

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION

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Telephone No. 897-0853 / Telefax: 897-9313



RESOLUTION No. 10-2006

**Prescribing Protocols to be Observed in
Rendering Dissenting Opinions**

WHEREAS, cognizant of the fact that the deliberations of the arbitrators in formulating the Arbitral Award is a democratic exercise and each views of the members should be considered in the drafting of the Final Award, and as such, Section 16.2 (Form of Award) of the Revised Rules of Procedures Governing Construction Arbitration (the "Rules") pertinently provides that: "The Final award shall be in writing and signed by the Arbitral Tribunal. **A dissent from the decision of the majority or a portion thereof shall be in writing and signed by the dissenting member;**"

WHEREAS, to better implement the above provision of the Rules and to preclude animosity among the arbitrators in a Tribunal of three (3) members, in a situation where one of them dissents from the majority decision/position as to specific issues, the Commission deems it proper to establish protocols on the matter for the guidance of the arbitrators;

WHEREAS, Sections 6 and 21 of Executive Order No. 1008 empowers the Construction Industry Arbitration Commission (CIAC) "to enunciate policies and prescribe rules and procedures for construction arbitration" and "to formulate necessary rules and procedures for construction arbitration";

NOW THEREFORE, WE the undersigned Commissioners, by virtue of the powers vested in US by law, do hereby RESOLVE, as it hereby RESOLVED, to adopt the attached "Protocols to be Observed in Rendering Dissenting Opinions", marked as **Annex A** hereof, which shall form part of this resolution.

BE IT RESOLVED FURTHER that said protocols shall become effective immediately upon its approval and shall cover all pending cases and those which are to be filed thereafter.

UNANIMOUSLY APPROVED.

Makati City, 11 April 2006.

THE COMMISSION


SEDFREY A. ORDONEZ

Chairman


ISAAC S. DAVID

Member


SAMSON C. IAZO

Member

PROTOCOLS TO BE OBSERVED IN RENDERING DISSENTING OPINION

RATIONALE

Decision-making in an arbitration case handled by an Arbitral Tribunal is a collegial exercise. Utmost efforts must be exerted by all members to resolve all issues unanimously. If there is a difference of opinion on the issues to be resolved, the disagreement shall be decided by a majority vote.

The rendition of dissenting opinion shall be guided by the following protocols:

I. DISSENT FROM QUESTION OF JURISDICTION:

All questions pertaining to jurisdiction must be resolved before receiving evidence on the merits unless the parties agree otherwise in the Terms of Reference. In the event that one of the Arbitrators in the panel dissents from the majority ruling that CIAC has jurisdiction over the case, the dissenting arbitrator shall voluntarily inhibit himself. The CIAC shall thereupon appoint his replacement in accordance with the pertinent provision of the Revised Rules.

II. DISSENT FROM INTERLOCUTORY ORDERS

In case of disagreement in the resolution of a pending incident, the Arbitral Tribunal shall refrain from discussing their opinion in front of the parties but shall convene separately. The disagreement shall be decided by a majority vote. The dissenting vote need not be made part of the order resolving a pending incident.

III. DISSENT ON THE MERITS

The Arbitral Tribunal are expected to have already studied the case in the course of the hearings. Thus, immediately after the termination of the hearings, the Arbitral Tribunal must endeavour to meet at an executive meeting to discuss the merits of the case. At this stage, each member can already ascertain his/her position on all the issues submitted for decision. In the event that a member of the panel has contradictory position on certain issues to be resolved, the same shall be subject to the following guidelines:

1. A member who dissents as to certain issues must have been present during the deliberations of the Tribunal on that issue.
2. The majority decision, as to the rest of the issues, must be signed also by the dissenting arbitrator with the appropriate notation that he/she has a separate dissenting opinion, which shall be attached to, and shall form part of the decision.
3. The dissenting opinion shall be furnished the other members of the Tribunal.
4. The majority decision and dissenting opinion must be submitted to CIAC simultaneously for scrutiny and promulgation.
5. A dissenting arbitrator in this case shall not forfeit his arbitrator's fee only for that reason.