



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

**NPM No. 161-2012**

21 December 2012

**MR. CHARLES ANDREWS**

*Team Leader*

**PROVINCIAL ROAD MANAGEMENT FACILITY (PRMF)**

**AUSTRALIAN AID**

19<sup>th</sup> Floor, Salcedo Towers,

No. 169 H.V. dela Costa Street, Salcedo Village,

Makati City

**Re: Defects Liability Period (DLP) and Modification of the Provisions  
of the General Conditions of Contract (GCC)**

Dear Mr. Andrews:

This is in response to your letter dated 20 November 2012, which we received on 22 November 2012, seeking our opinion on (i) whether fair wear and tear is covered under the one (1) year DLP and (ii) whether the Procuring Entity (PE) may be allowed to modify the provisions of the GCC under the Philippine Bidding Documents (PBDs) for the Procurement of Infrastructure Projects in the case of procurement of foreign-assisted projects.

It is represented that PRMF is an infrastructure and governance program of the Governments of Australia and the Republic of the Philippines, aimed at increasing economic activities and improving public access to infrastructure and services in the Southern Philippines. PRMF aims to achieve its goals by rehabilitating and maintaining a core road network in selected provinces, and through strengthening government systems. It is likewise represented that PRMF has already completed seventeen (17) rehabilitation projects under its Year 1 Provincial Gravel Roads Rehabilitation Program (Project) which are now covered by the DLP of one (1) year from completion date, in accordance with the provisions on Contractor's Risk and Warranty Security under Clauses 12.1 and 12.2 of the GCC. It is in this context that our views on the above-mentioned issues are being requested.

**Defects Liability Period (DLP)**

For procurement of infrastructure projects covered by Republic Act (RA) 9184 and its revised Implementing Rules and Regulations (IRR), Clause 12 of the GCC under the PBDs for Infrastructure Projects provides the rules on Contractor's Risk and Warranty Security. Clause 12.1 thereof states that the Contractor shall assume full responsibility for the Works from the time project construction commenced up to final acceptance by the Procuring Entity.

(PE) and shall be held responsible for any damage or destruction of the Works except those occasioned by force majeure.

The DLP for infrastructure applies for a period of one (1) year from contract completion up to final acceptance by the PE. During this period, the Contractor is required to undertake the repair works within ninety (90) days from the time the Head of the Procuring Entity (HOPE) has issued an order to undertake the repair on any damage to the Works on account of the use of inferior quality materials.<sup>1</sup>

Since the cause of the repair that the Contractor is required to undertake is limited to damages to the Works on the account of the use of inferior quality materials, it can be deduced that the DLP does not include ordinary repairs necessitated by fair wear and tear due to the natural and consequential deterioration brought about by the continuous usage of the Works.

Thus, we are of the view that fair wear and tear resulting from the intended natural use of the Works, and not resulting from the use of inferior quality materials, or the fault, negligence, carelessness, or abuse of the Contractor, are not covered by the DLP.

#### **Use of PBDs for Foreign-Assisted Procurement Activities**

As explained in its Preface, the PBDs for Infrastructure Projects is to be used by all branches, agencies, departments, bureaus, offices, or instrumentalities of the Government, including government owned and/or controlled corporations, government financial institutions, state universities and colleges, and local government units, for procurement activities undertaken through Competitive Bidding, whether financed in whole or in part by the Government or any foreign government/foreign or international financing institution, except when a Treaty or International or Executive Agreement expressly provides use of foreign government/foreign or international financing institution guidelines.

Since infrastructure projects under the PRMF are foreign-assisted projects, the applicable Treaty or International or Executive Agreement should be examined to determine whether a specific procurement guidelines other than RA 9184 and its IRR has been identified to apply therefor. If there is an express stipulation or provision in the appropriate Treaty or International or Executive Agreement relative to Project, then, the procurement procedures, guidelines, and forms indicated therein shall apply. In such scenario, the government agency concerned may validly use bidding forms, documents, and contracts, other than the PBDs, or may change portions of the PBDs in accordance with the identified applicable foreign government/foreign or international financing institution guidelines.

In the absence of an express provision or stipulation on the applicable procurement procedures and guidelines in the Treaty or International or Executive Agreement covering the procurement activities under the PRMF, the procedures laid down in RA 9184 and its IRR would apply. Accordingly, the use of PBDs, Generic Procurement Manuals (GPMs), and other standard forms, issued by the Government Procurement Policy Board (GPPB), shall be mandatory upon the government agency.<sup>2</sup> Consequently, the government agency concerned should use the PBDs as written and prescribed, such that the Instructions to Bidders and the General Conditions of the Contract shall be maintained and used unchanged, except through

<sup>1</sup> Clause 12, Section IV, PBDs for the Procurement of Infrastructure Projects, 4<sup>th</sup> Edition, December 2010.

<sup>2</sup> Section 6.2, RA 9184 revised IRR.

identified qualifications appearing in the Bid Data Sheet and the Special Conditions of the Contract, respectively, for all of its procurement activities under the PRMF.

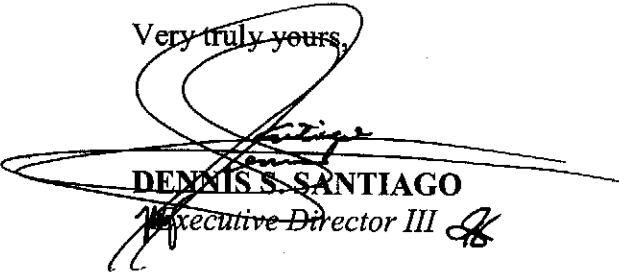
However, we wish to point out that whenever necessary to suit the particular needs of the PE, modifications may be made, particularly for major and specialized procurement, subject to the approval of the GPPB.<sup>3</sup>

### Summary

In sum, we wish to clarify that the DLP does not include ordinary repairs arising from fair wear and tear due to the natural use of the Works, and that the PBDs, including the GCC, should be used unchanged, unless the Treaty or International or Executive Agreement covering the foreign-assisted procurement activity provides for the application of a different set of procurement guidelines other than RA 9184 and its IRR.

We hope that our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of the facts and particular situation presented, and may not be applicable given 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>3</sup> *Ibid.*