



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 84-2013

30 October 2013

HON. MARIA ISABELLE G. CLIMACO

Mayor

CITY OF ZAMBOANGA

Valderrosa Street, Zamboanga City


Re: Variation Order

Dear Mayor Climaco:

We write in relation to your letter dated 3 September 2013 requesting technical assistance in determining whether the whole scope of work on slope protection may be deleted by way of a Variation Order.

As represented, the Office of the City Engineer of Zamboanga requested for approval for a Change Order for the Construction of Health Center at Pasonanca, Zamboanga City (Project) with a contract amount of P2,294,902.36. The requested Change Order consists of Negative and Positive Variation in the same amount of P205,594.70. As such, the resulting cumulative positive variation order is 0%. The proposed Negative Change Order, *i.e.*, the deletion of the slope protection, was explained as necessary in order to suit actual field condition, while the proposed Positive Change Order covering the increase in quantities for embankment, reinforcing steel, structural concrete, masonry, and painting works for the Health Center was due to change in the designed floor finish elevation.

At the outset, we wish to inform the Honorable Mayor that this office does not have the authority to pass upon decisions of procuring entities pertaining to its operations. We have always maintained the position that the procuring entity is in the best position and authority to determine the existence of facts and conditions that warrant the application of certain provisions of procurement rules and regulations. However, allow us to point out the relevant provisions of Republic Act No. (RA) 9184, its Revised Implementing Rules and Regulations (IRR), including associated rules applicable to the subject matter of the inquiry.

Section 17.6 of the IRR of RA 9184 mandates that no bidding and award of contract for infrastructure project shall be made unless the detailed engineering investigations, surveys and design for the project have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the Head of the Procuring Entity, and in accordance with the provisions of Annex A¹ of the IRR. Under Annex A, field surveys and investigations, which may include aerial, hydrographic, topographic, hydrologic, sub-surface, monumenting, and other surveys shall be carried out in accordance with the design standards adopted by the agency, and prepared in a manner that is satisfactory to carry out accurate design and productions of plans that will permit quantity estimates to be made within plus or minus ten percent (10%) of the final quantities of the completed structure. 

¹ Detailed Engineering for the Procurement of Infrastructure Projects.

We wish to point out that Section 1.1 of Annex E² of the IRR of RA 9184 provides that the scope of works **shall not be reduced so as to accommodate a Positive Variation Order**. In addition, the Manual of Procedures for the Procurement of Infrastructure Projects provides that the “addition/deletion of works should be within the general scope of the project as bid and awarded, and the **deletion of the work should not affect the integrity and usefulness of the structure.**”³ (*Emphasis ours*)

Moreover, Section 1.5 of the same Annex E provides that in claiming for any Variation Order, the contractor shall deliver a notice giving full and detailed particulars within twenty eight (28) calendar days after the circumstances or reasons justifying the claim shall have occurred or, within seven (7) calendar days in case the work is urgent to avoid detriment to public service, such that failure to provide notice in the stipulated time shall constitute a waiver by the contractor for any claim.

Based on all the foregoing, we respectfully suggest that a more detailed and in-depth analysis be conducted to determine the reasons and bases for the proposed Positive and Negative Variation Orders.

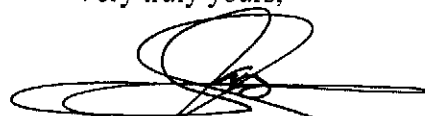

We observe that since detailed engineering should be properly and judiciously accomplished prior to the actual procurement activities, it can be assumed that the program of work for the Project pertaining to the Slope Protection was assessed to be necessary and suitable to the actual field condition. To claim that the deletion of the Slope Protection is meant to suit actual field condition would suggest that the detailed engineering studies and assessment was not properly accomplished during the project preparation stage. Thus, it may be necessary to clearly establish why the Slope Protection was originally considered in the detailed engineering studies and why it is no longer necessary.

Additionally, it should also be satisfactorily shown that the suggested deletion will not affect the integrity and usefulness of the structure, and was not meant to accommodate a Positive Variation Order. It may be well to note that the Positive Variation Order for the Health Center is said to be due to the change in the designed floor finish elevation, which may be presumed necessary mainly because of the deletion of the Slope Protection. Furthermore, the exact similarity of the costs involved for both Positive and Negative Variation Orders should be looked at more closely in order to ensure that the reduction in the scope of work was not meant to accommodate a Positive Variation Order.

Lastly, aside from the afore-mentioned technical details pertinent to the claim, it is also necessary for the City Government to verify whether the claim was made within the applicable time required under Section 1.5 of Annex E of the IRR of RA 9184.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III 

² Contract Implementation Guidelines for the Procurement of Infrastructure Projects.

³ Manual of Procedures for the Procurement of Infrastructure Project, 2006, p. 89.