

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos. (02) 735-4962; (02) 736-5758

NPM No. 101-2004

July 28, 2004

MS. JULIET B. DEMO-OS
Officer-in-Charge
Assistant Regional Director
Bureau of Fisheries and Aquatic Resources
Regional Fisheries Office VI
M.H. Del Pilar, Molo, Iloilo City

Re : Warranty Security for Infrastructure Projects

Dear Asst. Director Demo-os:

This refers to your letter dated July 13, 2004, addressed to the Regional Director of the Commission on Audit – Regional Office VI, which was referred to us on July 15, 2004, requesting clarification on Section 62 of the Implementing Rules and Regulations Part A (“IRR-A”) of Republic Act 9184 (“R.A. 9184”), particularly on the following issue:

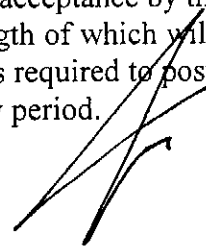
Whether or not the winning bidder in an infrastructure project for permanent structure is required to post a warranty security for a period of fifteen (15) years.

This is in connection with the bidding for the construction of Phase IV of the Regional Office of the Bureau of Fisheries and Aquatic Resources-Regional Fisheries Office VI (“BFAR-RFO VI”).

Posting of Warranty Security Mandatory

In order to ensure that the contractor will correct structural defects and failures, a defects liability period is observed one year from project completion until final acceptance by the procuring entity¹. After final acceptance of the project, a warranty period, the length of which will depend on the nature of the project, will commence. Accordingly, the contractor is required to post a warranty security that will cover both the defects liability period and the warranty period.

¹ Section 62.2.1, IRR-A, R.A. 9184



It is noteworthy that during the defects liability period and after the contractor has posted a warranty security in any of the form and amount prescribed in Section 62.2 of the IRR-A, the procuring entity will return to said contractor its performance security.

Section 62.2 of the IRR-A prescribes the forms and amount of the warranty security which the contractor may post, as well as its effectivity, to wit:

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 after the lapse of the said warranty period.** (Emphasis supplied)

In correlation to this, Section 62.2.2(a) of the IRR-A provides that for permanent structures, a contractor shall be held responsible for structural defects and/or failure of the completed project within a period of fifteen years from final acceptance, to wit:

After final acceptance of the project by the Government, the contractor shall be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by *force majeure* and those caused by other parties:

a) Permanent Structures: Fifteen (15) years

Buildings of types 4 (steel, iron, concrete, or masonry construction with walls, ceilings, and permanent partitions of incombustible fire resistance) and 5 (steel, iron, concrete, or masonry construction), steel and concrete bridges, flyovers, concrete aircraft movement areas, ports, dams, diversion tunnels, causeways, wharves, piers, dikes, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar structures;

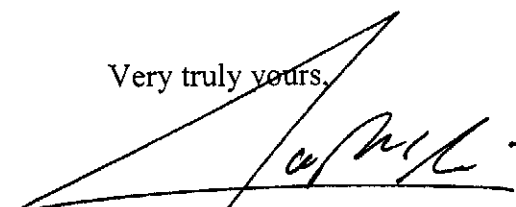
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Based on the above-quoted provisions, it is mandatory for a contractor to post a warranty security in any or a combination of the prescribed forms for a period of fifteen (15) years from the final acceptance by the procuring entity for the permanent structure it has constructed. The warranty security shall only be returned to the contractor after the lapse of the warranty period.

However, for practicality, it is suggested that a warranty security be posted in full for the first year and renewable every year thereafter, subject to depreciation after the first year on a straight line basis. Thus, a project with a fifteen-year required warranty security will have a full amount of the warranty for its first year; 14/15 of the full amount for the second year; 13/15 of the full amount for the third year; 12/15 for the fourth year; and so on. Following this formula, a permanent structure amounting to ₱100 million, with a warranty security in the form of a bank guarantee will amount to ₱10 million for the first year; ₱9,333,333.00 for the second year; ₱8,666,666.00 for the third year; ₱8 million for the fourth year; and so on.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

Copy furnished:

REGISTRY RECEIPT

317

Post Office: **REGISTERED**

Letter Pack: **MANILA POST OFFICE**

Posted on: **MANILA** 19

Preserve this receipt for reference in case of inquiry

JUL 28 2009
Postmaster/Teller

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July 20, 2004

ATTY. VIOLA P. VILLANUEVA

State Auditor V
Regional Cluster Director
Commission on Audit
Regional Office VI
Barangay Ungka, Pavia, Iloilo

Dear Director Villanueva:

This refers to your letter dated July 15, 2004, which we received on July 16, 2004, addressed to Executive Director Jose Martin C. Syquia, referring the letter of the Assistant Regional Director of the Bureau of Fisheries and Aquatic Resources – Regional Fisheries Office VI, requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, specifically, Section 62 thereof.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


ATTY. REYNALDO H. BICOL JR.
Procurement Management Officer V

RESPONSE SHEET FOR PHONE OPINIONS

PhO No. _____

Date Received: July 16, 2004

Date Called: July 20, 2004

Requesting Entity: RFAR - RDG

Contact Person / Number: Robert Espinosa (033) 3370265

Issue(s) / Request(s):

Whether or not a bidder awarded the contractor for infrastructure project is required to post a warranty security

Response: YES. This is mandatory under Sec. 62.2 of the IRK-A.

Remarks: Letter request necessary

Assigned to: Dennis