



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

NPM No. 49-2012

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MR. GUILLERMO L. LEONARDO

Director III, Project Management Service

DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC)

The Columbia Tower, Brgy. Wack-Wack,
Ortigas Avenue, Mandaluyong City

Re: On the Application of Warranty Security under Section 62

Dear Director Leonardo:

We respond to your letter dated 1 February 2012 requesting for clarification on Section 62 on Warranty of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

As represented, the DOTC has implemented and completed a number of infrastructure projects nationwide on the basis of Section 62.2¹ of IRR Part A (IRR-A). This provision requires the annual renewal of warranty securities from the contractors, although they are now hesitant to do so given that this is no longer necessary in the revised IRR. The DOTC wishes to know if it can continue to require contractors to renew warranty security for completed projects implemented under IRR-A or to require contractors to provide warranty security effective only for one (1) year under Section 62.2.3.4² of the revised IRR.

¹ For the procurement of infrastructure projects, the contractor shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the government and shall be held responsible for any damage or destruction of the works except those occasioned by force majeure. The contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work and shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, GSIS or surety bond callable on demand, in accordance with the following schedule:

Form of Warranty	Minimum Amount in % of Total Contract Price
1. Cash deposit, cash bond or letter of credit	Five percent (5%)
2. Bank guarantee	Ten percent (10%)
3. Surety bond	Thirty percent (30%)

The warranty security shall be stated in Philippine Pesos, shall remain effective during the applicable warranty period provided in Section 62.2.2 hereof, and shall be returned only after the lapse of the said warranty period. The warranty shall be full for the first year, and renewable every year thereafter, subject to depreciation after the first year, on a straight line basis. (underline ours)

² The warranty security shall be denominated in Philippine Pesos, remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by the procuring entity, and returned only after the lapse of the said one (1) year period.

At the outset, we wish to inform you that that the revised IRR took effect on 2 September 2009. Thus, its provisions shall apply to all procurement activities where the invitations to bid (ITB) were posted on or after this date.³ This reflects the prospective application of laws, which is a basic tenet that "Laws shall have no retroactive effect, unless the contrary is provided".⁴ This rule has been underscored in the case of *Lepanto Consolidated v. WMC Resources*⁵, wherein the Supreme Court held that, "in order that a law may have retroactive effect it is necessary that an express provision to this effect be made in the law, otherwise nothing should be understood which is not embodied in the law."

Based on the foregoing, since the IRR of RA 9184 does not provide for a retroactive effect, we are of the opinion that Section 62.2.3.4 of the revised IRR should be applied prospectively to DOTC's infrastructure contracts. Thus, for the numerous infrastructure projects implemented and completed using IRR-A, it can continue to require the renewal of the warranty based on Section 62.2, on the assumption that the ITBs were posted before 2 September 2009.

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. 19-2010 dated 15 June 2010

⁴ Section 4 of the Civil Code of the Philippines

⁵ G.R. No. 162331 dated 20 November 2006