

NPM No. 22-2009

21 May 2009

MR. NAZARIO SANTOS
General Manager
ARSANT ENGINEERING
1191 Bornaheco Compound
P. Ocampo Extension
Makati City

Re : Prescriptive Period for Progress Billing

Dear Mr. Santos:

This has reference to your letter, dated 31 March 2009, seeking clarification on the processing of requests for progress billings under the provisions of Republic Act No. 9184 (R.A. 9184) or the GOVERNMENT PROCUREMENT REFORM ACT, and its IMPLEMENTING RULES AND REGULATIONS PART – A (IRR-A).

The issues posited may be summarized as follows:

1. Whether R.A. 9184 mandates a prescriptive period for the processing of a contractor's billing request; and
2. Whether the actual receipt of the supporting documents for a billing request is tantamount to a certification that all the necessary documents for the purpose are complete.

With regard to the first query, we would like to inform you that no provision, insofar as R.A. 9184 and its IRR-A are concerned, sets the minimum period when a claim for a contractor's billing request should be processed and completed. Customarily, the time therefor is provided in the contract between the procuring entity and the contractor. In the event, however, that no period is provided under the agreement, principles of equity and fairness dictate that the same must be interpreted to be that which is reasonable, based on pertinent laws, agency practice and the circumstances at hand.

Anent your second query, under Section 9.2 of the *Contract Implementation Guidelines for the Procurement of Infrastructure Projects*, the Contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days

from date of receipt of written notice from the contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to,

- a. x x x ;
- e. Delay in payment of contractor's claim for progress billing beyond forty-five (45) days from the time the contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the contractor. (Emphasis supplied)

Cursory reading of the abovementioned provision will show that in order for the submission of the documents to be considered as complete, a certification to that effect must have been made by the procuring entity's representative. Thus, the completeness of the requirements is left to the procuring entity's determination, upon verification of all necessary documents, previously agreed upon by the parties, or included as an integral part of the contract. Corollarily, the forty-five day period referred to above may be reckoned from the issuance of said certification.

We would like to take note that the Government Procurement Policy Board is an administrative body imbued with quasi-legislative or rule-making power¹ to determine policy directions in the area of public procurement. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding process and the implementation of the awarded contract considering that it has no *quasi-judicial*² functions under R.A. 9184 and its IRR-A. Hence, the determination of the legality and/or propriety of the actions and decisions of the procuring entity are not within the express mandate of this Office.

We hope this clarifies matters.

Very truly yours,


EMILUISA C. PEÑANO
Executive Director II

¹ Rule-making power of administrative agencies refers to the power to issue rules and regulations which result from delegated legislation in the administrative level. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p.137).

² Quasi-judicial is defined as a term applied to the actions or discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p. 216 citing *Lupangco v. CA*, 160 SCRA 848 [1988]).

05-21-09
11:30
Fax
Connie Soria
Secretary

4 May 2009

MR. NAZARIO SANTOS

General Manager

ARSANT ENGINEERING

1191 Bormaheco Compound

P. Ocampo Extension

Makati City

Re : Prescriptive Period for Progress Billing

Dear Mr. Santos:

This has reference to your letter, dated 31 March 2009, seeking clarification on the processing of requests for progress billings under the provisions of Republic Act No. 9184 (R.A. 9184) or the GOVERNMENT PROCUREMENT REFORM ACT, and its IMPLEMENTING RULES AND REGULATIONS PART – A (IRR-A).

The issues posited may be summarized as follows:

1. Whether R.A. 9184 mandates a prescriptive period for the processing of a contractor's billing request; and
2. Whether the actual receipt of the supporting documents for a billing request is tantamount to a certification that all the necessary documents for the purpose are complete.

With regard to the first query, we would like to inform you that no provision, insofar as R.A. 9184 and its IRR-A are concerned, sets the minimum period when a claim for a contractor's billing request should be processed and completed. Customarily, the time therefor is provided in the contract between the procuring entity and the contractor. In the event, however, that no period is provided under the agreement, principles of equity and fairness dictate that the same must be interpreted to be that which is reasonable, based on pertinent laws, agency practice and the circumstances at hand.

