



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 11-2012

18 January 2012

MR. JOSEPH O. VERGARA

Division Chief and OIC

*Secretariat for the Bids and Awards Committees
in the Head Office*

PHILIPPINE HEALTH INSURANCE CORPORATION

Citystate Centre, 709 Shaw Blvd.,
Oranbo, Pasig City

Re: Warranty Security for Consulting Services

Dear Mr. Vergara:

We respond to your letter requesting for clarification whether warranty security under Section 62.2 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 is applicable to consulting services. Per your letter, the question stems from the following statement in the Manual of Procedures for the Procurement of Consulting Services¹ (Manual) under page 102 thereof:

A warranty is an assurance that the consultant who prepared the design or undertook construction supervision for the project shall be held liable when structural defects and/or failures arise during the applicable warranty period due to faulty and/or inadequate design and specifications as well as construction supervision. It is required of a consultant for detailed engineering design and construction supervision, but may also be incorporated as a provision of the contract for other consulting services, as mutually agreed upon by the consultant and the Procuring Entity.

For your guidance, Section 62 of RA 9184 and its IRR requires the issuance of warranty security only for goods and infrastructure projects procured, and does not include consulting services. Based on the established rule of statutory construction that the express mention of one person, thing or consequence is tantamount to an express exclusion of all others², thus, the requirement for warranty security does not cover consultancy services

Please note that the warranty security in Section 62 of the IRR, which is a form of deposit or collateral that can easily be forfeited by the buyer in case the supplier does not

¹ Volume 4, June 2006

² Noli C. Diaz, Statutory Construction (Third Edition), p. 90.

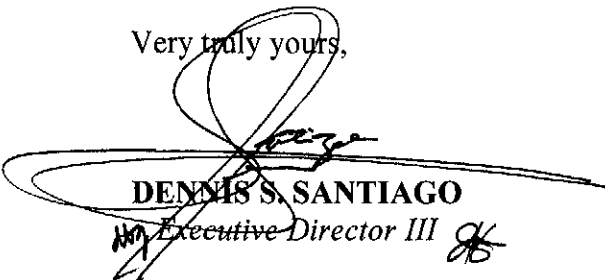
correct any manufacturing defect on the product purchased³ or, in the case of infrastructure projects, if the contractor refuses to correct structural defects/failures, is different from the warranty being considered in the Manual.

The warranty contemplated in the Manual does not involve an amount similar to the warranty security provided in the IRR. It refers to a mere statement that emphasizes the liability of the consultant in line with Section 62.2.3.1 (b) of the IRR. This is akin to the warranty mentioned in the PBDs for the Procurement of Consulting Services, particularly, Clause 16 of its General Conditions of the Contract, where the consultant warrants its eligibility and the fulfillment of its obligations by using knowledge according to the best accepted professional standards.

Based on the foregoing, we wish to clarify that Section 62.2 of the IRR, insofar as it requires the posting of warranty security, does not apply to procurement of consulting services. However, this does not preclude procuring entities from requiring in consultancy contracts that the consultants warrant or ensure that they shall be liable in case of Structural Defects/Failures as provided in Section 62.2.3.1 of the IRR and/or for pecuniary civil liability and damages.

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

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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³ NPM No. 012-2010 dated 19 May 2010