



## TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Avenue, Ortigas Center,  
Pasig City, Philippines 1605

**NPM No. 31-2005**

July 11, 2005

**HON. CAMILO LAMMAWIN**  
Mayor  
Municipality of Tabuk  
Province of Kalinga  
Cordillera Autonomous Region

**Re : Contract Price Adjustment**

Dear Mayor Lammawin:

This refers to the letter-request of the Hon. Director General Romulo Neri of National Economic and Development Authority (NEDA) dated 18 June 2005 which we received on 21 June 2005, requesting the Government Procurement Policy Board (GPPB) to decide on the request for price adjustment raised by Scepter Engineering and Integrated Services.

The Local Government of Tabuk has entered in a Contract for the Construction of a 350 cu. m. Elevated Steel Tank using Direct Contracting as its mode of procurement. Since the advertisement was perfected prior to the effectivity of the IRR-A of R.A. 9184, the said procurement shall be governed by E.O. 40 and its IRR. But, by virtue of the express provision of R.A. 9184 granting the GPPB the power to assume the functions of the then PPB, the GPPB is now taking cognizance of the issues involved in the letter-request.

Notably, the contract stipulates by way of clear and categorical expression that the contract price shall not be subject to any price adjustment/alteration. Thus, the specific issue for our consideration is based on this stipulation. It may be stated in this wise:

Whether or not a contract price adjustment may be made despite a stipulation in the contract to the effect that the contract price shall not be subject to any price adjustment/alteration.

### **Contract Price Adjustment**

As earlier stated, the contract, subject of this query, is governed by the provisions of E.O. 40. Section 33 of the Implementing Rules and Regulations of the said law provides that:

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 adjustments during contract implementation, except under extraordinary circumstances and upon prior approval of the PPB.

For purposes of these IRR, "extraordinary circumstances" shall refer to events that may be determined by NEDA in accordance with the Civil Code of the Philippines, and upon the recommendation of the agency.

As can be gleaned from the above-mentioned provisions, contract price adjustment, generally, is not allowed during contract implementation. The only exception is when said price adjustment is justified by the occurrence of extraordinary circumstances upon prior approval of the then PPB.

In the case of Scepter Engineering and Integrated Services, it is apparent though that no extraordinary circumstance appears to be present to warrant the approval for a price adjustment. Even assuming, that there indeed occurred an extraordinary circumstance, this would still not in any way affect the earlier stipulation agreed upon by the parties which states that no contract price adjustment shall be made. Witness item 47.0 of the Contract Data:

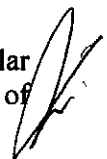
"The Contract Price shall not be subject to any price adjustment or alteration with the exception of any adjustment to the Contract Price resulting from a Variation/ Change Order issued in accordance with the Appendix (Change Order Procedures) attached to the Contract Agreement."

Quite significantly, the request for price adjustment is based on erratic increase of the price of steel and not resulting from a variation order or a change order. Hence, this situation does not justify an adjustment in the contract price, as the same does not fall under the exception to the agreement under the aforementioned Clause in the Contract.

Furthermore, Clause 47 of the Contract for the Construction of the 350 cu. m. Elevated Steel Tank signed by Scepter Engineering and Integrated Services and the Municipality of Tabuk also provides that prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Contract Date. Hence, absent such abovementioned conditions, no contract price adjustment shall be allowed.

By way of operation of the presumption that the contract has been freely entered into and agreed upon by the parties, the stipulations of the parties represent their agreement and, hence, shall govern their relations. Thus, in light of this principle, it is the considered view of this office that under the circumstances, no price adjustment is possible.

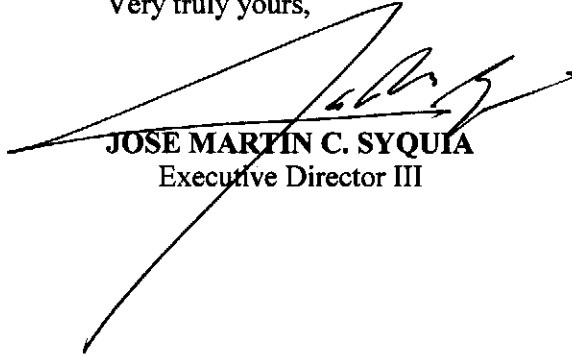
This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of



facts or circumstances. Moreover, the issues raised for this office's consideration is limited only to the propriety of price adjustment and does not delve on the issues concerning the legality of the procurement method used by the Municipality of Tabuk in acquiring the works for the infrastructure projects; neither does this opinion treat of issues concerning conformity by the Municipality of Tabuk to relevant procurement rules and regulations.

We trust that this clarifies matters.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director III

# CENTER NOTE FOR LEGAL QUESTIONS

Requesting Entity WEDA Date Received Jan 21, 2005

## Clarifications/ Issues and Concerns:

- 1) The contract for the construction of the 350 cu. m. elevated steel tank was executed prior to the effectivity of RA 9104, hence following Section 77 of the IRRA of said Act, the provisions of EO 90 would apply.
- 2) With reference to EO 90 of the IRRA, no specific guidelines for contract price adjustment, although the said EO may allow requests for such adjustment.
- 3) However, under the contract it has already been stipulated that the contract price shall not be subject to any price adjustment/attraction.

Query → whether or not there may be a contract price adjustment despite a clear stipulations in the contract not allowing such.

## Applicable Procurement Laws, Rules and Regulations

Section 1305, Section 1306 of NLC

## Suggested Response/ Recommended Actions:

No price adjustment

## Items for Research

Section 1305, Section 1306

Remarks: → Purely Contractual. By operation of the provisions of the Contract, No price adjustment is possible.  
→ Draft NPA.

Assigned To: Asatha