

NPM No. 19-2015

7 October 2015



Re: Variation Order

Dear [REDACTED]:

This is in response to the Honorable Secretary's letter requesting the Government Procurement Policy Board (GPPB) for the immediate release of the Guidelines on Variation Order.

As represented, there is an on-going construction of the Benguet Agri-Pinoy Trading Center (BAPTC) Phase 1 being undertaken by DA's contractor, JD Legaspi Construction with the original contract price in the amount of PhP 377,240,377.53. DA has previously approved a variation order (Variation Order No. 1) in the amount of PhP 24,151,170.72.

Based on the evaluation of A.C. Ong Consulting, the Construction Manager of the BAPTC Project, the extra work for the provision for additional thickness from the original depth of 0.20 meter to 0.60 meter of sub-base course, the addition of geotextile under the sub-base course and Portland concrete cement pavement (PCCP) thickness with reinforcing bars will provide a more stable, safer and improved area of facility. The additional work will have a sixty-six (66)-day period to accomplish. Hence, JD Legaspi Construction is requesting another variation order (Variation Order No. 2) in the amount of PhP 27,237,179.42. However, the total amount of Variation Order Nos. 1 and 2 will exceed the ten percent (10%) limit allowed by Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR). It is in this context that the Honorable Secretary is requesting the immediate release of the Guidelines as basis for the approval of the proposed Variation Order No. 2.

Limitation on Variation Order

Section 1.1 of the Contract Implementation Guidelines for the Procurement of Infrastructure Projects¹ (Guidelines) provides that as a rule, the cumulative amount of positive or additive Variation Orders shall not be more than ten percent (10%) of the original contract price, and the scope of work should not be reduced so as to accommodate a positive Variation Order.

Any cumulative positive Variation Order beyond ten percent (10%) of the original contract price shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original

¹ Annex "E" of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184.

scope of work, the Head of the Procuring Entity may authorize a positive variation order that will make the cumulative value of the positive Variation Orders go beyond ten percent (10%) but not more than twenty percent (20%) of the original contract price, subject to the guidelines to be determined by the GPPB. However, appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design, which failed to consider the Variation Order beyond ten percent (10%)².

Sanctions for Variation Orders beyond 10%

In NPM No. 01-2008³, this Office discussed the sanctions imposed on the official responsible for the preparation of the original detailed engineering that resulted in the increase of variation orders beyond ten percent (10%) of the contract price, thus:

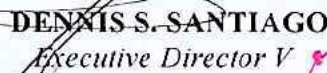
Although the GPPB has yet to issue the guidelines on the matter, it can be inferred that existing provisions under RA 9184 which impose civil, criminal, and administrative sanctions on certain offenses, in addition to the sanctions for dishonesty, abuse of discretion, neglect of duty, inefficiency and incompetence in the performance of official duties, among others, under the Civil Service law and rules, as well as for violations of the Anti-Graft and Corrupt Practices Act, may be considered in the prosecution of any official held responsible for the preparation of the original detailed engineering design that resulted to the increase of variation orders beyond ten percent (10%). Among the more noted administrative penalties are dismissal, suspension, transfer, demotion, imprisonment, and disqualification.


Guidelines on Variation Order

Please note that the GPPB has not issued the Guidelines on Variation Order beyond ten percent (10%). On the other hand, we respectfully inform the Honorable Secretary that the Board is currently reviewing the IRR of RA 9184 for its third (3rd) major revision, which includes a review on the contract implementation provisions, specifically on variation order. We wish to clarify, however, that in the event the Guidelines for Variation Orders is issued, the same shall have a prospective application and shall not apply to those projects that were undertaken prior to its effectivity. Accordingly, the rules on Variation Order should be applied as it is currently crafted and formulated.

We hope this opinion issued by GPPB-TSO provided sufficient guidance on the matter. Note that this is 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.

(sgd.)


DENNIS S. SANTIAGO
Executive Director V


² Section 1.4, Guidelines.

³ Dated 30 January 2008.