



RESOLUTION NO. 02-2024

APPROVING THE REQUESTS FOR PRICE ESCALATION RELATIVE TO THE CONSTRUCTION OF STANDARD FACTORY BUILDING AND HOUSING OF FREEPORT AREA OF BATAAN WORKERS FOR THE AUTHORITY OF FREEPORT AREA OF BATAAN IN MARIVELES, BATAAN

WHEREAS, Republic Act (RA) No. 9184, otherwise known as the “Government Procurement Reform Act”, took effect on 26 January 2003, while its 2016 revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

WHEREAS, Section 61 of RA No. 9184 and its 2016 revised IRR provide 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 escalation during contract implementation, except under extraordinary circumstances as determined by the National Economic and Development Authority (NEDA) and upon prior approval of the Government Procurement Policy Board (GPPB);

WHEREAS, Section 61.3 of the same IRR further provides that the request for price escalation shall be submitted by the contractor to the Procuring Entity (PE), which has the burden of proving the occurrence of extraordinary circumstances that will allow for price escalation before it endorses the said request to the NEDA;

WHEREAS, the Revised Guidelines for Contract Price Escalation¹ (Guidelines) under the 2016 revised IRR of RA No. 9184 governs the request for price escalation during the implementation of contracts for the procurement of Goods and Infrastructure Projects under extraordinary circumstances in accordance with Section 61 of RA No. 9184;

WHEREAS, in a letter dated 14 February 2022, the Authority of Freeport Area of Bataan (AFAB) recommended to the NEDA the requests for price escalation of the contractor on two (2) work items relative to the two (2) projects: (i) Construction of Standard Factory Building (SFB-18); and (ii) Housing of Freeport Area of Bataan (FAB) Workers in Mariveles, Bataan (projects) for the period of April 2021 to September 2021. In the said letter, the AFAB informed the NEDA that the contractor for these projects requested a ten percent (10%) increase on the following items due to the dramatically increased import prices of steel in the world market:

NO.	WORK ITEM	FLUCTUATION FACTOR ²
1	Reinforcing Steel Bars	K19
2	Structural Steel	K20

WHEREAS, in compliance with the NEDA’s letter dated 14 March 2022, the AFAB, through a letter dated 14 November 2022, the AFAB provided the legal basis for the request for price escalation and information relevant to the second stage review process, particularly the supporting documents for the existence of price escalation based on Articles 1250 and 1680 of the Civil Code;³

¹ GPPB Resolution 07-2004 dated 22 July 2004, published in the Official Gazette on 04 October 2004, effective 19 October 2004, as amended by GPPB Resolution No. 03-2011 dated 28 January 2011, published in the Manila Times on 6 April 2011.

² Fluctuation Factor (K) represents the increase or decrease of the value of an item of work as a result of price escalation.

³ Article 1250 of the Civil Code provides: “In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary.”

Article 1680 of the Civil Code provides: “[E]xtraordinary fortuitous events are understood to be: fire, war, pestilence, unusual flood, locusts, earthquake, or others which are uncommon, and which the contracting parties could not have reasonably foreseen.”

WHEREAS, the NEDA, using the two-stage review process under the Guidelines, confirmed the existence of extraordinary circumstance and the presence of price escalation on the two (2) work items based on Article 1680 of the Civil Code due to the COVID-19 Pandemic. Based on the foregoing, the NEDA endorsed and recommended for approval of the GPPB the request for price escalation;⁴

WHEREAS, the requests for price escalation by the contractor on the two (2) work items, as recommended by the AFAB and subsequently endorsed by the NEDA for the GPPB's approval, were routed by the GPPB-Technical Support Office (TSO) to the Inter-Agency Technical Working Group (IATWG) for initial review and comments.⁵ Considering that the TSO did not receive any substantial comments from the IATWG regarding the requests, the requests were endorsed to the GPPB for consideration and approval;

WHEREAS, during the 2nd GPPB Meeting on 7 June 2024, the GPPB-TSO presented the requests for price escalation on the two (2) work items of the projects by the contractor for the period of April 2021 to September 2021, as favorably recommended by the AFAB and endorsed by the NEDA. The GPPB-TSO likewise emphasized the responsibilities of the AFAB, as the PE, in the requests for price escalation by the contractor, *to wit*:

- a. The determination of the specific amount of price escalation to be granted to the contractor, subject to availability of funds, which shall be computed in accordance with Sections 5.3⁶ and 5.4⁷ of the Guidelines, taking into consideration Section 8⁸ thereof, in case of any delay; and
- b. The approval of the requests for price escalation shall in no way be construed as validation or confirmation of any irregular action that may have been committed during the processing of the requests and shall not excuse or exonerate responsible officials and personnel from any criminal, civil and/or administrative liability;

WHEREAS, the Private Sector representative mentioned that there are two (2) circumstances cited in the request for price escalation: (i) application of no loss-no gain basis

The AFAB cited Articles 1250 and 1680 of the Civil Code as the legal basis for the request for price escalation for the two projects because of the *extraordinary inflation* brought by the continued increase in the price of reinforcing and structural steel when the contracts were awarded and during the contracts' implementation stages, and the two (2) events classified as *extraordinary fortuitous events*: (i) COVID-19 Pandemic; and (ii) Russia's Invasion of Ukraine, respectively.

