

[GPPB RESOLUTION NO. 07-2004, July 21, 2004]

GUIDELINES FOR CONTRACT PRICE ESCALATION

WHEREAS, Republic Act No. 9184 ("R.A. 9184"), entitled "An Act Providing for Modernization, Standardization and Regulation of the Procurement Activities of the Government for other Purposes," was signed into law on January 10, 2003, and took effect on January 26, 2003. On the other hand, its Implementing Rules and Regulations Part A ("IRR-A") took effect on October 8, 2003;

WHEREAS, Section 61 of R.A. 9184 explicitly provides that all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the Government Procurement Policy Board ("GPPB");

WHEREAS, pursuant to Section 61 of R.A. 9184 which designates the GPPB as the approving authority for all requests for price escalation based on "extraordinary circumstances," the GPPB, during its 6th meeting for year 2003 held on October 20, 2003, tasked the GPPB-Technical Support Office ("GPPB-TSO") and the National Economic and Development Authority ("NEDA") to draft the guidelines that will govern requests for contract price escalation for the procurement of goods and infrastructure projects;

WHEREAS, the members of the GPPB have reviewed the draft Guidelines for Contract Price Escalation submitted by the GPPB-TSO and the NEDA during its 4th meeting for the year held on June 10, 2004, and unanimously agreed to adopt the said draft Guidelines, subject to the incorporation of their comments;

WHEREAS, during the 5th meeting of the GPPB held on July 22, 2004, the Members of the GPPB discussed and unanimously approved to adopt the Guidelines for Contract Price Escalation, a copy of which is attached hereto as Annex "A" to form an integral part hereof;

NOW, THEREFORE, for and in consideration of the foregoing, WE, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on US by law, hereby **RESOLVE** to confirm, adopt and approve, as WE hereby confirm, adopt and approve the Guidelines for Contract Price Escalation as submitted to US and modified according to OUR comments.

Adopted: 22 July 2004

(SGD.) HON. EMILIA T. BONCODIN
Secretary, Department of Budget and Management

Also signed by the Representatives of the following agencies:

Department of Education
Department of Energy
Department of Finance
Department of Health
Department of Interior and Local Government
Department of National Defense
Department of Science and Technology
Department of Trade and Industry
Private Sector

Annex "A"

GUIDELINES FOR CONTRACT PRICE ESCALATION

1. SCOPE

These guidelines shall govern requests for contract price escalation during contract implementation of all contracts for the procurement of goods and infrastructure projects under extraordinary circumstances pursuant to and in accordance with Section 61 of Republic Act No. 9184 (R.A. 9184), otherwise known as "Government Procurement Reform Act" and its Implementing Rules and Regulations Part A (IRR-A).

These guidelines shall apply to all branches, constitutional commissions and offices, agencies, departments, bureaus, offices and instrumentalities of the Government, including government-owned and/or controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).

2. PURPOSE

These guidelines are being formulated to meet the following objectives:

2.1 To prescribe the rules and procedures in the approval by the Government Procurement Policy Board (GPPB) of requests for price escalation;

2.2 To ensure that the task mandated by Section 61 of R.A. 9184 shall be undertaken competently, objectively and expeditiously by the GPPB and the National Economic and Development Authority (NEDA); and

2.3 To establish the legal and technical parameters for an objective

determination of events that will result to extraordinary circumstances in accordance with the Civil Code of the Philippines.

3. DEFINITION OF TERMS

3.1 **Price Escalation.** Refers to an increase in the contract price during contract implementation on the basis of the existence of "extraordinary circumstances" as determined by the NEDA and upon prior approval of the GPPB.

3.2 **Extraordinary Circumstances.** Refers to an event or occurrence, or series of events or occurrences during contract implementation which give/s rise to price escalation as may be determined by the NEDA, in accordance with the provisions of the Civil Code of the Philippines, as enumerated in Section 4 hereof.

3.3 **Extraordinary Inflation or Deflation.** Refers to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed under Section 5.2.b of these guidelines and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.