Anent your second query, under Section 9.2 of the *Contract Implementation Guidelines for the Procurement of Infrastructure Projects*, the Contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to,

- a. x x x ;
- e. Delay in payment of contractor's claim for progress billing beyond forty-five (45) days from the time the contractor's claim has been **certified to by the procuring entity's authorized representative that the documents are complete** unless there are justifiable reasons thereof which shall be communicated in writing to the contractor. (Emphasis supplied)

Cursory reading of the abovementioned provision will show that in order for the submission of the documents to be considered as complete, a ~~written~~ certification to that effect must have been ^{made} ~~issued~~ by the procuring entity's representative ~~to the contractor~~. Thus, the completeness of the requirements is left to the procuring entity's determination, upon verification of all necessary documents, previously agreed upon by the parties, or included as an integral part of the contract. *Corollarily, the 45 day period referred to above may shall be reckoned from the issuance of said certification.*

We would like to take note that ~~pursuant to Section 34 of R.A. 9184 and its IRR-A, the Bids and Awards Committee (BAC) has the exclusive jurisdiction to verify, validate and ascertain all statements made and documents submitted by the bidders.~~ The Government Procurement Policy Board is an administrative body imbued with quasi-legislative or rule-making power¹ to determine policy directions in the area of public procurement. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding process, ^{and for the implementation of the awarded contract} considering that it has no quasi-judicial² functions under R.A. 9184 and its IRR-A. Hence, the determination of the legality and/or propriety of the actions and decisions of the ~~Land Registration Authority - BAC~~ ^{procuring entity} are not within the expressed mandate of this Office.

We hope this clarifies matters.

Very truly yours,

(JOSELITO R. ARMOVIT) ECP
Officer-in-Charge

¹ Rule-making power of administrative agencies refers to the power to issue rules and regulations which result from delegated legislation in the administrative level. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p.137).

² Quasi-judicial is defined as a term applied to the actions or discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p. 216 citing *Lupangco v. CA*, 160 SCRA 848 [1988]).



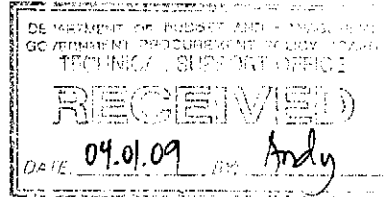
Manila Office : 1191 Bormaheco Compound, P. Ocampo Ext., Makati City * Tel.: (02) 890-2346 * Fax No.: (02) 897-1378
 Cebu Office : 11-B Banilad Green Mandaue City * Tel. (032) 346-6916

March 31, 2009

*ty. Glycer,
Please draft reply.*

*→ Eunice,
Pls. handle. Sign
in my behalf. Thanks.
4/17/09
JG #1/2/09*

MS. RUBY V. ALVAREZ
 Executive Director
 GPPB – TSO
 Unit 2506 Raffles Corporate Center
 Emerald Avenue, Pasig City



Madam:

We are attaching hereto our letter to NEDA last November 24, 2008 and their reply of December 16, 2008 which are self-explanatory.

Again, after consulting with NEDA last March 27, 2009, we are referred to your office regarding interpretation on some provisions of RA 9184 specifically on Suspension of Work on Infrastructure project.

As mentioned on our NEDA letter, we submitted our first accomplishment billing of Nov. 12, 2008 on our resumed contract with LRA. We continued working until January 9, 2009 when they again suspended the project (letter attached).

On February 10, 2009, LRA issued a second Resumption Order (per attached) to which we ask for continued suspension until such time our billing is paid (per our attached letter of Feb. 13, 2009).

Based on the above, can we be clarified on the herein questions?

NONE. The law is silent on the matter. The time is usually provided for in the contract b/w the PE and the contractor.

1. Is there a prescribed time for a procuring entity to process a contractor's billing under RA 9184?

2. Sec. 9.2.e states that suspension is allowed beyond 45 days from the time the contractor's claim has been certified by the procuring entity's authorized representative that the documents are complete.

If no period was provided, he same must be interpreted as reasonable, based on agency practice.

(a) does 'by complete' means that all documents required for a billing to be processed has been submitted by the contractor and certified by the procuring entity's representative?

For the documents to be considered as complete, a written certification to that effect must have been issued by the PE's rep. to the contractor. The determination as to completeness of docs. is left to the PE's discretion (provided that the documents to be submitted have been previously agreed upon by the parties, or made an integral part of the contract.)



Manila Office : 1191 Bormaheco Compound, P. Ocampo Ext., Makati City * Tel.: (02) 890-2346 * Fax No.: (02) 897-1378
Cebu Office : 11-B Banilad Green Mandaue City * Tel. (032) 346-6916

- If so, we submitted all required documents on Nov. 17, 2008 (per attached letter) wherein no formal communication was transmitted to us on the contrary.
- It is also our reading that our billing was approved for payment after the concurrence of all authorized officials of LRA only on Feb. 24, 2009.

