

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

*Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
Telefax Nos. (02) 900-6741 to 44*

NPM No. 001-2005

January 3, 2005

MR. ISAAC S. PUNO III

Executive Vice-President
Chairman, Bids and Awards Committee
Bases Conversion Development Authority
BCDA Corporate Center, 2/F Bonifacio
Technology Center, 31st St. cor. 2nd Ave.,
Bonifacio Global City, Taguig, Metro Manila

**Re : Applicability of the Guidelines for Contract Price Escalation on
Foreign-Funded Projects**

Dear Mr. Puno:

This refers to your letter dated 26 November 2004, which we received on 02 December 2004, seeking clarification whether or not the Guidelines for Contract Price Escalation issued by the Government Procurement Policy Board (GPPB) through its Resolution 07-2004, dated 22 July 2004, may be applied to the Subic-Clark-Tarlac Expressway Project (hereinafter the "Project") of the Bases Conversion Development Authority (BCDA).

This sole issue stems from the fact that the Guidelines for Contract Price Escalation issued by the GPPB requires a ten percent (10%) increase in price before escalation may be considered while the JBIC rules provide for only five percent (5%) increase.

Applicability of the Guidelines for Contract Price Escalation to the Project

As represented, the Project is funded by the Japan Bank for International Cooperation (JBIC) under the Special Yen Loan Package. On this basis, considering that the Implementing Rules and Regulations Part B of Republic Act 9184 has not yet been issued, the applicable rules and regulations shall be that which was agreed upon and expressly stated in the loan agreement; in this case, the JBIC Rules on Procurement under ODA Loans.

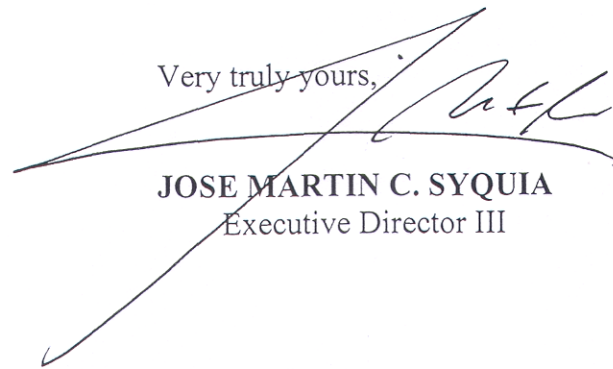
Section 4 of the Civil Code of the Philippines provides that laws shall have no retroactive effect, unless the contrary is provided. Thus, there being no express nor implied authorization embodied in the Guidelines for Contract Price Escalation allowing retroactive application, prospective construction is called for.

Accordingly, we are of the opinion that if the negotiations for the Project started prior to the effectivity of the Guidelines for Contract Price Escalation on 26 October 2004, there is no sufficient legal basis for its adoption. However, this does not preclude the negotiators from pushing for the employment of the ten percent (10%) threshold as part of the provision on Price Escalation presently being negotiated with the Japanese proponents.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'JMS', is written over the typed name and title.

JOSE MARTIN C. SYQUIA
Executive Director III

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
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*Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
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December 6, 2004

MR. ISAAC S. PUNO III

Executive Vice-President
Chairman
Special Bids and Awards Committee
Bases Conversion Development Authority
BCDA Corporate Center, 2/F Bonifacio
Technology Center, 31st St. cor. 2nd Ave.,
Bonifacio Global City, Taguig, Metro Manila

Dear Mr. Puno:

This refers to your letter dated 26 November 2004, which we received on 02 December 2004, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, specifically the application of the Guidelines for Contract Price Escalation in the Subic-Clark-Tarlac Expressway Project.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


ATTY. SALVADOR C. MALANA III
Head, Legal and Policy Group