

**NPM No. 37-2005**

September 05, 2005

**HON. WALDO Q. FLORES**  
Senior Deputy Executive Secretary  
BAC Chairman  
Office of the President

**Re : Contract Price Adjustment**

Dear Secretary Flores:

This refers to the letter of the Honorable Senior Deputy Executive Secretary, dated 11 August 2005, addressed to the Honorable Secretary Romulo L. Neri, of the Department of Budget and Management in his capacity as Chairperson of the Government Procurement Policy Board (GPPB). Request is made for the approval of a price escalation relative to your contract for security guard services pursuant to Section 61.1 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (RA 9184).

As factual backdrop, the incumbent security guard service provider of the Office of the President – Ultra Security Services Inc. – has requested for an increase in their monthly billing rates effective June 16, 2005, pursuant to Wage Order No. NCR-11. It is mentioned that the request for an increase of monthly billing rates is within the rates prescribed by the said Wage Order and in accordance with the PADPAO rates. And, on the belief that the said basis qualifies as an extraordinary circumstance, it is submitted that contract price escalation is justified.

Hence, the sole issue for resolution is whether or not the Office of the President may grant the request for contract price escalation raised by its incumbent security service provider on the basis of the effect of the issuance of Wage Order NCR-11.

**Extraordinary Circumstances under the Guidelines for  
Contract Price Escalation**

Under the Guidelines for Contract Price Escalation,<sup>1</sup> "Extraordinary Circumstance" is referred to as an event or occurrence, or series of events or occurrences during contract implementation which give/s rise to price escalation as may

<sup>1</sup> Annex "A" of GPPB Resolution No. 07-2004, dated July 22, 2004.

be determined by the NEDA, in accordance with the provisions of the Civil Code of the Philippines. For purposes of the guidelines, the term refers to any or all of these three: (a) Ordinary Fortuitous Events or those events which ordinarily happen or which could be reasonably foreseen but are inevitable,<sup>2</sup> (b) Extraordinary inflation or deflation,<sup>3</sup> and (c) Extraordinary Fortuitous Events or those events which do not usually happen.<sup>4</sup>

A fortuitous event, in the context of the Guidelines for Contract Price Escalation, may be caused by act of man having the force of an imposition which the contractor or supplier could not have resisted. Examples of this, as provided in the guidelines, are armed invasion, attack by bandits, governmental prohibitions, and robbery. This concept however is not confined to this enumeration in the guidelines, inasmuch as they are merely provided as examples and are merely descriptive of a genus, purported to establish a model or pattern so that others of the same nature or character may be embraced by the definition.

The issuance or promulgation of a valid law, regulation, or governmental order conforms to the pattern established by the aforesaid enumeration of examples. Ordinarily, the same is independent of the will of the parties to the contract and the contractor or supplier is free from any participation inasmuch as the same is presumed to have been done in the course of official functions to achieve a certain purpose or implement a certain policy. Thus, such event is fairly unavoidable and beyond the control of any of the contracting parties. Corollarily, such occurrence may possibly render it difficult for the security agency to fulfill his obligation in a normal manner and/or within the original contemplation of the parties to the contract.

The foregoing having been said, it is not hard a task to categorically state that the case under consideration is well within the definition of an extraordinary circumstance. However, the Guidelines for Contract Price Escalation stands to be inapplicable in the case as the same is limited only to address price adjustments in tangible goods. It does not cover under its scope the adjustment of prices for contracts of services.

While it is not categorically mentioned in any of the provisions of the guidelines, the clear intention is to limit its application only to cases where price escalation is warranted in the cases of tangible goods or commodities. Note that in the review of the technical parameters of a request for price escalation, reference is made to price indices and commodities which fact plainly points to the intention of the guidelines.

#### **Section 17.7.4 of the IRR-A of R.A. 9184 is applicable**

The foregoing discourse notwithstanding, the Office of the President is not without any option given the extraordinary circumstances confronting it where a supervening law, regulation, or governmental order is issued or promulgated during the

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<sup>2</sup> See Art. 1174 of the New Civil Code of the Philippines; also see Section 3.4 and 4.1 of the Guidelines for Contract Price Escalation.

<sup>3</sup> See Art. 1250 of the New Civil Code of the Philippines; see also definition under Section 3.3 of the Guidelines for Contract Price Escalation.

<sup>4</sup> See Art. 1680 of the New Civil Code of the Philippines; also see Section 3.4 and 4.3 of the Guidelines for Contract Price Escalation



implementation of its subsisting security service contract. Section 17.7.4 of the IRR-A of RA 9184 is responsive and relevant portion of which provides as follows:

*Before submitting their bids, the bidders are deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect the contract in any way. 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 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.*<sup>5</sup>

The provision above-cited sufficiently provides remedy to the contracting parties in addressing the need for price adjustment because of the issuance or promulgation of a new law, ordinance, regulation, or other Governmental act. The provision is self-executing and does not require elaborate process for its accomplishment; provided, that in the grant of relief or allowing price adjustment shall be on a "no loss-no gain" basis, i.e., the relief or adjustment shall only be to the extent of the actual adjustment or change caused by the supervening issuance or governmental act.

In sum, the Office of the President may allow price adjustment relative to its contract for security services with its incumbent service provider, in accordance with the new Wage Order No. NCR-11 and on a "no loss-no gain" basis as stated above.

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.

We trust that this clarifies matters.

Very truly yours,



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

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<sup>5</sup> Italics ours.