We strongly feel that certification on the completeness of all documents is different from approval of the documents. Meaning, the 45 days prescription time on the completeness of our documents ended sometime the first week of January 2009.

If not, what would prevent its delay if there is no prescribe time for the certification on the completeness of documents submitted for payment?

Further, we are not saying that our interpretation is correct while the other is wrong. Mam, we know that your good office is in a better position to interpret such provision.

We hope to be enlighten on the foregoing.

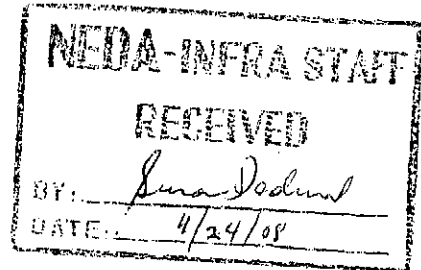
Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nazario Santos', is written over a set of horizontal and vertical dashed lines.

NAZARIO SANTOS
General Manager

NOVEMBER 24, 2008



RUBEN S. REINOSO JR.
Asst. Director General
Infrastructure Staff
NEDA sa Pasig
Esscriva Drive, Pasig city

Sir;

Please allow us to introduce ourselves. We are the contractor of the Registry of Deeds Building located at Batangas City which we have contracted with the Land Registration Authority (LRA) being the lead government agency.

We write this letter to seek your assistance on our request for price escalation in relation to our December 17, 2003 suspended contract, to which we have also resumed based on LRA's resumption order of August 14, 2008. Further, may we also ask your opinion and or answer on questions herein listed.

By way of backgrounder, permit us to state the following details:

- Project : Construction of 2 storey Registry of deeds Bldg.
- Location : Capitol Compound Batangas City
- Contract Price : P 3, 491, 529.44
- Notice of Award : December 5, 2003
- Contract signing : December 17, 2003
- Project Suspension : July 16, 2004
- Meeting with LRA people on the mechanics of resuming the project : July 24, 2008
- We submitted our request for price escalation (letter attached hereto) : August 4, 2008
- Notice to Resume (to construct on another site) : August 14, 2008
- We submitted our progress billing and follow up our request for price escalation and amendment of contract(pls. see attached) : November 12, 2008

Based on the foregoing, may we be clarified by your good office on the following:

- a) Is our contract of December 17, 2003 still effective necessitating price escalation due to suspension of more than 4 years and its relocating to another site?
- b) If the contract is still binding and price escalation justified, is our interpretation of the GPPB formula for price escalation appearing on our attached letter request of August 4, 2008 the correct one?
- c) If contract no longer effective and binding:
 - c.1 what are the procedures for the resumption of the project?
 - c.2 will our accomplishment of November 2008 based on LRA's Notice to Resume be paid?
 - c.3 can we unilaterally suspend our activities on the project?

Sir, any help extended to us regarding the matter will definitely be appreciated.

If needed, we would be glad to meet with you at your most convenient time to discuss in detail the above mention issues.

Thank you.

Very truly yours,



NAZARIO SANTOS
General Manager



Republic of the Philippines
NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY

NEDA sa Pasig, 12 Saint Josemaría Escrivá Drive, Ortigas Center, Pasig City 1605
P.O. Box 419, Greenhills • Tels. 631-0945 to 64
<http://www.neda.gov.ph>

16 December 2008

MR. NAZARIO SANTOS
General Manager
Arsant Engineering
1191 Bormaheco Compound
P. Ocampo Ext.
Makati City

Dear **Mr. Santos**:

SUBJECT : **CONSTRUCTION OF TWO (2)-STOREY
REGISTRY OF DEEDS BUILDING (BATANGAS
PROVINCE) FOR LAND REGISTRATION
AUTHORITY (LRA)**

This is to acknowledge receipt of your letter dated 24 November 2008 which states the basic information on the subject project, i.e., project name, location, contract price, and relevant dates (awarding, contract signing, project suspension and resumption, price escalation request, and progress billing request), and contains the following attachments:

- a) Request for Price Escalation addressed to the Chairman of Bids and Awards Committee (BAC) for LRA (04 August 2008);
- b) Old Guidelines for Contract Price Escalation;
- c) Average retail price indices from National Statistics Office (NSO) of selected construction materials or goods in National Capital Region (NCR) for years 2003 and 2004;
- d) Revised Bid/Cost Proposal for the Project, as prepared by Arsant Engineering (21 July 2008);
- e) Request by Arsant Engineering for Suspension of Project (12 November 2008);

In general, it is our view that prior to price escalation claims/requests, other issues pertaining to the Project, such as suspension/resumption of project, land/ownership disputes, and relocation of project site, among others, should be initially addressed and settled first.

