



RESOLUTION NO. 28-2013

REITERATING THE REQUIREMENT OF PROCURING ENTITY ENDORSEMENT AS A CONDITION FOR THE REVIEW AND APPROVAL PROCESS OF REQUESTS FOR PRICE ESCALATION

WHEREAS, Republic Act (RA) No. 9184, otherwise known as the “Government Procurement Reform Act” and its revised Implementing Rules and Regulations (IRR) took effect on 26 January 2003 and 2 September 2009, respectively;

WHEREAS, Section 61 of RA 9184 provides that for the given scope of work in the contract as awarded, 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). It likewise provides that “extraordinary circumstances” shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines, and upon recommendation of the procuring entity concerned;

WHEREAS, Section 61.3 of the IRR of RA 9184 provides that any request for price escalation under extraordinary circumstances shall be submitted by the concerned entity to the NEDA with the endorsement of the procuring entity. The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such;

WHEREAS, the Revised Guidelines for Contract Price Escalation¹ (Guidelines) govern requests for price escalation during implementation of contracts for the procurement of goods and infrastructure projects under extraordinary circumstances pursuant to and in accordance with Section 61 of RA 9184;

WHEREAS, Marbel Construction Development (MARCON), through a letter dated 7 January 2010, filed a request for contract price escalation for the construction of the new Koronadal City Hall (Project) with the former Koronadal City Mayor, Mayor Fernando Q. Miguel, in the amount of PhP 66,539,750.32, which the latter endorsed to NEDA through a letter dated 18 January 2010;

WHEREAS, the NEDA Secretariat conveyed the results of its review and recommendations to the former Mayor Fernando Q. Miguel through its letter dated 26 February 2010;

WHEREAS, due to the refusal of the current Koronadal City Mayor, Mayor Peter B. Miguel, to issue a Certificate of Completion in favor of MARCON, the latter elevated the matter to the Construction Industry Arbitration Commission (CIAC) on 3 August 2011, which then rendered a Decision establishing 15 June 2010 as the date of completion of the Project;

¹ GPPB Resolution 07-2004 dated 22 July 2004, published in the Official Gazette on 04 October 2004, effective 19 October 2004, as amended by GPPB Resolution No. 03-2011 dated 28 January 2011, published in the Manila Times on 6 April 2011.

WHEREAS, based on the decision of the CIAC, MARCON sent NEDA the other documentary requirements in support of its request for price escalation, including the revised computation of the fluctuation factor (K) being claimed as well as the revised actual price escalation in the total amount of PhP55,641,122.25;

WHEREAS, in accordance with Sections 5 and 6 of the Guidelines, NEDA sent a letter dated 12 August 2013 requesting Mayor Peter B. Miguel to endorse the documents submitted, as well as the revised computations of the fluctuation factors (K) and the actual amount being requested for price escalation, but the Honorable Mayor refused to issue the requested documents;

WHEREAS, in its letter dated 25 September 2013, NEDA sought guidance and clarification from GPPB on the appropriate action to take relative to MARCON's request for contract price escalation due to non-endorsement by Mayor Peter B. Miguel;

WHEREAS, NEDA's request was discussed during the Inter-Agency Technical Working Group (IATWG) meeting on 11 October 2013 wherein the members recommended that GPPB-TSO to prepare a reply in response to NEDA's letter dated 25 September 2013, stating that Section 5 of the Guidelines is mandatory and NEDA could not validly commence the review process of MARCON's request for price escalation in the absence of the endorsement of the Head of the Procuring Entity (HOPE), Mayor Peter B. Miguel;

WHEREAS, in its 7th Regular GPPB Meeting on 25 October 2013, the members discussed and deliberated on NEDA's request for guidance and clarification on the appropriate action to take relative to MARCON's request for contract price escalation due to non-endorsement by Mayor Peter B. Miguel;

NOW, THEREFORE, for and in view of all the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the following:

1. **EMPHASIZE** that the endorsement of the request for price escalation by the HOPE under Section 5 of the Revised Guidelines for Contract Price Escalation is mandatory. Hence, in the absence of the endorsement of MARCON's request for price escalation by the Mayor of Koronadal City, NEDA could not commence the review process; and
2. **DIRECT** the GPPB-TSO to respond to NEDA's request in writing that Section 5 of the Revised Guidelines for Contract Price Escalation is mandatory, and as such, NEDA could not validly commence the review process in the absence of the endorsement by the HOPE.

This Resolution shall take effect immediately.

APPROVED this 25th day of October, 2013 at Pasig City, Philippines.

(Sgd.)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(Sgd.)

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

(Sgd.)

DEPARTMENT OF FINANCE

DEPARTMENT OF HEALTH

(Sgd.)

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

(Sgd.)

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

(Sgd.)

**DEPARTMENT OF TRADE AND
INDUSTRY**

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

(Sgd.)

PRIVATE SECTOR REPRESENTATIVE

Attested by:

(Sgd.)

DENNIS S. SANTIAGO
Board Secretary, GPPB
Executive Director, GPPB-TSO