



## TECHNICAL SUPPORT OFFICE

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

**NPM No. 15-2008**

8 August 2008

**PETER L. DY**  
*Gen. Manager*  
**PLD CONSTRUCTION**  
P.C. Suico St., Tabok, Mandaue City

**Re : Variation Order**

We respond to your letter dated 24 April 2008 seeking our opinion on matters pertaining to variation orders which you had performed in connection with the construction of the National Food Authority-Region VII (NFA-7) warehouse in Cebu.

Based on your representations, NFA-7 refused to pay for the amount of the varied increase in the quantity done on the warehouse, citing Sections 17.7.1 and 17.7.3 of the Implementing Rules and Regulations (IRR-A) of Republic Act No. 9184 (R.A. 9184).

Relative thereto, please be informed that item 3 of Annex "E" of the IRR-A of R.A. 9184<sup>1</sup> provides for the conditions under which a contractor may perform variation orders and be paid therefor, viz:

### 3. – CONDITIONS UNDER WHICH CONTRACTOR IS TO START WORK UNDER VARIATION ORDERS AND RECEIVE PAYMENTS

1. Under no circumstances shall a contractor proceed to commence work under any Change Order or Extra Work Order unless it has been approved by the head of the procuring entity or his duly authorized representative. Exceptions to the preceding rule are the following:
  - a. The Regional Director of equivalent official may, subject to the availability of funds, authorize the immediate start of work under any Change or Extra Work Order under any or all of the following conditions:

<sup>1</sup> Contract Implementation Guidelines for the Procurement of Infrastructure Projects

(1) In the event of an emergency where the prosecution of the work is urgent to avoid detriment to public service, or damage to life and/or property; and/or

(2) When time is of the essence;

*Provided, however,* That such approval is valid on work done up to the point where the cumulative increase in value of work on the project which has not yet been duly fully approved does not exceed five percent (5%) of the adjusted original contract price whichever is less;

*Provided, further,* That immediately after the start of work, the corresponding Change Order or Extra Work Order shall be prepared and submitted for approval in accordance with the rules herein set. Payments for works satisfactorily accomplished on any Change Order or Extra Work Order may be made only after approval of the same by the head of the procuring entity or his duly authorized representative.


- b. For a Change Order or Extra Work Order involving a cumulative amount exceeding five percent (5%) of the original contract, no work thereon may be commenced unless said Change Order or Extra Work Order has been approved by the Secretary or his duly authorized representative.

It is clear from the aforesaid provision that unless the condition or situation under which you decided to carry on the change order falls within any of the exceptions provided therein, then you, as the contractor, should have first secured the approval of the Head of the Procuring Entity (HOPE) before undertaking the same. Hence, it necessarily follows that variation or change orders done without the approval of the HOPE or his duly authorized representative, as the case may be, shall not be the responsibility of the procuring entity concerned.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

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

BUILDERS



CONTRACTORS

# PLD CONSTRUCTION

**OFFICE ADDRESS:**

P. C. Suico St.,  
Tabok, Mandaue City  
Cebu, Philippines; 6014  
Tel. No. 345-1452; 422-9878  
Cel. No: 0917-3231851

**CEBU CITY LIAISON OFFICE:**

Rm. 201, 2nd Floor, Cebu Long Se Temple Bldg.  
Osmeña Blvd., Capitol Site, Cebu City  
Tel. No. 255-2778; 253-0139  
Fax No. (63-32) 254-5774  
E:mail : pdy@globelines.com.ph

April 24, 2008

Government Procurement Policy Board  
Unit 2506 Raffles Corporate Center  
F. Ortigas Jr. Road, Ortigas Center  
Pasig City 1106

*city. funny,  
pls. draft opinion.*

*Ernie,  
Pls. handle. begin in  
my behalf.  
4/24/08*

Attn: Legal Department

Sir/Madam:

Greetings and good day! I would like to ask for your legal input on a matter which has confounded my logic.

I have recently substantially completed construction on a 200,000 bags capacity warehouse in North Reclamation Area, Cebu City for the National Food Authority - Region VII. During the construction of the warehouse, I have had to append on the quantity of the estimated materials since the estimated quantity was inadequate and was hindering the completion of the construction.

I have already filed the necessary Variation Orders on the work done. However, NFA-Region 7 has cited Sections 17.7.1 and 17.7.3 of the IRR-A as its reason for its refusal to pay the amount for the varied increase in quantity done on the warehouse. They have stated that the NFA-7, as procuring entity, is not assuming any responsibility on our erroneous interpretation or conclusion from the data they have furnished.

