

FREQUENTLY ASKED QUESTIONS ON PRICE ESCALATION REQUESTS UNDER THE GOVERNMENT PROCUREMENT REFORM ACT (RA 9184)

Are you considering a claim to recoup additional costs due to price escalation? If yes and your claim falls within a government procurement contract under RA 9184, then this material is right for you.



1. What is the legal basis for granting contract price escalation requests?

Republic Act (RA) No. 9184 and its 2016 Revised Implementing Rules and Regulations (IRR), specifically the revised guidelines for contract price escalation (Annex of the said law and IRR), enable the Philippine Government to grant price escalation requests under extraordinary circumstances.



2. What contracts may be eligible for price escalation?

Contracts undertaken by any government entity under RA 9184 for the procurement of goods and infrastructure.

Consultancy contracts are NOT eligible.



3. What are conditions for granting price escalation requests?

Section 61 of the RA 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 escalation during contract implementation, **except under extraordinary circumstances and upon prior approval of the GPPB.***

*For purposes of this Section, “extraordinary circumstances” shall refer to events that may be determined by the National Economic and Development Authority **in accordance with the Civil Code of the Philippines, and upon the recommendation of the procuring entity concerned.**” (emphases supplied)*



4. What are examples of extraordinary circumstances?

Section 4 of the guidelines states that the term “extraordinary circumstances” shall refer to the Articles 1174, 1250, and 1680 of the Civil Code of the Philippines. See table below for reference.

Civil Code of the Philippines – Related Provisions

Article 1174 (Ordinary fortuitous events) ¹	Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those <u>events which could not be foreseen, or which, though foreseen, were inevitable. (emphasis supplied)</u>
Article 1250 (Extraordinary inflation or deflation) ²	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 (Extraordinary fortuitous events) ³	-xXx- Extraordinary fortuitous events are understood to be: <u>fire, war, pestilence, unusual flood, locusts, earthquake, or others which are uncommon, and which the contracting parties could not have reasonably foreseen. (emphasis supplied)</u>



Further, Section 5.6 of the Guidelines states the necessary supporting documents as evidence of such extraordinary circumstances, stating that:

“The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation. NEDA shall only respond to such request after receiving the proof and the necessary documentation.”

¹Provided that the following requisites are present: (a) The cause of the extraordinary circumstance must be independent of the will of the parties; (b) The event must be either unforeseeable or unavoidable; (c) The event must be such as to render it difficult but not impossible for the supplier or contractor to fulfill his obligation in a normal manner or within the contemplation of the parties; (d) The supplier or contractor must be free from any participation in or aggravation of the injury to the procuring entity; (v) The allowance for price escalation should an ordinary fortuitous event occur is stipulated by the parties or the nature of the obligation requires the assumption of risk.

²Refers to the decrease or increase of the purchasing power of the Philippine currency which is unusual or beyond the common fluctuation in the value of said currency, in accordance with the two standard deviation rule computed under the Guidelines, and such decrease or increase could not have been reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the establishment of the obligation

³Provided that the circumstances before, during, and after the event shall be taken into consideration



5. What contract items may be subjected to price escalation?

As a general policy, a request shall only be allowed for cost items **already incurred** by the supplier, contractor or concerned entity for goods or infrastructure projects. Price escalation cannot be requested prospectively. Therefore, a price escalation request shall only be granted for items already delivered or accomplished.



6. When can price escalation requests be made?

As per Section 5.4 of the guidelines, requests shall only be made not less than six months reckoned from the date of the effectivity of contract, and not less than six months thereafter, except for requests being made after the completion of the contract.



7. Who may request for price escalation?

Contractors may request the government procuring entity for contract price escalation. The following entities may request for price escalation pursuant to the said guidelines: constitutional commissions and offices, agencies, departments, bureaus, other offices and instrumentalities including government-owned and/or controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).

The procuring entity in turn processes the price escalation request.



