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AMENDMENTS TO THE RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION (PROMULGATED ON AUGUST 23, 1988)

CIAC RESOLUTION NO. 3-93, August 25, 1993

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WHEREAS, Section 6 of Executive Order No. 1008 empowers the Construction Industry Arbitration Commission (CIAC) "to enunciate policies and prescribe rules and procedures for construction arbitration;

WHEREAS, CIAC also is specifically empowered under Section 21 of E.O. No. 1008 "to formulate necessary rules and procedures for construction arbitration;

NOW, THEREFORE, WE, THE UNDERSIGNED CIAC COMMISSIONERS, by virtue of the powers vested in us by law, do hereby promulgate the following amendments to the Rules of Procedure Governing Construction Arbitration promulgated on August 23, 1988, to wit:

Article II
Request for Arbitration
SECTION 1. Submission to Arbitration —

> "x x x ...PROVIDED, that in the case of government construction contracts, the claimant against the government shall state in the submission that he has exhausted all administrative remedies, or that there is unreasonable delay, on the part of the government office or officer to whom appeal is made, in acting upon the claim, or that, due to the application for interim relief, exhaustion of administrative remedies is not practicable."

SECTION 2. Contents of Request — The Request for Arbitration shall, inter alia, contain the following information:

a. Names in full, description, and addresses of the parties;

b. A statement of the claimant's case;

c. Copy of the construction contract in question;

d. The relevant agreements, and in particular the agreement to arbitrate, and such documentation or information as will serve clearly to establish the circumstances of the case.[1]

Article III
Effect of the Agreement to Arbitrate
SECTION 1. Submission to CIAC Jurisdiction — An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke

the jurisdiction of CIAC.

An arbitration agreement or a submission to arbitration shall be in writing, but it need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration.

It may be in the form of exchange of letters sent by post or by telefax, telexes, telegrams or any other mode of communication.

SECTION 2. Failure or Refusal to Arbitrate — Where the jurisdiction of CIAC is properly invoked by the filing of a Request for Arbitration in accordance with these Rules, the failure or refusal of the respondent to arbitrate shall not affect the proceedings. In such case, CIAC shall appoint the sole arbitrator from among the list of accredited arbitrators, or if the arbitration clause provides for a panel of three (3) arbitrators, CIAC shall name the arbitrator for the respondent. Arbitration proceedings shall continue notwithstanding the absence or lack of participation of the respondent, and the award shall be made after receiving the evidence of the claimant. In the event that, before award, the respondent shall appear and offer to present his evidence, the arbitrator shall reopen the proceedings and allow the respondent to present his evidence, but evidence already received shall not be affected by the reopening of the proceedings.

Article V
Choice/Selection of Arbitrators
SECTION 2. Sole Arbitrator — Where the parties have agreed that the dispute(s) shall be settled by a Sole Arbitrator, they may each nominate three (3) arbitrators from the list of CIAC-accredited arbitrators. The CIAC shall choose and appoint an arbitrator from the nominees. If any or both of the parties fail to submit the names of their nominees within fifteen (15) days from the date of respondent's answer to claimant, a sole arbitrator shall be appointed by the CIAC from the nominees submitted or, if no names were submitted, from the list of CIAC-accredited arbitrators.

SECTION 3. Arbitral Tribunal — Where the parties agree that the dispute shall be settled by an Arbitral Tribunal, each party may nominate six (6) arbitrators from the list of CIAC-accredited arbitrators. The CIAC shall choose and appoint, as members of the Tribunal, one arbitrator from the claimant's nominees and another arbitrator from respondent's nominees. The Third Arbitrator who shall be the Chairman of the Tribunal, shall be selected from the list of CIAC-accredited arbitrators, by the two Arbitrators first chosen within fifteen (15) days from acceptance of their appointment. In case of failure to agree on the third member within such period, the CIAC shall, within fifteen (15) days thereafter, appoint a Chairman from its list of accredited arbitrators.

SECTION 4. Disqualification of or Non-acceptance by Nominees — If the nominee(s) of a party shall be disqualified or fail or refuse to accept the appointment, CIAC shall choose and appoint any qualified arbitrator who is willing to be so appointed.

