

NPM No. 30-2007

30 July 2007

ENGR. ALBERTO M. CERVANCIA
General Manager
CALAMBA WATER DISTRICT
Lakeview Subdivision, Calamba, Laguna

Re: Price Adjustment due to Increase in Minimum Wage

Dear Engr. Cervancia:

We respond to your letter dated 24 November 2006 seeking clarification on the application of Section 61 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R. A. 9184) and of Section 27.1 of the General Conditions of Contract (GCC) of the Standard Bidding Documents (SBD).

We understand that you received a letter from your janitorial services contractor, D'Triumph Cleaners and Allied Services, Inc., requesting for an increase of P18.00 per day as mandated under Wage Order No. IV-11 dated 19 July 2006 issued by the Department of Labor and Employment (DOLE). In order to comply with said wage order, you wish to know how to amend your contract with said contractor considering that under Section 61.1 of the IRR-A, the approval of the Government Procurement Policy Board (GPPB) is required; however, under Section 27.1 of the GCC of the SBD, the contract can be amended by the procuring entity and the contractor themselves.

Section 61.1 of IRR-A provides as follows:

“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. x x x.”

The GPPB issued the Guidelines for Contract Price Escalation on 22 July 2004 prescribing the rules and procedures in the approval of the GPPB for requests for price escalation and to establish the legal and technical parameters for an objective determination of events that will result to extraordinary circumstances. Under the Guidelines, the term “extraordinary circumstances” refers to any of the following events:

1. Ordinary fortuitous events (Article 1174, Civil Code) or those events which ordinarily happen or which could be reasonably foreseen but are inevitable, such as, but not limited to typhoons, thunderstorms, flooding of lowly areas, and vehicular accidents;
2. Extraordinary inflation or deflation (Article 1250, Civil Code) or the decrease or increase in the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency 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; or
3. Extraordinary fortuitous events (Article 1680, Civil Code) or those events which do not usually happen, such as, but not limited to fire, war, pestilence, unusual flood, locusts, or earthquake.

Based on the definition of the term "extraordinary circumstance" under Section 61.1 and its Guidelines, a mandated wage increase is not an occurrence during contract implementation which would justify an increase in the contract price as determined by the National Economic Development Authority and upon prior approval of the GPPB. Thus, Section 61.1 is not applicable in the instant case.

On the other hand, Section 27.1 of the GCC of the SBD provides that "subject to applicable laws, no variation in or modification of the terms of this Contract shall be made except by written amendment signed by the parties." Section 27.1 is legally based on Section 17.7.4 of the IRR-A which provides as follows:

"x x x. However, in cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations or other acts of Government promulgated after the date of bidding, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis, provided such is not covered by the contract provisions on price adjustment."

In Non-Policy Matter No. 09-2006 dated 10 April 2006, this Office opined as follows:

"The matter was discussed by the Inter-Agency Technical Working Group (IATWG) of the Government Procurement Policy Board (GPPB) last 05 January 2006 and it was agreed that the issuance of a supplemental/bid bulletin containing the adjusted prices would be the proper recourse of the procuring entity if the bids have not been opened.

However, if the bids have been opened at the time of the effectivity of the EVAT law, then the procurement activity shall be continued until contract award, subject to the subsequent agreement between the procuring entity and the winning bidder of corresponding price adjustments as may be necessary in accordance with Section 17.7.4 of the IRR-A, x x x.

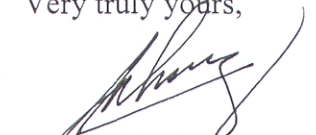
Moreover, the winning bidder is also required to provide for a sufficient basis to justify the requested contract price adjustment. Further, the bidder should

also show proof of the substantial effect of the new law, ordinance, regulation or any other act of the Government to the contract price, thereby necessitating a contract price adjustment.” (Emphasis supplied)

Considering that the wage order increasing the minimum wage was issued by the DOLE after contract award and signing, thus, the parties may amend the contract applying Section 17.7.4 of the IRR-A in relation to Section 27.1 of the GCC of the SBD, subject to proof of the substantial effect of the wage order to the contract price.

We hope 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