



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

**NPM No. 99-2014**

30 October 2014

**HON. ROGELIO L. SINGSON**

*Secretary*

**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH)**

DPWH Compound, Bonifacio Drive,  
Port Area, Manila

**Re: Release of Retention Money**

Dear Secretary Singson:

This refers to the Honorable Secretary's letter seeking our opinion regarding the alleged untimely release of retention money contained in Item 6 of the Audit Observation Memorandum (AOM) sent by the Commission on Audit (COA) on 2 May 2014, and the appropriate action that the Honorable Secretary may undertake to address the issues raised in the AOM.

Item 6 of the said AOM states that:

The release of the retention money prior to the final acceptance of works and allowing the previously withheld retention money to be paid with the contractor in lieu of irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand will defeat the purpose of withholding retention money, that is "to cover uncorrected discovered defects and third party liabilities". Although a substitute guarantee had been posted in lieu of the retention money, it will only cover the amount of the retention money corresponding to the previous progress billings. And this does not include the liability of the contractor subsequent to the posting of the substitute guarantee.

The rules on retention money can be found under Section 6 of **Annex "E" Contract Implementation Guidelines for the Procurement of Infrastructure Projects**; the Philippine Bidding Documents for the Procurement of Infrastructure Projects, 4<sup>th</sup> Edition; and the Manual of Procedures for the Procurement of Infrastructure Projects.

Based on the foregoing documents, "retention money" refers to the amount equal to ten percent (10%) of the progress payments, before deductions are made, that is withheld by the Procuring Entity to cover uncorrected discovered defects and third party liabilities. It is collected from all progress payments until works equivalent to fifty percent (50%) of the value of works, as determined by the Procuring Entity, is completed. If, after fifty percent (50%) completion, the work is satisfactorily performed and on schedule, no additional

retention shall be made; otherwise, the ten percent (10%) retention shall continue to be imposed.

It is true that the total "retention money" shall be due for release after the defects liability period, and upon final acceptance of the works. However, the rule admits some qualifications; thus, the contractor may request the Procuring Entity that, instead of withholding the retention money for every progress billing, the same be substituted by an irrevocable standby letter of credit; bank guarantee or surety bond callable on demand (collectively, instruments) for each progress billing. These financial instruments must be of such amounts equivalent to the retention money to be substituted and acceptable to government. They must also be valid for a duration to be determined by the concerned Procuring Entity and will answer for the purpose for which the ten percent (10%) retention is intended. The Procuring Entity, for its part, may agree to the request, provided that the project is on schedule and is satisfactorily undertaken.<sup>1</sup> Otherwise, the 10% retention shall be maintained.

The instruments seek to indemnify the Government for any damage or loss due to non-completion or non-performance of the project. In addition, the instruments provide guarantee that should there be defective works by the contractor, the Government has the means to compel the contractor to remedy these defective works or use the money retained to pay other parties to correct the defects in a manner satisfactory to the Government.

Relative to the AOM claim that the substitute guarantee posted in lieu of the retention money will only cover the amount of the retention money corresponding to the previous progress billings, and will not include the liability of the contractor subsequent to the posting of the substitute guarantee, we wish to point out that for the duration of the project implementation, the Performance Security is identified to guarantee the faithful performance by the winning bidder of its obligations under the contract in accordance with the Bidding Documents.<sup>2</sup> Moreover, under Section 62.2.2.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the one (1) year period from project completion up to final acceptance, or the defects liability period, is likewise covered by the Performance Security of the contractor as mentioned in Section 39.1 of the IRR of RA 9184.

In addition, in case of failure by the contractor to fulfill its responsibilities under the Contract, the procuring entity is not without recourse. The procuring entity shall forfeit the contractor's Performance Security, subject its property/ies to attachment or garnishment proceedings, and perpetually disqualify it from participating in any public bidding. All payables of the Government of the Philippines (GOP) in his favor shall be offset to recover the costs.<sup>3</sup>

In view of all the foregoing, we wish to emphasize that the retention money may be substituted by financial instruments in the form of an irrevocable standby letter of credit, bank guarantee, or surety bond callable on demand, upon request of the contractor, subject to the approval of the procuring entity, and provided that the project is on schedule and satisfactorily executed. The purpose of the instruments in lieu of the retention money, including the Performance Security, is to guarantee the faithful performance by the winning

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<sup>1</sup> Section 6.2, Annex "E", IRR of RA 9184; *Manual of Procedures for the Procurement of Infrastructure Projects*, Vol. 3, p.87.