During the course of the construction, there were some increase and decrease on the Bill of Quantities as provided by NFA-7. As a contractor, it is my responsibility to apply for a Variation Order since according to Annex E of the IRR-A, a "variation order may be issued by the procuring entity to cover any increase/decrease in quantities." Allow me to cite for example the painting works. As per contract, the Bill of Quantity amount stipulated by NFA-7 during the bidding is 2,458 sq.m. The actual measurement during construction work for painting was 3,174.71 sq.m. NFA-7 has refused to pay for the variance of 716.71 sq.m. invoking Sections 17.7.1 and 17.7.1 of the IRR-A as their reason. Another case in cite is the tinsmithry work for the roof. As per contract, the quantity provided by NFA-7 is 116 l.m. Actual quantity during construction was 174 l.m. NFA-7, invoking 17.7.1 and 17.7.3 has also refused to pay for the variance of 58 l.m. (For your reference, I have attached a copy of the Variation Order which I have submitted last February.)

In your legal opinion, is it right for the procuring entity, NFA-7 to decline payment invoking Sections 17.7.1 and 17.7.3? As of this writing, the warehouse in question has already been used by the procuring entity, NFA-7, since the second week of March. They have already moved in despite their hesitance to pay for the completion of the warehouse.

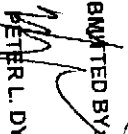
I look forward to hearing your opinion. Thank you for your attention on this matter.

Very truly yours,  
**PLD CONSTRUCTION**

*[Signature]*  
**PETER L. DY**  
Gen. Manager

PROJECT: 200 TCC Warehouse  
 LOCATION: NFA Compound, Port Area, Cebu City  
 CONTRACTOR: PLD Construction  
 SUBJECT: VARIATION ORDER NO. 1  
 DATE: FEBRUARY 13, 2008

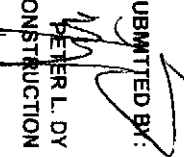
DESCRIPTION	UNIT	ACTUAL QUANTITY	PER CONTRACT	VARIANCE	REMARKS	Unit Cost	Amount
<b>A. STRUCTURAL METAL WORKS</b>							
Provision of additional Web Members @ the Main Truss	lgt	15,000	0,000	15,000	Additive	1,425.090	21,376.35
Angle Bars: 4.5mm thk x 50mm x 50mm x 6.0m							
Provision of batten support @ the skylight opening	lgt	22,000	0,000	22,000	Additive	1,514.166	33,311.66
Square Tubes: 1.2mm thk x 50mm x 50mm x 6.0m							
Provision of additional angle stiffeners @ the Ridge Vent Framing	lgt	145,000	0,000	145,000	Additive	576.755	83,629.49
Angle Bars: 3mm thk x 25mm x 25mm x 6.0m							
Box Strut	set	54,000	63,000	-9,000	Deductive	7,382.730	-66,444.57
C-purlins: 2.2mm thk x 200mm x 50mm x 6.0m	lgt	840,000	800,000	40,000	Additive	2,128.230	85,129.20
C-Purlins: 2mm thk x 175mm x 50mm x 6.0m							
<b>B. DRAINAGE SYSTEM</b>							
Provision of Curb & Gutter Along the Open Canal	lot	1,000	0,000	1,000	Additive	68,129.766	68,129.77
<b>C. POWERHOUSE</b>							
Jaffer (Powerhouse): 2mm thk x 150mm x 50mm x 6.0m	lgt	2,000	1,000	1,000	Additive	1,585.740	1,585.74
5.0mm thk Marine Plywood Ceiling	shl	8,000	0,000	8,000	Additive	570.630	4,565.04
Painting of Ceiling	sqm	23,040	0,000	23,040	Additive	230.980	5,321.78
0.5mm thk x 1.22m x 2.44m Stainless Steel Sheet Gutter	slt	5,000	0,000	5,000	Deductive	4,766.208	-23,831.04
0.5mm thk x 18" x 2.40m Pre-painted G.I. Gutter	shl	0,000	5,000	-5,000	Deductive	744.964	-3,724.82
C-purlins: 2mm thk x 100mm x 50mm x 6.0m	lgt	7,000	9,000	-2,000	Deductive	1,251.900	-2,503.80
<b>Subtotal</b>							<b>29,074.96</b>

SUBMITTED BY:   
 PETER L. DY  
 PLD CONSTRUCTION

PROJECT: 200 TCC Warehouse  
 LOCATION: NFA Compound, Port Area, Cebu City  
 CONTRACTOR: PLD Construction  
 SUBJECT: VARIATION ORDER NO. 1  
 DATE: FEBRUARY 13, 2008

