

The Power of an Administrative Authority to Liquidate Bank Letters of Guarantee for Public Work Contracts

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Abstract

Public Works Contracts are one the most important type of such these contracts. The Administrative Authorities are using this type of contracts for purposes of the public utilities which serve the Public Interest. And as these works serve the Public Interest and financed by Public Funds, the contracts, which these works are its subject, are enclosed by guarantees which ensure that the work is perfectly in progress and allow choosing the suitable contractor which can execute the works at the specified time and by the lowest costs. According to the Tender and Auction law no.89/1998 the Administrative Authority usually requires the bidders to furnish a Bid Security in the specified amount to be certain of seriousness of the submitted bid and the contractor who enters into a contract with a State Agency prefers to furnish the Bid Security in the form of a Bank Letter of Guarantee rather than in cash.

Practically, Letters of Guarantee of Public Works Contracts pose many problems.

These problems are related to: Significance, nature, essence, elements and characteristics of a Public Works Contract. The competent authority delegated to enter into such contracts and the Contracting Parties to such contracts, represented in a State Agency (Administrative Authority) and a Contractor. And also the Scope of authority of a State Agency (Administrative Authority) in terms of: **requesting cashing a Letter of Guarantee as a result of withdrawing, entirely or partially, contracting works; **amendment of a contract and the effect of such amendments on the relevant Letter of Guarantee.

Finally, disputes arising from forfeiture of Letters of Guarantee in terms of: **nature of such disputes; **the judge competent to hearing such disputes; **scope of the judicial control entitled to this judge in this regard in terms of legitimacy and sufficiency;

**permissibility of forfeiture or sequestration of a letter of guarantee; **possibility of settlement of such disputes by amicable ways or by arbitration; **effect of an Arbitration Agreement whether it (Arbitration Clause) has been included in a Principal Contract concluded between a State Agency and a contractor or in a Guarantee Agreement Principal Contract concluded between a State Agency and a contractor or in a Guarantee Agreement concluded between a bank and a State Agency; **invoking an Arbitration Award against the source of a letter of guarantee (or the reference bank).

Keywords: Tender and auction law no.89/1998; Administrative authority; Letter of guarantee.