<sup>2</sup> Section 39.1, IRR of RA 9184.

<sup>3</sup> Clause 12.3 Section IV, General Conditions of Contract, Philippine Bidding Documents: Procurement of Infrastructure Projects, 4<sup>th</sup> Edition, December 2010.

bidder of its obligations under the contract; to assure the procuring entity that the contractor shall assume full responsibility for any damage or destruction of the works except those occasioned by *force majeure*; and 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.<sup>4</sup> As such, any violation of the contract by the contractor would result in the forfeiture thereof in favor of the Government.

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

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director V*

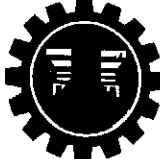
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<sup>4</sup> Section 62.2.1 of the IRR of RA 9184.

01/09/14

DPWH RMD HRAS  
DATE: 9/23-14  
FILE No.: 941  
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Republic of the Philippines  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
**OFFICE OF THE SECRETARY**  
Manila

September 3, 2014

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**Secretary FLORENCIO B. ABAD**  
Chairperson, GPPB  
**DEPARTMENT OF BUDGET AND MANAGEMENT**  
General Solano St., San Miguel, Manila  
Metro Manila Area Code: 02

**Thru: HON. DENNIS S. SANTIAGO**  
Executive Director IV  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
Unit 2506, Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City

**Subject: Release of Retention Before Final Acceptance of Project and Substantial Amount of Unreconciled Balance of Guaranty Deposits Payable Account as of December 31, 2013**

Sir:

This refers to the Audit Observation Memorandum (AOM) No. DPWH-OSEC 2014 - 032 (102) dated May 2, 2014 of Ms. Reynalda M. Sorra, State Auditor IV, Audit Team Leader and Ms. Avenilda B. Torres, Supervising Auditor, DPWH Audit Group, of the Commission on Audit, Office of the Auditor.

Item No. 6 of the said Memorandum states that:

*"The release of the retention money prior to the final acceptance of works and allowing the previously withheld retention money to be paid with the contractor in lieu of irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand will defeat the purpose of withholding retention money, that is "to cover uncorrected discovered defects and third party liabilities". Although a substitute guarantee had been posted in lieu of the retention money, it will only cover the amount of the retention money corresponding to the previous progress billings. And this does not include the liability of the contractor subsequent to the posting of the substitute guarantee".*

Relative to this, may we respectfully seek your opinion on the said item, vis-à-vis the appropriate action we can undertake for the satisfaction of the same.

Truly yours,  
  
**ROGELIO L. SINGSON**  
Secretary

*Jan [Signature] 30/9/2014  
Please prepare OPINION Check relevant provisions on retention money from the LRA, SADA and GMA. 2014*

Department of Public Works and Highways  
Office of the Secretary  
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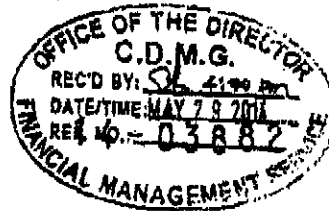


REPUBLIC OF THE PHILIPPINES  
**COMMISSION ON AUDIT**  
 OFFICE OF THE AUDITOR  
 DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
 PORT AREA, METRO MANILA

AOM No. DPWH-OSEC 2014-032 (102)  
 Date: May 2, 2014

**AUDIT OBSERVATION MEMORANDUM (AOM)**

**FOR** : Honorable **ROGELIO L. SINGSON**  
 Secretary  
 Department of Public Works and Highways  
 Bonifacio Drive, Port Area, Manila



**THRU** : Director **ARISTEO O. REYES**  
 Financial and Management Services

Attention : **Ms. MARY ANTOINETTE Z. FUNO**  
 Caretaker, Financial Management Services

**SUBJECT** : *Release of retention before final acceptance of project and substantial amount of unreconciled balance of Guaranty Deposits Payable account as of December 31, 2013*

