



OFFICE

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NPM No. 12 -2010

19 May 2010

ENGR. FILEMON I. SIBULO
Municipal Administrator and
Chairman, Bids and Awards Committee
MUNICIPALITY OF SAN PEDRO
Province of Laguna

Re : Warranty Security

Dear Engr. Sibulo:

We refer to your undated letter received by this office last 13 April 2010 submitting the following queries to this office:

- (1) Is warranty security required in the procurement of goods through alternative methods, particularly under Small Value Procurement and Shopping under Section 53.9 and 52, respectively, of the Implementing Rules and Regulations (IRR) of Republic Act 9184 (RA 9184)?
- (2) In the procurement of brand new vehicles, does the submission of a warranty certificate constitute compliance with the requirement on warranty security as prescribed under Section 62 of the IRR?

To ensure that manufacturing defects shall be corrected by the supplier, Section 62.1¹ of the IRR prescribes the general rule that submission of a warranty security is required in the procurement of goods. However, an exception to the foregoing is provided under Section 54.5 of the IRR, which reads:

¹ 62.1 For the procurement of goods, in order to assure that manufacturing defects shall be corrected by the supplier, a warranty security shall be required from the contract awardee for a minimum period of three (3) months, in the case of Expendable Supplies, or a minimum period of one (1) year, in the case of Non-expendable Supplies, after acceptance by the procuring entity of the delivered supplies.

The obligation for the warranty shall be covered by either retention money in an amount equivalent to at least ten percent (10%) of every progress payment, or a special bank guarantee equivalent to at least ten percent (10%) of the total contract price. The said amounts shall only be released after the lapse of the warranty period or, in the case of Expendable Supplies, after consumption thereof: Provided, however, That the supplies delivered are free from patent and latent defects and all the conditions imposed under the contract have been fully met.

Performance and warranty securities, as prescribed in Secs. 39 and 62 of this IRR, shall be submitted for contracts acquired through the alternative methods of procurement, **except for Shopping under Sec. 52** and Negotiated Procurement under Secs. 53.2 (emergency cases), **53.9 (small value procurement)**, 53.10 (lease of real property), and 53.13 (UN agencies). [Emphasis supplied]

Accordingly, posting of warranty security is not required in the procurement of goods through the alternative method of Shopping and Small Value Procurement under Section 53.9 and 52, respectively, of the IRR. Relative thereto, please be advised that the purchase threshold for the two (2) modes shall depend on the income classification of your local government unit, as provided under Annex "H" of the IRR on THRESHOLDS FOR SHOPPING AND SMALL VALUE PROCUREMENT.

Anent the second query, it bears stressing that the manufacturer's certificate of warranty is not one of the acceptable forms of warranty security enumerated under Section 62.1 of the IRR. It differs from a warranty security in that a certificate of warranty simply stipulates the agreement on when the supplier shall make repairs or remedy a problem at no additional cost to the buyer. A warranty security, on the other hand, is a form of deposit or collateral that can easily be forfeited by the buyer in case the supplier does not correct any manufacturing defect on the product purchased.

In ending, please allow us to note that the policy rationale behind Section 62 of RA 9184 and its IRR is to provide protection to government by reducing the risk of government being left with the proverbial empty bag in case the supplier does not make good its warranty. The clear and emphatic language of Section 62 indicates that our policy makers saw this as a clear advantage even if it entails additional cost to the government.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III