



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

NPM No. 33-2014

8 October 2014

ARCH. JERRY MAGPAYO

Chairman, Bids and Awards Committee (BAC)

CITY GOVERNMENT OF NAVOTAS

No. 1052 Mariano Naval Street, Sipac,

Navotas City 1485

Re: Warranty Security and Warranty against Structural Defects

Dear Arch. Magpayo:

We write in response to your letter seeking guidance on the rules on the implementation of the warranty security requirement under Section 62.2.3.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, otherwise known as the Government Procurement Reform Act, *vis-à-vis* the warranty period against structural defects under Section 62.2.32 of the same IRR.

Per your letter, the City of Navotas conducted a public bidding for the construction of the Navotas City Hospital. Since the Project has already been completed and due for final payment, the City of Navotas needs clarification on whether the warranty security to be posted by the contractor should only be effective for a period of one (1) year even if the Project falls under Type 4 (Permanent Structure), and the warranty period against structural defects is fifteen (15) years.

We wish to clarify the distinction between the warranty period and the warranty security period for an infrastructure project.

The warranty period for infrastructure projects covers the periods of two (2), five (5), and fifteen (15) years from final acceptance for other structures, semi-permanent structures, and permanent structures, respectively. On the other hand, the warranty security period pertains to the duration of the effectivity of the warranty security required under 62.2.3.3 of the IRR, which is one (1) year from the date of issuance of the certificate of final acceptance by the procuring entity.

During the warranty period, the contractor shall be responsible for reimbursing the procuring entity for necessary restoration or reconstruction works brought about by structural defects¹ or structural failures² occurring due to improper construction, use of inferior

¹ Refers to major faults/flaws/deficiencies in one or more key structural elements of the project, which may lead to structural failure of the completed elements or structure. (Section 62.2.3.1 of the IRR of RA 9184)

² Refers to the circumstance where one or more key structural elements in an infrastructure facility fails or collapses. (Section 62.2.3.1 of the IRR of RA 9184)

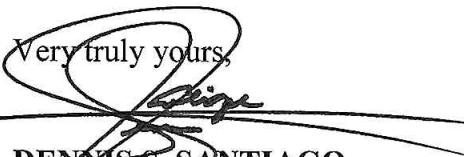
quality/substandard materials, and any violation of the contract plans and specifications.³ During the warranty security period, the contractor's performance of this responsibility is guaranteed by the warranty security.

The warranty security required under Section 62.2.3.3 of the IRR must be submitted by the contractor after the procuring entity has issued the certificate of final acceptance for an infrastructure project. This replaces the performance security posted by the contractor as a condition for award of contract, and retained by the procuring entity until the end of the defects liability period. After the lapse of the warranty security period, the procuring entity is required to return the warranty security to the contractor regardless of the type of infrastructure project.

Based on the foregoing, it is worthy to stress that the warranty security posted by the contractor shall be retained by the procuring entity for the duration of the warranty security period, *i.e.*, one (1) year from the issuance of the certificate of final acceptance – and returned thereafter regardless of the type of the infrastructure facility involved. However, it should be pointed out that even after the lapse of the warranty security period, the contractor continues to be responsible/liable for any structural defect/failure that will occur on the infrastructure facility due to its fault for the duration of the applicable warranty period, *i.e.*, two (2), five (5), or fifteen (15) for other structures, semi-permanent structures, or permanent structures, respectively.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

³ Section 62.2.3 and 62.2.4 of the IRR of RA 9184.