⁴ Received through GPPB-Technical Support Office on 13 January 2023.

⁵ The documents relative to the requests for price escalation were routed to the IATWG during its asynchronous meetings held on 17 August 2023 and 16 May 2024.

⁶ Amount of Price Escalation to be Granted. After this determination, the amount of escalation to be granted in the case of goods should only be the remaining amount over and above the thresholds as computed under Sections 5.2.2 (a) or 5.2.2 (b) hereof. In the case of infrastructure projects, the amount to be granted shall be determined based on the following:

Where $K > 1.05$, $P = P_o (K - 0.05)$

Where $0.95 < K < 1.05$, $P = P_o$

Where $K < 0.95$, $P = P_o (K + 0.05)$

Where P - escalated bid/unit price

P_o - original bid/unit price

K - fluctuation factor

⁷ Period and Frequency of Requests for Price Escalation. Requests for price escalation shall only be made for cost items already incurred by the contractor/supplier, as supported by official receipts, sales invoices, or other documentary evidence. No request for price escalation shall be made for prospective application. Further, price escalation shall only be granted to those items included in a specific request; Provided further, that requests for price escalation shall be made not less than six (6) months reckoned from the date of the effectivity of the contract, and not less than six (6)-month period thereafter, except for price escalation being requested at the completion of the contract.

⁸ Other Conditions for Approval:

8.1 In case the project is behind schedule based on the approved Project Evaluation Review Technique/Critical Path Method (PERT/CPM) network or schedule, price escalation on the portion of work that should have been, but was not, actually accomplished within the period shall be based on the applicable price index for the period in which it should have been accomplished. Payment of the computed amount shall not be made until said unaccomplished portion of the work is completed and upon prior approval of the GPPB and the head of the procuring entity.

8.2 Where advance payment has been made, no price escalation shall be granted for the following:

- a. That portion of work accomplished during the period corresponding to a value equal to the amount of recoupment of advance payment; and
- b. The amount of materials for which advance payment was made.

and (ii) coverage of extraordinary circumstances, which have different computational requirements. However, the GPPB-TSO clarified that the requests for price escalation by the contractor do not relate to any act of the government that would necessitate the application of price escalation on a no loss-no gain basis, and the NEDA confirmed that, based on the price escalation formula under the Guidelines, the price of steel increased due to the COVID-19 pandemic based on Article 1680⁹ of the Civil Code;

WHEREAS, the DBM representative also sought clarification if the responsibility for calculating the amount of price escalation lies with the PE. The GPPB-TSO confirmed that the PE is solely responsible and accountable for accurately computing the escalated prices according to the parametric formula provided in the Guidelines;

WHEREAS, the GPPB, after careful review and deliberations, and endorsed by the IATWG, resolved to approve the price escalation requests on the two (2) work items (K19 and K20) relative to the Construction of SFB-18 and Housing of FAB Workers in Mariveles, Bataan, for the period of April 2021 to September 2021, using the two-stage review process under the Guidelines conducted by the NEDA, subject to the: (i) applicable government accounting, budgeting, and auditing rules and regulations; (ii) computation by the AFAB of the specific amount of price escalation to be granted to the contractor, being solely responsible therein, subject to the availability of funds and in accordance with Sections 5.3 and 5.4 of the Guidelines, taking into consideration Section 8 thereof, in case of any delay; and (iii) non-validation or confirmation of any irregular action that may have been committed in the course of the processing of the requests for price escalation, thus, responsible officials and personnel are not excused or exonerated from any criminal, civil, and/or administrative liability therein.

NOW, THEREFORE, for and in view of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the price escalation requests on the two (2) work items (K19 and K20) relative to the Construction of SFB-18 and Housing of FAB Workers in Mariveles, Bataan, for the period of April 2021 to September 2021, using the two-stage review process under the Guidelines conducted by the NEDA, subject to the: (i) applicable government accounting, budgeting, and auditing rules and regulations; (ii) computation by the AFAB of the specific amount of price escalation to be granted to the contractor, being solely responsible therein, subject to the availability of funds and in accordance with Sections 5.3 and 5.4 of the Guidelines, taking into consideration Section 8 thereof, in case of any delay; and (iii) non-validation or confirmation of any irregular action that may have been committed in the course of the processing of the requests for price escalation, thus, responsible officials and personnel are not excused or exonerated from any criminal, civil, and/or administrative liability therein.

This Resolution shall take effect immediately.

APPROVED this 7th day of June 2024 at Quezon City, Philippines.

⁹ Article 1680 of the Civil Code provides: “[E]xtraordinary fortuitous events are understood to be: fire, war, pestilence, unusual flood, locusts, earthquake, or others which are uncommon, and which the contracting parties could not have reasonably foreseen.”

SGD

GPPB, Chairperson
DEPARTMENT OF BUDGET AND MANAGEMENT

SGD

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

DEPARTMENT OF EDUCATION

SGD

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

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DEPARTMENT OF HEALTH

**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

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**DEPARTMENT OF NATIONAL
DEFENSE**

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**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

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**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

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**DEPARTMENT OF TRADE AND
INDUSTRY**

DEPARTMENT OF TRANSPORTATION

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

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PHILIPPINE SPACE AGENCY

PRIVATE SECTOR REPRESENTATIVE