8. How should a procuring entity process a price escalation request?

The burden of proving the occurrence of extraordinary circumstances requires the submission of a detailed computation to and validation of price escalation by the Head of Procuring Entity (HOPE). The HOPE shall endorse the price escalation request, accompanied by the following documentary requirements, to NEDA:

- a. Certification from HOPE stating that the request for price escalation is justified in accordance with RA No. 9184, its IRR and the Revised Guidelines;
- b. Description of the nature of the requested price escalation;
- c. Certified copy of the original contract including the original scope of work and the original contract price, as awarded;
- d. Original cost estimates and/or bill of materials of the items, goods or components affected by the request for price escalation and the proposed escalated prices;
- e. Certified copy of the original and, if applicable, revised schedule of contract implementation;
- f. Original request for price escalation submitted by the contractor/supplier to the procuring entity;
- g. Data on the price indices of the materials or goods, including the source of data used in the detailed computation; and
- h. Other documents required by NEDA and/or Government Procurement Policy Board (GPPB), e.g., Certified copies of the Notice to Proceed, Certificate of Completion of the Project, receipts and/or invoices.



9. How does NEDA review the request?

The review process shall commence only after NEDA has acknowledged the completeness of the request. NEDA will follow a “2-Stage” Review and Approval Process. Under Section 5.2 of the guidelines, the request for price escalation shall undergo the following:

- a. **First Stage: Legal Parameters.** The legal basis for “extraordinary circumstances” that will allow price escalation requests is established; and
- b. **Second Stage: Technical Parameters.** Determination if an item, good or component is at least be two standard deviations⁴ from a mean calculated based on the historical trend of applicable price indices covering a 30-month⁵ period reckoned backwards starting from the opening of the bids; or — if there is no available historical data — an item, good or component, should have registered an increase of more than ten percent, as determined from the prevailing price index on the date of bid opening.

A request should satisfy both the legal and technical parameters before price escalation may be granted.



10. What would be the applicable technical parameters or applicable price indices?

A price index is a statistic designed to help compare how prices, taken as a whole, differ between time periods or geographical locations. See below for the indices according to coverage.

- a. **For goods** - the most appropriate price index of the commodity group - consumer price index (CPI), wholesale price index (WPI) and producer’s price index (PPI).⁶
- b. **For infrastructure projects** - the price indices to establish a fluctuation factor — K, which is the coefficient used in the previous rules for civil works, i.e., Presidential Decree (PD) No. 1594, dated 11 June 1980,⁷ and its IRR — representing the change in the unit price of an item of work as a result of price escalation.

A request should satisfy both the legal and technical parameters before price escalation may be granted.



11. What is the next step after NEDA review?

Upon completion of its review pursuant to Section 5.2 of the guidelines, NEDA shall submit its recommendations to the GPPB for appropriate action. The Board shall then approve or act upon the request for price escalation during one of its meetings, to be attended by the head of the procuring entity concerned or his duly authorized representative/s.

⁴Standard deviation is a useful measure of the scatter of a set of observations. A range covered by one standard deviation above the mean and one standard deviation below it includes about 68 percent of the observations; a range of two standard deviations above and two below includes about 95 percent of the observations. Consequently, by setting the limit to two standard deviations above and below the mean it can be predicted that only 5 percent of the observations will lie outside the two standard deviations, which can be considered as extraordinary. ⁵The choice of 30 months as basis for computing the mean and the standard deviation was based on the perception that it broadly reflected the trend in price. If the two standard deviation threshold is added to the mean, the normal movement of construction material, good and supply prices during construction phase is presumed to be captured. Only the outlier to the 30-month price band is viewed as extraordinary.⁶

Provided that, based on the availability and applicability, the WPI for the commodity group shall first be utilized, followed by the CPI, and lastly the PPI.

⁷ As amended on 24 May and 05 July 2000, <https://www.yumpu.com/en/document/read/15776052/pd-1594-implementing-rules-and-regulations-gppb>