

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

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

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 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