On query (a) pertaining to the effectivity of the Contract, given the four (4)-year suspension of the Project and the relocation of its construction site, there may be a need

100/09

to check the scope, specification, and conditions stipulated in the original Contract of 17 December 2003 between LRA and Arsant Engineering. Since a new site for said Project is being identified, it is deemed that the relocation of the project site would cause the original Contract to be inapplicable in the absence of any legal basis for said changes.

The Contractor and/or LRA may refer to Annex E (Contract Implementation Guidelines for the Procurement of Infrastructure Projects) of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 for the procedure in resuming the Contract/Project, among others. Partly, said Annex states that Extra Work Order may only be issued to cover introduction of new work necessary for the completion, improvement or protection of the project not in the original contract. Further, Section 4 of Annex E states that any cumulative variation order beyond ten percent (10%) shall be subject of another contract to be bid out if the works are separable from the original contract.

Regarding the suspension of work/project, the GPPB "Manual of Procedures for the Procurement of Infrastructure Projects" (www.gppb.gov.ph/downloadables08/forms/GenericProcurementManual-Vol.3.pdf) contains the mechanism for contract suspension.

On procedures for price escalation claim, the Contractor and LRA may refer to Section 61 (Contract Prices) of the IRR of RA 9184 and the Revised Guidelines for Contract Price Escalation which was approved by the GPPB on 28 September 2008 and took effect on 6 November 2008. However, it is emphasized that before requesting for price escalation, issues and concerns on suspension/resumption of the Project and relocation of project site should first and foremost be addressed accordingly. Unless the contract is in order, any price escalation request cannot be processed.

The "Manual of Procedures for the Procurement of Infrastructure Projects" can be viewed/downloaded from the GPPB website (www.gppb.gov.ph), while the Revised Guidelines for Contract Price Escalation can be viewed/downloaded from the GPPB website and the NEDA website (www.neda.gov.ph) under "Contract Review Services" of the Programs and Projects category. Furthermore, Annex C of said Guidelines includes a detailed sample computation for contract price escalation for your reference.

We hope to have provided you with the necessary information and assistance on the matter.

Very truly yours,


MARGARITA R. SONGCO
Deputy Director – General

cc: Dir. Ronald A. Ortile, LRA-BAC



REPUBLICA NG PILIPINAS
KAGAWARAN NG KATARUNGAN
PANGASIWAAN SA PATALAAN NG LUPAIN
(LAND REGISTRATION AUTHORITY)
East Avenue cor. NIA Road
Quezon City

(7)

January 9, 2009

ARCH. NAZARIO SANTOS
General Manager
ARSANT ENGINEERING
1191 Bormahoco Compound
P. Ocampo Ext., Makati City

SUBJECT : NOTICE TO SUSPEND

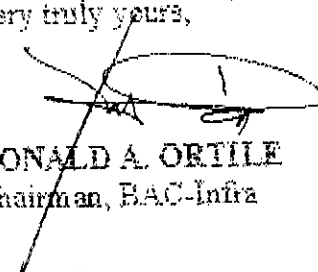
Sir:

This is to serve you notice to suspend the execution of the Construction Agreement dated December 17, 2003 relative to the construction of the Registry of Deeds Building of Batangas Province, due to the problem of ownership of the site on which the construction is being undertaken.

Kindly submit a written acknowledgement of the fact of your suspension of works within seven (7) calendar days from receipt of this Notice.

Thank you.

Very truly yours,


RONALD A. ORTILE
Chairman, BAC-Infra

cc: RD Batangas Province



REPUBLIKA NG PILIPINAS
KAGAWARAN NG KATARUNGAN
PANGASIWAAN SA PATALAAN NG LUPAIN
(LAND REGISTRATION AUTHORITY)
East Avenue cor. NIA Road
Quezon City

5

February 10, 2009

ARCH. NAZARIO M. SANTOS
General Manager
ARSANT ENGINEERING
1191, Bormaheco Compound
P. Ocampo Ext., Makati City

SUBJECT : NOTICE TO RESUME

Sir:

This is to serve you notice to resume the execution of the Construction Agreement dated December 17, 2003, in view of the favorable resolution of the issue of ownership of the new site on which the construction is being undertaken.

Article II, par. II.4 of the Agreement, provides:

*"The CONTRACTOR x x x shall ensure, x x x the completion of the project within the contract period of **ONE HUNDRED EIGHTY (180) calendar days.**"*

You shall also submit a revised Bar Chart Schedule of the project to compensate the requirement of the new revised contract time.

