

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. 133-2004

October 12, 2004

MR. ROGELIO M. MURGA
President and CEO
National Power Corporation
Cor. Quezon Ave. & Agham Road
Diliman Quezon City

Re : Fixed Price Requirement on Fuel Supply Contract

Dear Mr. Murga:

This refers to your letter dated August 17, 2004, which we received on September 17, 2004, addressed to the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board (GPPB), requesting reconsideration on the fixed pricing requirement provided in Republic Act No. 9184 and its Implementing Rules and Regulations Part A.

It bears stating that the issue advanced is similar to that raised by the Department of National Defense in its letter to this office on April 1, 2004¹. The same issue was raised before the Government Procurement Policy Board² and eventually became the subject of the Board's Policy Matter No. 05-2004³. Hence, for the purpose of addressing similar concern by the National Power Corporation, following is a reproduction, in toto, of the pertinent portion of the aforementioned Policy matter, to wit:

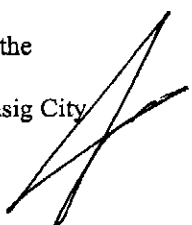
Strict Rule on Fixed Prices of Bids Under the IRR-A of R.A. 9184

It is an established rule in R.A. 9184 under Article XIX, on Contract Prices and Warranties that bid prices shall be considered as fixed prices and not subject to adjustment or modification during the contract implementation stage, Section 61 thereof explicitly provides:

¹ Letter requesting to exempt the procurement of Petroleum, Oil and Lubricants (POL) of the Armed Forces of the Philippines from Section 61 of the Implementing Rules and Regulations Part A (IRR-A) of R.A. 9184

² On April 28, 2004 during the #rd GPPB Meeting held at The Taipan Place, Emerald Ave., Ortigas Center, Pasig City

³ Dated May 05, 2004.



Sec 61. **Contract Prices.** – 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 GPPB.** For purposes of this Section, “extraordinary circumstances” shall refer to events that may be determined by the National Economic and Development Authority [NEDA] in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned. (Emphasis supplied)

This is further amplified by Section 61.1 of the IRR-A, to wit:

61.1. 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 GPPB. All contracts shall be denominated and payable in Philippine currency, and this shall be stated in the bidding documents: Provided, however, That should the procuring entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening. (Emphasis supplied)

Based on the foregoing, R.A. 9184 and its IRR-A establish the general rule that bid prices are not subject to change. This means that the contract price to be paid to the winning bidder should not vary from the price quoted as financial component of their bid. Thus, price escalation is not allowed except under extraordinary circumstances and only upon prior approval of the GPPB.

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It must be noted that the fixed price requirement on bid prices under R.A. 9184 and its IRR-A is a stringent requirement that must be observed by procuring entities and bidders. Section 61 of R.A. 9184 presupposes that the bidders for a particular government project should submit a fixed bid price in its financial proposal for the project being bid out at the competitive bidding stage, which shall be treated as its offered price to the government. This price quoted by the bidder shall be the very basis of bid evaluation in the determination of the lowest calculated bid. The bidder adjudged to be with the lowest calculated bid shall then be subject to post qualification, and if he passes all the criteria thereto, such bidder shall be declared as the bidder with the lowest calculated responsive bid, and the head of the procuring entity concerned shall award the contract to said bidder at its submitted price. This bid price shall be the contract price, which cannot be adjusted or modified during the contract implementation stage, save in case of requests for price escalation under extraordinary circumstances, which shall be determined by the NEDA and subject to the approval of the GPPB.

Thus it can be deduced that the fixed price requirement for bid prices in R.A. 9184 and its IRR-A cannot be compromised as it is the very basis for the exact comparison of bids. It has been held that the three principles in public

bidding are (1) the offer to the public; (2) opportunity for competition; and (3) a basis for the exact comparison of bids. Exclusion of any of these factors destroys the distinctive character of the system and thwarts the purpose of its adoption. Hence, considering that the requirement of law that bid prices should be fixed prices is part of the underlying precepts in public bidding, the GPPB is not disposed to adopt a new or innovative mode of comparison of bids. We believe that strict adherence on the principles, rules and regulations on public bidding must be sustained to preserve the integrity and the faith of the general public bid on the future.

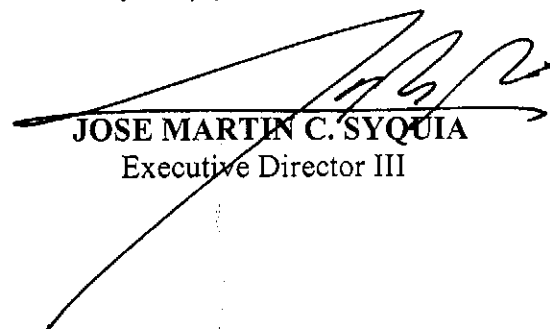
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While the above-cited opinion was premised on the context of a request for the use of the Wholesale Posted Price (WPP) in determining and fixing the price for the subject contract, the underlying reason for the same is fairly applicable even in the framework of the present request for the use of the Mean of Platts of Singapore (MOPS). The logic for upholding the stringent requirement for fixed pricing stands, that is, to ensure the stability of the terms of the contract, insofar as the price is concerned, during the implementation stage. Such is a pragmatic prescription aimed at protecting not only the government but the contractor as well from changes beyond their contemplation. Equally important, the requirement is designed to preserve the character of public bidding, that is, it caters a steady and objective basis for the exact comparison of bids.

Also, it may rightly be stressed that the requirement subject of our consideration is a prescription that finds its basis on R.A. 9184 – the law creating the GPPB. Significantly, the GPPB is mandated to effectuate its provisions and ensure its implementation; thus, it is powerless to depart from its mandate or allow any inconsistency with the law's prescriptions.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

Cc: **Hon. Vincent S. Perez, Jr.**
Secretary
Department of Energy (DOE)

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September 21, 2004

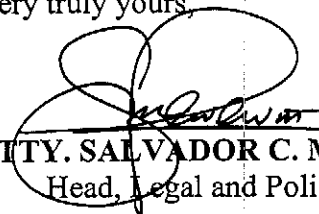
MR. ROGELIO M. MURGA
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We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the GPPB for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


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