We have verified/analyzed the account Guaranty Deposits Payable under the Foreign Assisted Projects Fund (Fund 102) as of December 31, 2013 and the following errors were observed:

- a. *Retention money of P126,948,352.47 were released in CY 2013 prior to the completion and final acceptance of the project.*
1. Section 6.2 of the Revised Implementing Rules and Regulations (RIRR) of RA 9184 provides explicitly that "The total "retention money" shall be due for release upon final acceptance of the works."
2. Review and analysis of the account Guaranty Deposits Payable under Fund 102 as of December 31, 2013, revealed that the retention withheld for several projects were released prior to completion and final acceptance of the project. Details of which are as follows:

CY 2013		
Not yet completed projects		
Contractor	Project	Amount
China International Water & Electric Corporation	Civil works for Contract Package No. 2: Lower Porao-Gumain River Diversion Channel for the Pinanibo Hazard Urgent Mitigation Project (PHUMP) Phase III, Province of Pampanga	P 15,537,740.40

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Ciriso Corporation	Contract Package No. II-A Construction of Lulluran Bridge, Ilagan, Isabela under the Urgent Bridges Construction Project for Rural Development (UBCPRD)	35,876,636.99	2012-05-014160
R.A Pahati Construction & Supply, Inc.	Civil Work Contract in connection with Contract Package 64 - Restoration of Slope Protection along Pampanga River in Brgy. Dampulan Jaen, Nueva Ecija under additional sub-project of the Post Oedey and Pepang Short-Term Infrastructure Rehabilitation Project (POPSTIRP)	1,926,643.29	2012-04-015009 2012-07-016155
Northern Builders ✓	PM 03-2011: Asphalt Overlay of Daang Maharilka Road, Cabanatuan and Sta. Rosa, Nueva Ecija, Km. 107+200 - Km. 120+800, Region III, National Roads Improvement Management Project (NRIMP) Phase II	7,170,020.61	2012-07-027294 2012-07-028203
BMK Construction /WBRR Corp. International	Contract Package 52: Repair/Rehabilitation of Flood control facilities in San Ildefonso, Ilocos Sur & Pidding Curral Dumalneg Bangui Vintar Pasuquin Ilocos Norte under POPSTIRP	587,328.66	2012-07-028124
E.M. Cuervo, Inc.	PM 09-2011: Asphalt Overlay of Daang Maharilka Road, Km. 1493+290 - Km. 1497+880, Davao City, Region XI, NRIMP Phase II	1,193,633.66	2012-06-028100
L.R. Tiqui Builder Inc.	Contract Package 69: Rehabilitation of breached dike and slope protection with steel sheet piles along Ppalt Arayat set back levee Cupang section, Arayat Pampanga under the POPSTIRP	704,258.76	2012-07-028221
Ferdstar Builders Contractors	Contract Package 66: Desilting/ Dredging/ Channel Excavation of Abacan River (Downstream Portion) from Barangay San Lorenzo, Mexico to Brgy. Dela Paz, San Simon (NLEX), Pampanga under the Additional Sub-Project for POPSTIRP	3,395,885.26	2012-11-028221
J.D Legaspi Construction	Contract Package 38: Restoration of Damaged Slope Protection in Pinukpuk, Tabuk and Tinglayan, Province of CAR under POPSTIRP	1,146,898.39	2012-11-027624
<b>Completed Projects but not yet accounted</b>			
Hunan Road and Bridge Corporation	CP-R1-2.9: Improvement of Marcos Highway (Evangelista Street to Masinag), NRIMP Phase II	23,839,007.98	2012-01-004225 2012-01-004227
A.J. Taylan Construction Corporation	Civil Work contract in connection with the Contract Package 7: Rehabilitation of Flood Control Facilities in Bacarra, Dumalneg and Pasuquin, all in the Province of Ilocos Norte, Region I, under the POPSTIRP	860,823.72	2012-02-0244
RAM Builder	Contract Package 40: Restoration of damaged flood control facilities in Noveleta, Cavite Guinayangan, Infanta & Tagkawayan, Quezon and Sta. Cruz, Laguna under POPSTIRP	88,817.12	2012-02-0244
O.R. Sarmiento Construction/ Plern Constructions	Contract Package 2-1: Construction of Tungeui Bridge and approaches Ilagan, Isabela and Contract Package 2-2: Construction of Sicalao Bridge and approaches Lusan, Cagayan under the Spanish Government financing	9,081,670.83	2012-02-0244
A.J Taylan Construction Corporation	Contract Package 7: Rehabilitation of Flood Control facilities in Bacarra Dumalneg & Pasuquin, Ilocos Norte under POPSTIRP	103,298.98	2012-02-0244
Eddie G. Guillen Builders	Contract Package 16: Repair/Rehabilitation of damaged revetment and seawall in Aparri Cagayan under POPSTIRP	830,932.32	2012-02-0244 2012-02-005