DESCRIPTION	UNIT	ACTUAL QUANTITY	PER CONTRACT	VARIANCE	REMARKS	Unit Cost	Amount
<b>D. TINSMITHRY WORKS</b>							
Supply and Installation of 0.500mm thk Prepainted plain G.I. Sheets complete with flashings, PVC Screen, Framings and Fasteners	ln.m.	174,000	116,000	58,000	Additive	1,735.796	100,676.19
						<b>Subtotal</b>	<b>100,676.19</b>
<b>E. PAINTING WORKS (see attached sheets)</b>							
Painting Works; Masonry and Concrete Surfaces (1-coat Primer and 2-finish Coat of Latex paint)	sq.m.	3,174.705	2,458,000	716,705	Additive	230.988	165,550.33
						<b>Subtotal</b>	<b>165,550.33</b>
<b>F. DRAINAGE SYSTEM</b>							
Steel Covered Canal	lot	1,000	0,000	1,000	Additive	162,902.010	162,902.01
Steel Grating	ln.m.	0,000	41,800	-41,800	Deductive	6,010.779	-251,250.55
						<b>Subtotal</b>	<b>-88,348.54</b>
<b>G. ELECTRICAL WORKS</b>							
Electrical Devices							
Convenience Outlet, Duplex, Flush-mounted	set	17,000	10,000	7,000	Additive	283.764	1,986.35
Switch, one-gang, weather proof with cover	set	11,000	7,000	4,000	Additive	584.220	2,336.88
Electrical Wires and Conduits							
3.5mm <sup>2</sup> TW wires, PVC pipes	lot	1,000	0,000	1,000	Additive	14,908.781	14,908.78
						<b>Sub Total</b>	<b>19,232.01</b>
<b>H. EARTHWORKS</b>							
Excavation and Replacement of selected Spoil Materials @ Bay 2	cu.m.	360,000	0,000	360,000	Additive	494.450	178,002.00
Excavation and Replacement of selected spoil Materials @ Bay 1 and 3	cu.m.	40,000	0,000	40,000	Additive	497.190	19,887.60
						<b>Sub Total</b>	<b>197,889.60</b>
<b>I. SITE DEVELOPMENT (DRAINAGE CANAL)</b>							
Manhole for 450mm Ø RCP	lot	1,000	0,000	1,000	Additive	10,571.460	10,571.46
450mm Ø Reinforced Concrete Pipe Culvert	ln	43,110	57,000	-13,890	Deductive	1,362.876	-18,930.35
Repair of 0.15m thk concrete road	sq.m.	0,000	1,463,500	-1,463,500	Deductive	1,032.283	-1,510,745.88
						<b>Sub Total</b>	<b>-1,549,104.76</b>

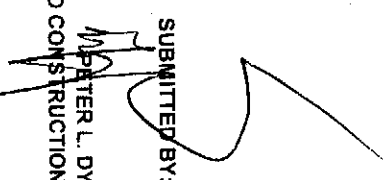
SUBMITTED BY:

  
 PETER L. DY  
 PLD CONSTRUCTION

**PROJECT:** 200 TCC Warehouse  
**LOCATION:** NFA Compound, Port Area, Cebu City  
**CONTRACTOR:** PLD Construction  
**SUBJECT:** VARIATION ORDER NO. 1  
**DATE:** FEBRUARY 13, 2008

DESCRIPTION	UNIT	ACTUAL QUANTITY	PER CONTRACT	VARIANCE	REMARKS	Unit Cost	Amount
J. DOORS & WINDOWS							
INDUSTRIAL FIXED GLASS WINDOWS 0.50 X 3.00M	SET	35,000	36,000	-1,000	Deductive	4,093.927	-4,093.93
CONCRETE LOUVER WINDOW 1.00 X 2.40M	SET	18,000	30,000	-12,000	Deductive	3,156.246	-37,874.95
CONCRETE LOUVER WINDOW 1.00 X 3.00M	SET	27,000	16,000	11,000	Additive	3,939.633	43,335.96
						<b>Sub Total</b>	<b>1,367.08</b>
K. 0.15m thk. Concrete slab(3000 psi@28 days-ready mixed) on 100mm thk. Gravel base with binder	SQ.M.	518,000	551,300	-33,300	Deductive	1,065.880	-35,493.80
						<b>Sub Total</b>	<b>-35,493.80</b>
L. FIRE PROTECTION SYSTEM	lot	1,000	0,000	1,000	Additive	724,261.587	724,261.59
						<b>Sub Total</b>	<b>724,261.59</b>
<b>Grand Total</b>							<b>-179,763.45</b>

SUBMITTED BY:

  
 PETER L. DY  
 PLD CONSTRUCTION

NATIONAL FOOD AUTHORITY  
REGION VII, CEBU CITY

APRIL 23, 2008

ENGR. PETER L. DY  
PLD CONSTRUCTION  
CEBU CITY

**SUBJECT : CHANGE ORDERS ON WHSE CONSTRUCTION**

Dear Engr. Dy,

This is with regards to the various change orders performed during the warehouse construction at Cebu Reclamation Area.

