

NPM No. 01-2008

30 January 2008

MR. DIONISIO T. SAMEN

Chairman

Bids and Awards Committee (BAC)

BATAAN ECONOMIC ZONE

PHILIPPINE ECONOMIC ZONE AUTHORITY

Mariveles, Bataan

Dear Mr. Samen:

We respond to your letter dated 30 July 2007, which our office received last 8 August 2007, where you raised the following queries:

1. Whether the ten percent (10%) limit on variation orders applies to repair or rehabilitation projects, or for new construction projects only?
2. What are the sanctions that may be imposed on the official responsible for the preparation of the original detailed engineering that resulted to the increase of variations orders beyond 10%?

The ten percent (10%) cap on variation orders applies to both repair/rehabilitation as well as new construction projects. The definition of infrastructure project under Sec. 5 of the Implementing Rules and Regulation Part-A (IRR-A) of Republic Act (R.A) 9184 is comprehensive and includes the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communications facilities, civil works components of information technology, irrigation, flood control and drainage, and other related construction projects of the government. The rule on variation orders forms part of the Contract Implementation Guidelines for the Procurement of Infrastructure Projects (the "Guidelines") under R.A. 9184 and its IRR-A.

As regards your second query, the Guidelines also state that the head of the procuring entity may authorize the variation order beyond ten percent (10%) but not more than twenty percent (20%) subject to the guidelines to be determined by the Government Procurement Policy Board (GPPB), provided that appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original

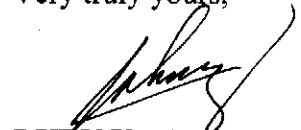
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SIX TO A. INALAN
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detailed engineering design which failed to consider the variation order beyond ten percent (10%).

Although the GPPB has yet to issue the guidelines on the matter, it can be inferred that existing provisions under R.A. 9184 which impose civil, criminal, and administrative sanctions on certain offenses, in addition to the sanctions for dishonesty, abuse of discretion, neglect of duty, inefficiency and incompetence in the performance of official duties, among others, under the Civil Service law and rules, as well as for violations of the Anti-Graft and Corrupt Practices Act, may be considered in the prosecution of any official held responsible for the preparation of the original detailed engineering design that resulted to the increase of variation orders beyond ten percent (10%). Among the more noted administrative penalties are dismissal, suspension, transfer, demotion, imprisonment, and disqualification.

We trust to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III