DQT Corporation	Builder	Contract Package 24: Repair /Rehabilitation of Damaged River bank Protection along Angat River and Creek bank Towerville Minuyan proper in Plaridel, Pullian and San Jose Del Monte, Bulacan under the POPSTIRP	800,579.76	2013-03-082541 2013-03-085278
NPH Construction and Supply		Contract Package 57: Construction of Riverbanks Protection Along Mindoro West Coast Road and Jct. San Isidro-Penal Colony Jct. Yapang Road under additional sub-project of the POPSTIRP	1,417,496.27	2013-05-014221
R.D. Interior Junior Construction		PM-02-2011: Asphalt Overlay of Cagayan Valley Road (Iguig-Amulung Section) km. 488+000 to km. 511+600, Cagayan, Region II, NRIMP Phase II	3,796,714.32	2013-05-02113
SATRAP Construction Co., Inc.		PM 01-2011: Asphalt Overlay of Manila North Road (Pasuquin Section), Km. 501+000 - Km. 510+391, Ilocos Norte, Region I, NRIMP Phase II	1,802,594.73	2013-07-017301
MSB Construction		Contract Package 9: Rehabilitation of facilities in Cabugao, Santa and Candon City, Ilocos Sur under POPSTIRP	1,273,373.57	2013-06-0245 2013-10-03031
Northern Builders		Contract Package 6: Repair and Restoration of Collapsed Retention Along Malanas Balili, Adunot and Ambalangan River in San Juan, Abra; La Trinidad, Bokod and Itogon, Benguet; Sabangan Mountain Province and Tabuk, CAR under POPSTIRP	3,118,212.54	2013-05-02451 2013-05-03027
J.D. Construction	Legaspi	Contract Package 38: Restoration of Damaged Slope Protection in Pinukpuk, Tabuk and Tinglayan, Province of CAR under the POPSTIRP	137,627.80	2013-07-02111
BMK Construction		Contract Package 49: Rehabilitation/ Construction of Protection Works along Sinocalan and Bued Rivers in Sta. Barbara and San Fabian, Pangasinan, under the POPSTIRP	2,060,001.30	2013-09-0242 2013-12-04201
WERR Corporation International		Contract Package 51: Rehabilitation of Dike with Protection Works, Benila, Viray-Depalo, Ambayaoan, Sabangan and Cabellian River Control Project at Umilingan, San Quintin and San Nicolas all in Pangasinan under additional sub-project for POPSTIRP	3,574,654.78	2013-09-02421 2013-12-04201
Bicol Goldrock Const. Corp.		Contract Package 62: Restoration of Flood Control Facilities along Cagayan River in Brgy. Pata, Enrile in the Province of Cagayan under the additional sub-project for POPSTIRP	1,954,563.26	2013-07-02421 2013-12-04201
Ferdstar Contractors	Builders	Contract Package 53: Repair/Rehabilitation of Damaged Flood Control Facilities in Claveria, Laram & Sta. Praxedas, Cagayan, under the POPSTIRP	872,894.12	2013-07-02441 2013-12-04201
Vicente T. Lao Construction		PM 07-2011: Asphalt Overlay of Sayre Highway (Kitaotao-Kibawa Section), Km. 1572+000 - 1586+000, Bukidnon, Region X, NRIMP Phase II	1,671,954.42	2013-12-03111
R.D Interior Junior Construction		Contract Package 71: Repair/Reconstruction of Washed-Out Flood Control Structure Along Cagayan River in Brgy. San Vicente, Iguig Cagayan, Under the Additional Sub-Project for POPSTIRP	2,082,086.63	2013-12-04161
<b>TOTAL</b>			<b>PH26,948,362.47</b>	