Please take note that after the evaluation by our TSD-Central Office, the result of which is attached herewith, some work items presented therein were not considered, hence were denied due to reasons cited therein.

The cost of the Fire Protection System was also reduced to P621,791.63 which is lower than your proposal. In view of this, please inform our office if you are still interested to perform the said additional work, otherwise we would be construed to conduct a public bidding.

Hoping for your immediate reply on the above matters.

Very truly yours,



ATTY. DANILLO L. BONABON  
REGIONAL DIRECTOR

PROJECT : 200,000 CAVANS CAPACITY WAREHOUSE  
 LOCATION : PIER SITE CEBU CITY  
 OWNER : NATIONAL FOOD AUTHORITY

SUBJECT : REVIEW / EVALUATION ON THE PRESENTED PROPOSED CHANGE ORDERS/ADDITIONAL WORKS  
 DATE : April 1, 2008

NO.	WORK ITEM	NFAS EVALUATION	PLD'S EVALUATION	AMOUNT FOR		COMMENTS/REMARKS
				CONSIDERATION/APPROVAL ADDITIVE	DEDUCTIVE	

A. STRUCTURAL METAL WORKS

A.1 Provision of Additional Web Members @ Main Truss

Central Office-initiated improvement per IDM 2007 TSD-FOSD-05-05

A.2 Provision of Brittan Support @ Skyflight Opening

Region 7-initiated improvement consulted with CO per ROT-TS-1066.

A.3 Provision of Additional Angle Bar Stiffeners at Ridge Vent Framing

Central Office-initiated improvement per IDM 2007 TSD-FOSD-05-05, adopting the unit cost in the BOQ submitted by PLD during the bidding

A.4 C-purlins - additional Counting of the C-purlins is Shown per Attached Computation

Cannot be considered, PLD had a sworn statement attesting to the responsibilities in Section 17.7.1 of IRR-A that he had taken steps to carefully examine all bidding documents. Further, as provided for in Section 17.7.3 of the IRR-A, NFA as a procuring entity shall not assume any responsibility regarding erroneous interpretation or conclusion of the bidder out of the data furnished by NFA

A.5 Box Stuck

Cannot be considered, PLD had a sworn statement attesting to the responsibilities in Section 17.7.1 of IRR-A that he had taken steps to carefully examine all bidding documents. Further, as provided for in Section 17.7.3 of the IRR-A, NFA as a procuring entity shall not assume any responsibility regarding erroneous interpretation or conclusion of the bidder out of the data furnished by NFA as provided in Section 17.7.3 of the IRR-A.

B. DRAINAGE SYSTEM

Region 7-initiated scope of work, to be considered for approval of concerned authorities, PLD's cost evaluation result is to be adopted.

C. POWERHOUSE

Region 7-initiated change in the specification of the gutter from GI to stainless steel, with provision for roof

21,382.40	21,378.35	21,378.35		
27,613.96	32,311.56	27,312.05		
27,980.36	63,829.49	27,980.36		
85,129.20	85,129.20			
66,444.60	66,444.60			
68,181.54	68,129.77	68,129.77		
28,806.31	29,074.98	24,411.40		



