



Republic of the Philippines  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**



**NPM No. 177-2015**

29 December 2015

**MS. ROSVI C. GAETOS**

*Executive Director*

**CENTER FOR INTERNATIONAL TRADE**

**EXPOSITIONS AND MISSIONS (CITEM)**

Golden Shell Pavilion, Roxas Boulevard,

cor. Sen. Gil J. Puyat Avenue, Pasay City 1300

**Re: Contract Price Escalation; Approved Budget for the Contract (ABC)**

Dear Executive Director Gaetos:

This refers to your letter requesting approval from the Government Procurement Policy Board (GPPB) to allow the actual amount procured from a signage contractor in excess of the Actual Budget for the Contract (ABC) for various projects implemented in 2011 in reference to the rule on Price Escalation under Section 61.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, so as to lift the Notice of Disallowance issued by the CITEM Resident Commission on Audit (COA) Auditor.

As represented, CITEM Bids and Awards Committee (BAC) conducted a public bidding for the procurement of an official signage contractor for projects organized by CITEM in 2011 with an ABC in the amount of Php 900,000.00. As further represented, the posted ABC was an estimate and was not meant to be the limit of the contract, based on item I of the bidding guidelines for the project, which states that "*Budget allocation and issuance of Job order will be based on actual and specific requirements per project.*" Subsequently, the contract was awarded to the lone bidder, Pixografx Digital Imaging Center, Inc. (Pixografx), though in the Notice of Award (NOA) attached in the letter that we received, the total contract price for the project was not indicated.

It is also represented that since the total cost of the signage requirements for the year cannot be accurately pre-determined at the time of the bidding, the bid document did not specify the amount. The signage plan is prepared on a per project basis and is dependent on several factors: the creative theme and direction of the curator, the configuration of the venue, the exhibit lay-out which can be finalized only upon final confirmation of the total number of exhibitor companies, the rules and restrictions of the venue owner, and other factors. During the implementation of the project, the actual signage and graphics ordered from Pixografx reached Three Million One Hundred Two Thousand Pesos (Php 3,102,000.00) exceeding the ABC by Php 2,202,000.00. This leads to the issuance of an Audit Observation Memorandum and a Notice of Disallowance by the COA. Hence, this request.

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We wish to clarify that the authority of the GPPB to approve requests for contract price escalation is confined within the limits of RA 9184 and its IRR. Under Section 61 of RA 9184, 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.*** To provide the rules and procedures for the implementation of this mandate of the law, the GPPB issued the *Revised Guidelines for Contract Price Escalation*<sup>1</sup> (Guidelines for brevity).

In order to justify the request for contract price escalation, it is necessary to establish that an extraordinary circumstance occurred during contract implementation. The Guidelines define extraordinary circumstance as an event or occurrence, or series of events or occurrences during contract implementation which give/s rise to price escalation as may be determined by the National Economic and Development Authority (NEDA), in accordance with the provisions of the Civil Code of the Philippines, specifically the following:

1. Article 1174, as it pertains to Ordinary Fortuitous Events or those events which ordinarily happen or which could be reasonably foreseen but are inevitable, such as, but not limited to the following: (a) typhoons; (b) thunderstorms; (c) flooding of lowly areas; and (d) vehicular accidents;<sup>2</sup>
2. Article 1250, as it pertains to Extraordinary Inflation or Deflation;<sup>3</sup> and
3. Article 1680, as it enumerates Extraordinary Fortuitous Events or those events which do not usually happen, such as, but not limited to the following: (a) fire; (b) war; (c) pestilence; (d) unusual flood; (e) locusts; and (f) earthquake.<sup>4</sup>

The list of extraordinary circumstances, for purposes of approving requests for price escalation is exclusive. It admits no other additional circumstance. Further, contract price escalation contemplates a situation where the contractor performed the given scope of work in the contract as awarded. The increase in the cost of implementing the scope of work should be caused by an extraordinary circumstance as defined above, and not due to an increase in the quantity of items as indicated in the awarded contract or deviation in the scope of work or technical requirements of the project during contract implementation. Accordingly, the provisions of Section 61 of RA 9184 and its IRR and the rules and

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<sup>1</sup> GPPB Resolution 07-2004 dated 22 July 2004, published in the Official Gazette on 04 October 2004, effective 19 October 2004 as modified through the Revised Guideline, for Contract Price Escalation, which took effect on 6 November 2008.

<sup>2</sup> Provided that the following requisites are present:

- (i) The cause of the extraordinary circumstance must be independent of the will of the parties;
- (ii) The event must be either unforeseeable or unavoidable;
- (iii) The event must be such as to render it difficult but not impossible for the supplier or contractor to fulfill his obligation in a normal manner or within the contemplation of the parties;
- (iv) The supplier or contractor must be free from any participation in or aggravation of the injury to the procuring entity; and
- (v) The allowance for price escalation should an ordinary fortuitous event occur is stipulated by the parties or the nature of the obligation requires the assumption of risk.

<sup>3</sup> Refers to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two (2) standard deviation rule computed under Section 5.2.2 of these Guidelines, and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation.

<sup>4</sup> Section 3 in relation to Section 4 of the Revised Guidelines for Contract Price Escalation.

procedures in the Guidelines do not apply when the contract price escalation is not based on an extraordinary circumstance as defined in the Guidelines. This notwithstanding, it bears stressing that any request for contract price escalation should be strictly processed in accordance with the review and approval process under Section 5 of the Guidelines. Based on your representation, there was an excess in the actual signage and graphics ordered from Pixogرافx, and the amount of such excess reached to Php 2,202,000.00. However, we note that there was no mention of any extraordinary circumstance as defined in the Guidelines.

Additionally, we wish to clarify that the ABC shall be the upper limit or ceiling for bid prices.<sup>5</sup> Bid prices that exceed the ABC shall be disqualified outright from further participating in the bidding,<sup>6</sup> and the award of contract shall not exceed the ABC. In the award of contract, the bid prices indicated therein are considered as fixed prices and not subject to adjustment or escalation, except under the following circumstances<sup>7</sup>:

1. Price escalation under Section 61.1 of the IRR of RA 9184, as discussed above;
2. Price adjustment under Section 61.2<sup>8</sup> of the IRR of RA 9184; and
3. Price adjustment under Sections 1.1<sup>9</sup> and 2.2<sup>10</sup> of the Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials.

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

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*Executive Director V*



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<sup>5</sup> Section 31 of RA 9184.

<sup>6</sup> *Ibid.*

<sup>7</sup> For the procurement of goods.

<sup>8</sup> In cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations, or other acts of the GOP, promulgated after the date of bid opening, a **contract price adjustment** shall be made or appropriate relief shall be applied on a no loss-no gain basis.

<sup>9</sup> Subject to the conditions set forth in Sections 1.2 to 1.4, amendments to order may be issued at any time by the procuring entity concerned. If any such order increases or decreases the cost of, or the time required for executing any part of the work under the original contract, an **equitable adjustment in contract price** and/or delivery schedule shall be mutually agreed upon between the parties concerned, and the contract modified in writing.

<sup>10</sup> If the suspension order is lifted, or if the period of the order expires, the supplier or consultant shall have the right to resume work. Appropriate **adjustments shall be made in the delivery or contract schedule, or contract price, or both**, and the contract shall be modified accordingly.