Please be advised that you should commence the resumption of the project within ten (10) calendar days from receipt of this Notice to Resume.

Very truly yours,


RONALD A. ORTILE
Chairman, BAC-Infra



CONTRACTOR • DESIGNER
Manila Office : 1191 Bormaheco Compound, P. Ocampo Ext., Makati City * Tel.: (02) 890-2346 * Fax No.: (02) 897-1378
Cebu Office : 11-B Banilad Green Mandaue City * Tel. (032) 346-6916

February 13, 2009

RONALD A. ORTILE
Chairman, BAC-Infrastructure
Land Registration Authority
Diliman, Quezon City

Sir:

We are in receipt of your new Resumption Order on the construction of the Registry of Deeds Building at Batangas Province.

In view of the more than 40 days delay of our billing which we submitted last November 12, 2008, we would like to request that we be allowed to resume our work until such cost is paid per our contract.

Hope you understand our situation. Thank you.

Very truly yours,

NAZARIO SANTOS
General Manager

LEGAL AFFAIRS DEPARTMENT

RECEIVED

Date: 2-13-09
By: [Signature]



(7)

REPUBLIKA NG PILIPINAS
KAGAWARAN NG KATARUNGAN
PANGASIWAAN SA PATALAAN NG LUPAIN
(LAND REGISTRATION AUTHORITY)
East Avenue cor. NIA Road
Quezon City

March 20, 2009

ARCH. NAZARIO M. SANTOS
General Manager
ARSANT ENGINEERING
1191, Bormaheco Compound
P. Ocampo Ext., Makati City

Sir:

Relative to our Notice of Resumption for the construction of the Registry of Deeds Bldg. of Batangas Province dated February 10, 2009, which you have received last February 12, 2009, please be advised that you should immediately mobilize and commence with the resumption of the project without any further delay.

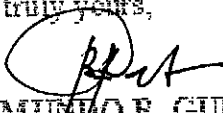
As regards your letter dated February 13, 2009, requesting for work suspension due to delayed payment of your first progress accomplishment, please be informed that LRA cannot grant your request due to the provision of the IRR of Republic Act No. 9184, on Suspension of Work, 9.2.e, which specifically states that the contractor shall have the right to suspend work once there is . . . *"Delay in the payment of the contractor's claim for progress billing beyond forty five (45) calendar days from the time the contractor's claim has been certified by the procuring entity's authorized representative that the documents are complete. . ."*

Here, your claim for progress billing has been certified to that effect only last February 24, 2009, thus, the forty-five (45) calendar days counted therefrom will lapse on April 10, 2009.

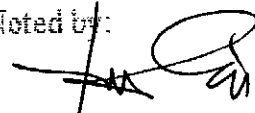
We hope we have made ourselves clear on this matter.

Thank you.

Very truly yours,


REYMUÑO R. GUIEB
Project Inspector

Noted by:


RONALD A. ORTILE
Director II, LAD
Chairman, BAC-Infra



Makati Office: 1191 Bonifacio Compound, P. Ocampo Ext., Makati City * Tel.: (02) 890-2346 * Fax No.: (02) 897-1378
Cebu Office: 11-B Bantad Green Mandaue City * Tel. (032) 346-6916

November 12, 2008

Director Ronald A. Ortile
Chairman SAC Infra
Land Registration Authority
Diliman, Quezon City

Thru: Remundo R. Guieb
Project Engineer

Subject: Progress Billing
Registry of Deeds Bldg.-Batangas Province

Sir:

We submit herewith our progress billing of 20% accomplishment on the abovementioned subject in the amount of

PESOS: SIX HUNDRED NINETY EIGHT THOUSAND THREE HUNDRED FIVE AND 88/100 ONLY (P698,395.88)

* Attached are the necessary documents.

Hope you find the foregoing in order. Thank you.

Very truly yours

[Handwritten Signature]
REYMONDO R. GUIEB
General Manager

- * ① CERTIFICATION
- ② PROGRESS ACCOMPLISHMENT REPORT (4 PAGES)
- ③ TEST REPORT ON REINFORCING STEEL BARS (4 PAGES)
- ④ PICTURES (22 pcs)
- ⑤ AFFIDAVIT
- ⑥ BILLING LETTER

LAND REGISTRY AUTHORITY
Batangas Province
Received: _____
Date: 11/17/08

RECEIVED BY: *[Signature]* 11/21/08
REYMONDO R. GUIEB