



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

NPM No. 38-2014

9 October 2014

MR. ANTONIOUS G. COLLADO

CAVEAT LAW

Suite 907, 9th Floor, One Corporate Center Condominium,
Dona Julia Vargas Ave. cor. Meralco Ave., Ortigas Center, Pasig City


Re: Expendable Supplies

Dear Mr. Collado:

This refers to your letter inquiring clarification whether Maintenance Free Lead Acid Batteries and Retrofit Led Flasher Lights are considered as expendable supplies under Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR).

As represented, your client, Berlyn Enterprises, was awarded the contract by the Philippine Coast Guard (PCG) for the delivery of 113 pieces of Deep Cycle, Maintenance Free, Valve Regulated Lead Acid Battery and 11 pieces of Retrofit LED Flasher. The goods were duly delivered and the corresponding warranty security was covered by retention money. However, after the lapse of more than three (3) months, the PCG refused to release the retention money saying that the goods were not expendable supplies, and as such, they can withhold the retention money for a period of one (1) year. It is in this context that you are inquiring on the propriety of considering the above-mentioned goods as non-expendable supplies.

Section 5 of the IRR of RA 9184 is clear. Expendable and non-expendable goods are particularly and clearly defined, such that, expendable goods refer to articles which are normally consumed in use within one (1) year or converted in the process of manufacture or construction, or those having a life expectancy of more than one (1) year but which shall have decreased substantially in value after being put to use for only one (1) year (*e.g.*, medicines, stationery, fuel, and spare parts).¹ On the other hand, non-expendable supplies are defined as articles which are not consumed in use and ordinarily retain their original identity during the period of use, whose serviceable life is more than one (1) year and which add to the assets of the GOP (*e.g.*, furniture, fixtures, transport and other equipment).²

The determination of the classification of the goods as expendable or non-expendable is material to the procurement activity, in that it affects the bidding requirements, such as the warranty security. Section 62.1 of the IRR requires that the warranty security be retained for a minimum of three (3) months in the case of expendable supplies, and one (1) year in the case of non-expendable supplies. 

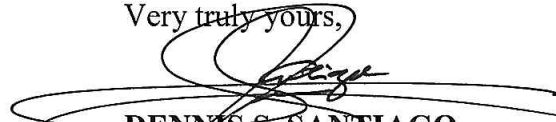
¹ Section 5(m) of the IRR of RA 9184.

² Section 5(w) of the IRR of RA 9184.

Alongside definitive crucibles under the procurement law and rules, the procuring entity should be guided by the classification of the goods to be procured as either expendable or non-expendable pursuant to Section 5(m) and 5(w) of IRR of RA 9184.

We hope that the advice of the GPPB-TSO provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

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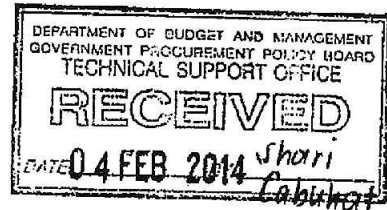
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04 February 2014



THE EXECUTIVE DIRECTOR

Government Procurement Policy Board
Unit 2506, Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center, 1605 Pasig City

THRU: THE LEGAL AND SECRETARIAT DIVISION

RE: LEGAL QUERY

"ARE MAINTENANCE FREE LEAD ACID BATTERIES AND RETROFIT LED FLASHER LIGHTS CONSIDERED AS EXPENDABLE SUPPLIES?"

Dear **SIR**:

Our client, **BERLYN ENTERPRISES**, referred to us the matter involving the retention money in a procurement of generally considered expendable supplies by the Philippine Coast Guard (PCG). The procurement was done through competitive bidding and on 13 November 2012 a Purchase Order for 113 pieces of Deep Cycle, Maintenance Free, Valve Regulated Lead Acid Battery and 11 pieces of Retrofit LED Flasher suitable for all types or standard marine lantern was issued by the PCG to our client.

The Maintenance Free Lead Acid Battery and the Retrofit LED Flasher were procured for use in various lighthouses scattered across the country to replace any worn-out batteries and flasher lights of the lighthouses.

Our client participated in the bidding process for the procurement of the above expendable supplies by the PCG and it was adjudged as the winning bidder. The expendable supplies were duly delivered and our client dutifully complied with the provisions on warranty security provided under R.A. No. 9184.

After the lapse of more than three (3) months, knowing that the Maintenance Free Lead Acid Batteries and Retrofit LED Flasher Lights are considered as Expendable Supplies, our client went to PCG to obtain the release of his retention money.

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However, to the pleasant surprise of our client, he was informed by the PCG that he could not yet obtain the release of the retention money since it is provided in the Invitation to Bid and other bidding documents that the warranty security is for a period of one (1) year and that the retention money for the said procurement can be released only after the lapse of one (1) year after acceptance of the delivered expendable supplies.

The PCG justified its continued withholding of the retention money by reasoning that the Maintenance Free Lead Acid Batteries and Retrofit LED Flasher Lights are not expendable supplies and as such they can withhold the retention money for a period of one (1) year.

Despite our client's insistence that the Maintenance Free Lead Acid Batteries and Retrofit LED Flasher Lights are clearly expendable supplies as defined under the Revised IRR of R.A. 9184 the PCG still refused and continue to refuse to release the retention money.

We therefore pose a legal query to your good office as follows:

“Are Maintenance Free Lead Acid Batteries and Retrofit LED Flasher Lights considered as expendable supplies?”

Under the Revised IRR of R.A. No. 9184 the term **“Expendable Supplies”** are defined as **“articles which are normally consumed in use within one (1) year or converted in the process of manufacture or construction, or those having a life expectancy of more than one (1) year but which shall have decreased substantially in value after being put to use for only one (1) year (e.g., medicines, stationery, fuel, and spare parts)”**.

It must be noted that Section 62, Rule XIX of the Revised IRR of R.A. 9184 provides that:

“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.”

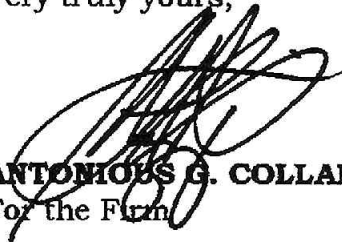
Corollary thereto, may the above quoted provisions be easily circumvented by a Procuring Entity simply by determining on their own what may or may not be considered as expendable supplies?

It must be noted that both the PCG and our client is bound by the provisions of R.A. No. 9184 and its Revised IRR and that the determination of what is an expendable supply ought to be solidly anchored on the provisions thereof.

In order to resolve the above legal question between our client and the PCG we therefore submit the above legal query and request for a positive action in the fastest way possible.

We appreciate your prompt action on this matter.

Very truly yours,



ANTONIOUS G. COLLADO
For the Firm

cc.: Legal and Secretariat Division