruit*.

As represented, the Navotas Bids and Awards Committee (BAC) conducted public bidding in 2010 for the construction of 2.40 kilometer flood control revetment<sup>2</sup> (the Project) with an approved budget for the contract of Php267,528,624.67, which was awarded to the sole bidder, Markbilt Construction Inc. The City Government suspended the implementation of the Project on 3 August 2010 as it encountered difficulties with the informal settlers whose permanent structures traversed the perimeter wall. It then hired Woodfields Consultants, Inc. to study the most economical way to address the problem. Navotas was among the hardest hit areas during a typhoon in 2011 and given the extent of damage it sustained, it became imperative to strengthen the design parameters of the coastal dike to avoid a similar occurrence in the future. The consultants recommended changes in the (i) elevation height of the crest of the dike, (ii) foundation for the dike, (iii) total length of the proposed dike; and, (iv) volume capacity of the twelve (12) pumping stations. It is in this context that the City Government inquires on the propriety of using the Guidelines since proceeding with the original Project will deter its objective to prevent flooding in Navotas.

At the outset, please note that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) only render policy and non-policy opinions, respectively, on issues purely relating to the interpretation and application of our procurement laws, rules and regulations.<sup>3</sup>

**Termination for Convenience**

For your guidance, however, note that as provided in Section III(B) of the Guidelines, a contract, in whole or in part, may be terminated at any time for the convenience of the PE provided that actual conditions exist making the project implementation economically, financially, or

<sup>1</sup> GPPB Resolution 081-2004 dated 22 December 2004.

<sup>2</sup> Retaining wall with drainage pump and pumping stations at Navotas Coastal Area.

<sup>3</sup> NPM No. 87-2012 dated 16 July 2012.

technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.

We are of the view that since the conditions and circumstances associated with and underlying the original concept for the Project have changed per information provided by the Consultants, thereby making the implementation of the original Project economically, financially, or technically impractical, the City Government may opt to terminate the existing contract for convenience. Nonetheless, the existence of these conditions is best determined by the PE since it is in the perfect position to assess, evaluate, and fully understand the objectives, peculiarities and condition of the Project and how its execution are affected by attending happenstances.

Elsewise put, if upon careful scrutiny and tedious technical evaluation, the City Government ascertained, verified and confirmed that continuing with the Project would hinder the City Government to achieve its goal of protecting its constituents and prevent flooding in the city, making it economically, financially and/or technically impractical or unnecessary, resort to contract termination for convenience under the Guidelines is a reasonable recourse.

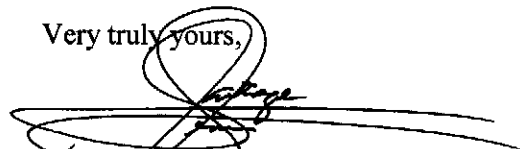
### **Payment Based on *Quantum Meruit***


Anent your second query, please note that based on Section IV(8) of the Guidelines, payment on *quantum meruit* is allowed only in Termination for Convenience involving Contracts for Goods, and is silent on Contracts for Works. For infrastructure projects, however, the contractor normally submits a statement of work accomplished or progress billing in order that it will receive the corresponding progress payment.<sup>4</sup> Thus, there should be no concern on whether the contractor may be paid for services rendered since progress billings should have been submitted so that it may receive payment for the portion of work or services it has completed. On the other hand, the Supreme Court held in several cases<sup>5</sup> that contractors are allowed to recover on the basis of *quantum meruit*, but the amount of recovery would only be the reasonable value of the thing or service rendered regardless of any agreement as to value.

Based on the foregoing, we are of the view that the determination of the propriety of terminating a contract for convenience falls squarely within the ambit of authority of the concerned PE inasmuch as it is in the best position to determine the existence of conditions allowing such termination. It goes without saying, however, that full accountability over such decision also rests with the PE. Moreover, although the Guidelines do not provide for payment on *quantum meruit* basis for infrastructure projects, jurisprudence recognizes that payment by way of *quantum meruit* may be made to the contractor for the works it has accomplished upon submitting its progress billings.

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

Very truly yours,

  
**DENNIS S. SANTIAGO**  
Executive Director III

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<sup>4</sup> Section 5.1 of the Contract Implementation Guidelines for the Procurement of Infrastructure Project.

<sup>5</sup> *ERG Construction v. Hon. Vigilar*, G.R. No. 131544, March 16, 2001 citing *Eslao v. Commission on Audit*, 195 SCRA 730 (1991) and *Royal Trust Construction v. COA*, G.R. No. 84202, November 23, 1988.