SECTION: REVIEW / EVALUATION ON THE PRESENTED PROPOSED CHANGE ORDERS/ADDITIONAL WORKS  
 DATE: April 1, 2008

WORK ITEM	NFA'S EVALUATION	PLD'S EVALUATION	AMOUNT FOR CONSIDERATION/ APPROVAL		COMMENTS/REMARKS
			ADDITIVE	DEDUCTIVE	
TINSMITHRY (ROOFING MATERIALS)	100,676.19	100,676.19			calling but the cost should only be Php 24,411.40 (Php25,136.22 - 3,724.82 (cost of G Gutter))
					Cannot be considered. PLD had a sworn statement attesting to the responsibilities in Section 17.7.1 of IRR-A that he had taken steps to carefully examine all bidding documents. Further, as provided for in Section 17.7.3 of the IRR-A, NFA as a procuring entity shall not assume any responsibility regarding erroneous interpretation or conclusion of the bidder out of the data furnished by NFA as provided in Section 17.7.3 of the IRR-A.
PAINTING WORKS	165,550.33	165,550.33			Cannot be considered. PLD had a sworn statement attesting to the responsibilities in Section 17.7.1 of IRR-A that he had taken steps to carefully examine all bidding documents. Further, as provided for in Section 17.7.3 of the IRR-A, NFA as a procuring entity shall not assume any responsibility regarding erroneous interpretation or conclusion of the bidder out of the data furnished by NFA as provided in Section 17.7.3 of the IRR-A.
DOORS AND WINDOWS	1,367.08	1,367.08			Cannot be considered. PLD had a sworn statement attesting to the responsibilities in Section 17.7.1 of IRR-A that he had taken steps to carefully examine all bidding documents. Further, as provided for in Section 17.7.3 of the IRR-A, NFA as a procuring entity shall not assume any responsibility regarding erroneous interpretation or conclusion of the bidder out of the data furnished by NFA as provided in Section 17.7.3 of the IRR-A.
DRAINAGE (STEEL GRATING)	88,500.74	88,348.54	88,348.54	88,348.54	Region 7-initiated scope of work, to be considered for approval of concerned authorities, PLD's cost evaluation result to be adopted.

PROJECT : 200,000 CAVANS CAPACITY WAREHOUSE  
 LOCATION : PIER SITE CEBU CITY  
 OWNER : NATIONAL FOOD AUTHORITY

SUBJECT : REVIEW/EVALUATION ON THE PRESENTED PROPOSED CHANGE ORDERS/ADDITIONAL WORKS  
 DATE : April 1, 2008

NO.	WORK ITEM	NFAS EVALUATION	PLD'S EVALUATION	AMOUNT FOR		COMMENTS/REMARKS
				CONSIDERATION/APPROVAL ADDITIVE	DEDUCTIVE	
<b>H. ELECTRICAL WORKS</b>						
		19,069.45	19,232.01	12,483.91		
						Only the 8-units outlets (P12,483.91) should be the additional works that can be considered for approval of concerned authorities as reflected on the approved memo of Director Danilo Bonatton dated August 23, 2007. Further, the variance in the BOC (11 against 10 outlets) prior to the addition of the 8 units cannot be considered because PLD had a sworn statement attesting to the responsibilities in Section 17.7.3 of the IRR-A that he has taken steps to carefully examine all bidding documents. And NFA shall not assume any responsibilities regarding erroneous interpretation or conclusion of the data furnished by NFA as provided Section 17.7.3 of the IRR-A.
<b>I. EARTHWORKS</b>						
		197,780.00	197,780.00	197,780.00		
						To be considered for approval of concerned authorities, undertaken per TSD-FDSD-J-01.
		18,930.35	18,930.35		18,930.35	Region 7-initiated change in the length of the drainage canal as found necessary based on actual site condition.
<b>J.2 Concreting of Roadway</b>						
		35,451.08	35,451.08			Cannot be considered, PLD had a sworn statement attesting to the responsibilities in Section 17.7.1 of IRR-A that he had taken steps to carefully examine all bidding documents. Further, as provided for in Section 17.7.3 of the IRR-A, NFA as a procuring entity shall not assume any responsibility regarding erroneous interpretation or conclusion of the bidder out of the data furnished by NFA as provided in Section 17.7.3 of the IRR-A.
<b>J.3 Provision of Manhole</b>						
		10,446.18	10,571.75	10,446.18		Region 7-initiated, to be considered for approval of concerned authorities, NFA's cost evaluation result to be adopted.

PROJECT : 200,000 CAPACITY WAREHOUSE  
 LOCATION : PIER SITE CEBU CITY  
 OWNER : NATIONAL FOOD AUTHORITY

SUBJECT : REVIEW / EVALUATION ON THE PRESENTED PROPOSED CHANGE ORDERS/ADDITIONAL WORKS  
 DATE : April 1, 2008

NO.	WORK ITEM	NFAS EVALUATION	PLDS EVALUATION	AMOUNT FOR CONSIDERATION/APPROVAL		COMMENTS/REMARKS
				ADDITIVE	DEDUCTIVE	
		1,510,745.88	1,510,745.88			
				1,510,746.88		Implementation was held in abeyance until all the variation orders are implemented and the result of the costing are settled with faculty.

J.4 Repair of 0.15km th Concrete Roadway

K FIRE PROTECTION SYSTEM

575,861.03	700,283.80	821,791.53			
<b>TOTAL</b>	<b>1,100,351.06</b>	<b>1,529,676.23</b>			Difference of P 429,325.15

NFA ROJ should negotiate with PLD at P821,791.53, considering only 20% labor cost for the installation of water pump (instead of 35 % as estimated by PLD)