SECTION 5. Challenge. — x x x

SECTION 6. When Arbitrator, Previously Acted as Conciliator/Mediator — x x x

Article VI
The Arbitrators
SECTION 1. The Arbitrators shall be men of distinction in whom the business sector and the government can have confidence, duly accredited by the CIAC, and members in good standing of the Philippine Institute of Construction Arbitrators (PICA). They shall be technically qualified to resolve any construction dispute brought before the CIAC expediently and equitably. The Arbitrators shall come from different professions. They may

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include engineers, architects, construction managers, project managers, engineering consultants, businessmen familiar with the construction industry, and lawyers who are experienced in construction disputes. They shall not be permanently employed with the CIAC. Instead, they shall render service only when called upon to arbitrate.

Article VII
Appointment and Acceptance of Arbitrators
SECTION 1. Communication of Appointments — After the CIAC (or the two members first chosen as the case may be) has selected the Arbitrator(s) for a particular case, the Secretariat shall communicate the appointment (or proposed appointment) to the Arbitrator(s).

SECTION 2. Disclosure by Arbitrator of Disqualification — Upon acceptance of appointment, the Arbitrator(s) shall disclose in writing to the CIAC any circumstance likely to create in either party a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Such written disclosure shall be communicated to the parties immediately by the Secretariat. The purpose of such disclosure shall be to enable either party to investigate and ascertain whether there is a substantial legal basis to file a motion for inhibition of the arbitrator concerned or seek his replacement.

SECTION 3. Acceptance or Refusal — The Arbitrator(s) must communicate to the CIAC the acceptance or refusal of his appointment within five (5) working days from receipt thereof. The Secretariat shall, upon notice of acceptance or refusal, inform the parties of such acceptance or refusal.

Article IX
Terms of Reference
SECTION 1. Contents — Before proceeding with the hearing of the case, the Arbitrator(s) shall formulate the Terms of Reference (TOR) on the basis of the documents submitted and agreements reached in the preliminary and subsequent conferences with the parties. The TOR shall include the following particulars:

- x x x

- x x x

- x x x

- x x x

- x x x

- x x x

- the breakdown, schedule of payment, and sharing of arbitration fees;

- such other particulars as may be required to make the arbitral award enforceable in law, or may be regarded as helpful by the CIAC or the Arbitrator(s).

SECTION 2. Signing of the Terms of Reference — The Terms of Reference mentioned in Section 1 hereof shall be signed by the parties and the Arbitrator(s) within fifteen (15) days from the preliminary conference or the last meeting held for the purpose of finalizing the TOR as the case may be. xxx

Article XI
Counterclaim/s
SECTION 1. Statement of Counterclaim — If the Respondent wishes to make a counterclaim/s, the same shall be included in the Answer. In such case, Respondent shall be required, upon filing of the answer with counterclaim/s, to pay a deposit of 10% of arbitrator's fees (based on the amount of counterclaim) or P5,000 whichever is higher

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but not to exceed P50,000. If the counterclaim is a non-monetary one, the amount to be charged shall be in accordance with the approved Table of Fees, for such claims.

Article XIII
Venue and General Matters
SECTION 5. Appointment of Experts — x x x

Whenever the parties request for the services of an expert, they shall equally shoulder the expert's fees and expenses, half of which shall be deposited with the Secretariat before the expert renders service. When only one party makes the request, it shall deposit the whole amount required. If the request for an expert is by the Arbitrator(s), the cost of such service(s) shall be considered part of the arbitration expenses which may be ordered to be paid by the losing party or by both parties as the arbitrator(s) in his/their award may adjudge, in the absence of a provision in the Terms of Reference signed by the parties relative to the sharing of these expenses: provided, however, both parties consented to the hiring of an expert.

SECTION 8. Adjournments — x x x

Hearings may be adjourned for more than five (5) working days when such have been suspended due to payment defaults of any or both of the parties. The Arbitrator(s) shall order the suspension of hearings upon advice by the CIAC of non-payment of arbitration fees by one or both parties. Hearings shall resume upon notice by CIAC of compliance by the defaulting party/ies.