3.4 **Fortuitous Event.** Refers to an occurrence or happening which could not be foreseen, or even if foreseen, is inevitable. It is necessary that the contractor or supplier is free from negligence. Fortuitous events may be produced by two (2) general causes: (1) by Nature, such as but not limited to, earthquakes, storms, floods, epidemics, fires, and (2) by the act of man, such as but not limited to, armed invasion, attack by bandits, governmental prohibitions, robbery, provided that they have the force of an imposition which the contractor or supplier could not have resisted.

3.5 **WPI.** Refers to the Wholesale Price Index, which measures the monthly changes in the general price level of commodities, usually in large quantities, that flow into the wholesale trading system.

3.6 **CPI.** Refers to the Consumer Price Index, which measures the monthly changes in the average retail prices of goods and services commonly purchased by a particular group of people in a particular area.

3.7 **PPI.** Refers to the Producer Price Index, which measures the average change in the unit price of a commodity as it leaves the establishment of the producer.

4. FOR PURPOSES OF THESE GUIDELINES, THE TERM "EXTRAORDINARY CIRCUMSTANCES" SHALL REFER TO THE FOLLOWING ARTICLES OF THE

CIVIL CODE OF THE PHILIPPINES:

4.1 Article 1174, as it pertains to Ordinary Fortuitous Events or those events which ordinarily happen or which could be reasonably foreseen but are inevitable, such as, but not limited to the following:

- a. Typhoons;
- b. Thunderstorms;
- c. Flooding of lowly areas; and
- d. Vehicular accidents

Provided that the following requisites are present:

- a. The cause of the extraordinary circumstance must be independent of the will of the parties;
- b. The event must be either unforeseeable or unavoidable;
- c. The event must be such as to render it difficult but not impossible for the supplier or contractor to fulfill his obligation in a normal manner or within the contemplation of the parties;
- d. The supplier or contractor must be free from any participation in or aggravation of the injury to the procuring entity; and
- e. The allowance for price escalation should an ordinary fortuitous event occur is stipulated by the parties or the nature of the obligation requires the assumption of risk.

4.2 Article 1250, as it pertains to Extraordinary Inflation or Deflation, as defined in Section 3.3 hereof;

4.3 Article 1680, as it enumerates Extraordinary fortuitous events or those events which do not usually happen, such as, but not limited to the following:

- a. Fire;
- b. War;
- c. Pestilence;
- d. Unusual flood;
- e. Locusts; and
- f. Earthquake

Provided that the circumstances before, during and after the event shall be taken into consideration.

5. REVIEW AND APPROVAL PROCESS FOR REQUESTS FOR PRICE ESCALATION.

In the review and approval of a request for price escalation, the procuring entity shall comply with the following conditions before the same can be acted upon:

5.1 Endorsement. The Head of the Procuring Entity concerned shall endorse the request for price escalation to the NEDA, through its Director-General, accompanied by the following documents:

- a. A certification from the Head of the Procuring Entity stating that the request for price escalation is justified in accordance with R.A. 9184, its IRR and these Guidelines;
- b. A description of the nature of the requested price escalation as well as the identification of the specific legal and technical parameters stated in these guidelines that have been complied with by the request. For the technical requirements, supporting documents shall contain information/data in accordance with Section 5.2.b hereof;
- c. Certified copy of the original contract including the original scope of work and the original contract price, as awarded;
- d. Original cost estimates and/or bill of materials of the items, goods or components affected by the request for price escalation and the proposed escalated prices thereof, as applicable to the type of contract;
- e. Original and, if applicable, revised schedule of contract implementation;
- f. Original copy of the request for price escalation submitted by the contractor/supplier to the procuring entity, including information on the quantity of materials/components and/or scope of work being proposed for price escalation;
- g. Ten (10)-year historical data on the price indices of the materials or goods under consideration, including the source of data; and
- h. Other information/documents as may be required by NEDA/GPPB.

5.2 Two-Stage Review Process. The review process shall commence only after the NEDA has acknowledged the completeness of the request in accordance with this Section. A request for price escalation shall only be granted if it satisfies both the First and Second Stage reviews.

- a. First Stage: Legal Parameters. This stage shall establish the legal basis for extraordinary circumstances that will allow contract price escalation. The determination shall strictly be in accordance with any of the extraordinary circumstances