3. It was also noted that the guaranty deposits of BMK Construction in the amount of ₱7,291,862.59 was released in CY 2012, under Cluster RB 4: Restoration of Collapsed Retaining Wall and Damaged Portland Cement Concrete Pavement (PCCP), while it is still in question pending resolution of the issue on the

disallowed amount of \$28,820,018.58 by the Technical Audit Specialist team due to over estimation of quantities in the Approved Budget Contract of the DPWH.

4. It was observed that the interpretation of the other provision of the RIRR of RA 9184 was misplaced and it was used as a legal basis for the release of the retention money prior to the final acceptance of the project. Section 6.2 of the RIRR further provides "The contractor may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable by the Government, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of the Government shall be valid for a duration to be determined by the concerned implementing office/agency or procuring entity and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities." (emphasis supplied)
5. Upon review of the records, audit revealed that what was replaced with the irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand is the retention money which was previously withheld. This is contrary to the above quoted provision which allows the subsequent retention money "for each progress billing" to be replaced with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand. Furthermore, the rule is very explicit that the "retention money withheld shall be due for release upon final acceptance of the works", and not at any time prior thereto.
6. The release of the retention money prior to the final acceptance of works and allowing the previously withheld retention money to be paid with the contractor in lieu of irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand will defeat the purpose of withholding retention money, that is; "to cover uncorrected discovered defects and third party liabilities." Although a substitute guarantee had been posted in lieu of the retention money, it will only cover the amount of the retention money corresponding to the previous progress billings. And this does not include the liability of the contractor subsequent to the posting of the substitute guarantee.
  - b. Unreliable ending balance of the account as of December 31, 2013 because of the presence of substantial amount of unreconciled balance of the corresponding subsidiary ledger account.
7. Verification of the individual Subsidiary Ledgers (SL) of the said account showed that a substantial negative balance of \$305,683,683.73 comprises the ending balance of the account as of December 31, 2013. This pertains to the unreconciled balance representing the balance set up due to the change of e-NGAS database in 2010. Considering the substantial amount of the unreconciled balances, this should have been investigated and reconciled with the proper accounts.



8. This has already been conveyed to the management through various Audit Observation Memorandums (AOMs), however, up to this time management had not yet taken any action to comply with the said observation.

*c. Release of Retention in the amount of P1,146,898.39 without sufficient documentation*

9. For CY 2013, release of Retention was made to J.D Legaspi Construction per Check No. 8984482 dated November 28, 2013 and JEV No. JEV-2013-11-037839 dated November 28, 2013 in the amount of P1,146,898.39 was made in connection with CP 38 - Restoration of Damaged Slope Protection in Pinukpuk, Tabuk and Tinglayan, Province of CAR under Project for Post Ondoy and Pepeng Short-Term Infrastructure Rehabilitation Project (POPSTIRP), without proper documentation.

10. Said release was only supported by Disbursement Voucher, Obligation Request, and a Memorandum indicating that due to the expiration of the loan to finance the project, the retention was paid through the GOP Portion without more. The lacking documents are, among others, request of the Contractor for the release of retention, recommendation of the Project Engineer on the said request, Certificate of Completion and Certificate of Acceptance.

11. Section 4 of PD 1445 provides, among others; that "*claims against government funds shall be supported with complete documentation.*"


**Recommendations:**


12. We recommend that management require the accountant to:

a. refrain from releasing/payment of the retention money without the final acceptance of the project and proper required documentations; and

b. exert extra effort to reconcile the long outstanding unreconciled balances.

May we have your comments on the foregoing audit observations within fifteen (15) days from receipt hereof to facilitate review and make decisions in audit.

  
REYNALDA M. SORRA  
State Auditor IV  
Audit Team Leader

  
AVENILDA B. TORRES  
Supervising Auditor  
DPWH Audit Group