

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**

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**NPM No. 32-2004**

March 22, 2004

**Mr. FRANK S. ABALOS**

Board Secretary  
National Irrigation Administration  
E. De Los Santos Avenue, Quezon City

**Re: Clarification on the Proposed Change Order No. 1  
and Extra Work Order No. 1 to Contract No.  
ADRIPD-C-1, Construction of Diversion Dam and  
Intake Barrel for Addalam River Irrigation Project  
under Contract with Atlantic Erectors Inc./Brostan  
Construction and Development Joint Venture**

Dear Mr. Abalos,

This refers to your letter dated December 8, 2003, which we received on January 16, 2003 requesting for clarification on this issue:

Whether or not the National Irrigation Administration could issue Change Order No. 1 and Extra Work Order No. 1 to Contract No. ADRIPD-C-1, based on the applicable provisions of IRR of PD 1594 as amended and the Contract Documents of said project, notwithstanding the enactment of Republic Act No. 9184 ("R.A. 9184"), otherwise as the Government Procurement Reform Act ("GPRA") and its Implementing Rules and Regulations Part A ("IRR-A").

This request was made in connection with the proposed variation orders necessary for the widening of access road for smooth prosecution of the contract works in the Addalam River Irrigation Project being undertaken by NIA.

**Effect of R.A. 9184 and its IRR-A on Existing Government Contracts**

In view of the enactment of R.A. 9184, otherwise known as the "Government Procurement Reform Act" and its IRR-A, which took effect on January 26, 2003 and



October 8, 2003 respectively, existing laws and executive issuances on procurement and government contracts, which include Executive Order No. 40 and Presidential Decree 1594 ("P.D. 1594"), were amended or repealed accordingly, thus consolidating all procurement laws, rules and regulations into a single statute containing coherent, standard and harmonized rules and procedures.<sup>1</sup>

It is to be understood, however, that the repealing clause of R.A. 9184 is prospective and has no retroactive effect, as delimited by the transitory clause of its IRR-A, viz:

Section 77. In all procurement activities where the advertisement or invitation for bids was issued prior to the effectivity of the Act, the provisions of E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be, shall govern.

In cases where the advertisements or invitations for bids were issued after the effectivity of the Act but before the effectivity of this IRR-A, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be.

Based on the foregoing, it is evident that notwithstanding the passage of R.A. 9184 and its IRR-A prior procurement laws, rules and regulations still govern the procurement and implementation of certain government contracts, if the advertisement or invitation for bids were issued prior to the effectivity of the GPRA or its IRR-A.

On these premises, we are of the opinion that NIA may issue the proposed variation orders (Change Order No. 1 and Extra Work Order No. 1 to Contract No. ADRIPD-C-1) for the widening of access road under the guidelines of the IRR of P.D. 1594 as amended. Indubitably, the original contract for Addalam River Irrigation Project was bid out last June 22, 2000 and hence, it is apparent that the invitation for bids for the same was issued long before the effectivity of R.A. 9184 and its IRR-A. Moreover, it is also worthy to note that the general provisions of the Contract Documents of said project incorporate therein the provisions of the IRR of PD 1594 on variation orders. Consequently, this stipulation of the parties primarily governs the implementation of the subject contract.

All told, we find no issue on the said variation orders as its aggregate amount, which is P 1,759,012.23 representing 1.13% deviation from the total contract price, is still within the allowable thresholds as prescribed under the IRR of both old and new applicable procurement laws (25% under the IRR of P.D. 1594 and 10% under the IRR-A of R.A. 9184).

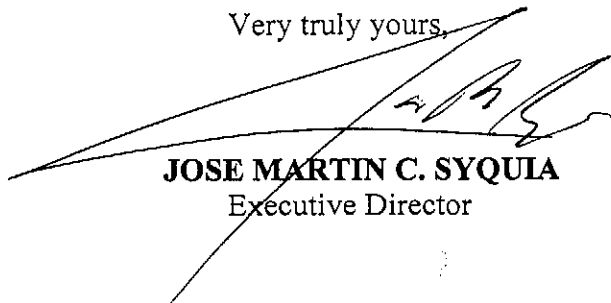
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<sup>1</sup> Section 76, R.A. 9184.

With the foregoing elucidations, we trust that our opinion has provided NIA with needed information in the issuance of the supplemental agreement.

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'JMS', is written over a horizontal line. The signature is slanted upwards to the right.

**JOSE MARTIN C. SYQUIA**  
Executive Director