SECTION 11. Expenses and Deposit — xxx

The CIAC Secretariat shall charge the claimant an initial filing fee of P3,000 plus a deposit equivalent to 10% of expected arbitrator(s)' fees (based on the claim) or P5,000 whichever is higher but not to exceed (P50.000 upon filing of the claim. Where the case is a non-monetary claim, the fees and deposit to be charged shall be in accordance with the approved Table of Fees for such claims.

The CIAC may fix the Arbitrator(s)' fees at a figure higher or lower than that which would result from the application of the Table of Fees if in the exceptional circumstances of the case, the same appears to be necessary.[2]

SECTION 12. Freedom to Settle — The parties shall be free to settle the dispute/s anytime even if the same is under arbitration. In such case, the actual expenses incurred for arbitration shall be charged against the deposit. If the deposit is insufficient, the parties shall equally shoulder the balance.

Article XIV
Arbitration Proceedings
SECTION 9. Presentation of Evidence — Unless the parties shall agree upon a different mode of presentation of evidence, the Arbitrator/Arbitral Tribunal may require the simultaneous or successive submission of affidavits of witnesses which contain both direct and rebuttal testimony, attached to which shall be the documents which they shall identify to support their respective declarations. These documents shall be properly marked for purposes of identification.

SECTION 10. Examination by Arbitrator/Arbitral Tribunal — The Arbitrator/Arbitral Tribunal may conduct the direct and cross-examination of such witnesses whether or not the parties are represented by counsel. Such counsel at his request may be allowed to ask additional direct or cross-examination questions of any witness.

SECTION 11. Documentary Evidence — As a general rule, no documentary evidence shall be rejected unless the same is found by the Arbitrator/Arbitral Tribunal to be completely irrelevant.

SECTION 14. Interim Measures — In the course of the proceedings, the Arbitrator(s) may, upon the request of either or both parties or upon his/their own initiative, issue orders as is necessary for the following:

a. to ensure the enforcement of the award;

b. to prevent loss or deterioration of property;

c. to minimize or avoid undue delays in project or contract implementation; or

d. such other measures deemed by the Arbitrator(s) to be necessary to prevent a miscarriage of justice or abuse of rights of any of the parties.

Article XV
The Arbitration Award
SECTION 1. Time of Award — The award shall be rendered promptly by the Arbitrator(s) within thirty (30) days from the time the case is submitted for resolution but not more than six (6) months from the date of signing of the TOR. There shall be no extensions of time unless approved by the CIAC.

SECTION 5. Decision as to Costs of Arbitration — In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitrator(s), the award shall, in addition to dealing with the merits of the case, fix the costs of arbitration and/or decide which of the parties shall bear the costs or in what proportion the costs shall be borne by each of them.

SECTION 6. Termination of Jurisdiction — The jurisdiction of the Arbitrator(s) over the dispute is terminated upon the finality of the Award or Decision. Where an appeal of the Award or Decision is taken, however, jurisdiction terminates only upon a final disposition by the appellate court of the case and/or a final determination of all incidental matters thereto.

SECTION 9. Motion for Reconsideration — Any or both parties may file a motion for reconsideration within fifteen (15) days from notice of the Award or Decision. Such motion for reconsideration filed in time shall stay the Award or Decision in question. No more than one motion for reconsideration shall be filed without express leave of the Arbitrator(s). A second motion for reconsideration will not stay the Award or Decision.

If the Arbitrator(s) find merit prima facie in the motion for reconsideration, the adverse party shall be given time to answer, after which the Arbitrator(s) at his/their discretion, may set the case for oral argument.

The foregoing amendments to the rules shall take effect immediately.

ADOPTED: 25 Aug. 1993

(Sgd.) JOSE U. JOVELLANOS

(Sgd.) LAMBERTO UN OCAMPO

Member

Member

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[1] Choice of arbitrator deleted.

[2] Transferred from Sections 5 of Article XV.

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