

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. 117-2004

August 24, 2004

MS. MA. CYNTHIA ELEANOR E. BAJAMUNDE
Acting Service Chief
Senate

Re : Warranty Requirement Under Republic Act 9184 and its Implementing Rules and Regulations Part A

Dear Ms. Bajamunde:

This refers to your letter dated August 13, 2004, which we received on August 18, 2004, requesting for clarification regarding the application of Section 62.1 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act 9184 (R.A. 9184), particularly on the retention fee of ten percent (10%) for the procurement of goods.

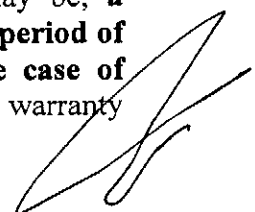
The concern being raised is that the strict application of the warranty provision in procurements which are of small quantity and amount may result to non-participation of suppliers in said biddings. Hence, the sole substantive issue for resolution is as follows:

Whether or not procurements which are of small amount and quantity may be exempted from the application of the requirement on posting of warranty security provided under Section 62.1 of the IRR-A of R.A. 9184.

Applicability of Warranty Provision on Small Procurements

Section 62.1 of the IRR-A provides that the contract awardee for the procurement of supplies or equipment, to wit:

For the procurement of goods, in order to assure that manufacturing defects shall be corrected by the supplier, manufacturer, or distributor, as the case may be, **a warranty shall be required from the contract awardee for a minimum period of three (3) months, in the case of supplies, and one (1) year, in the case of equipment, after performance of the contract.** The obligation for the warranty



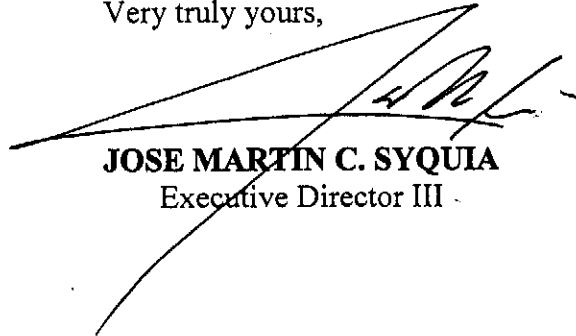
shall be covered by either retention money in an amount equivalent to at least ten percent (10%) of every progress payment, or a special bank guarantee equivalent to at least ten percent (10%) of the total contract price. The said amounts shall only be released after the lapse of the warranty period: *Provided, however,* That the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met. (Emphasis supplied)

As can be gleaned from the above-quoted provision, it is mandatory for the contract awardee in procurement for goods to post a warranty security in any of the forms allowed therein. It is apparent that Section 62.1 of the IRR-A does not allow any exemption from its application. It has been repeatedly declared by the courts that where the law speaks in clear and categorical language, there is no room for interpretation or construction; there is only room for application.¹

Hence, there being no provision with respect to any exemption, posting of warranty security pursuant to Section 62.1 of the IRR-A applies even to procurement of goods in small amount and quantity.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

¹ Samson S. Alcantara, *Statutes*, 1997 Edition, p. 32 citing Cebu Portland Cement Co. v. Mun. of Naga, G.R. Nos. 24116-17, August 22, 1963 and Gonzaga v. Court of Appeals, G.R. No. L-27455, June 28, 1973

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August 18, 2004

MS. MA. CYNTHIA ELEANOR E. BAJAMUNDE

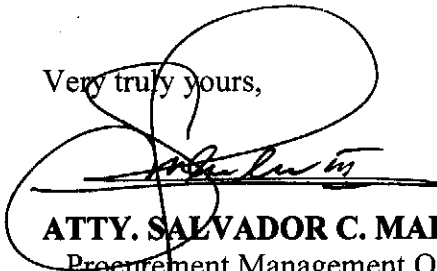
Acting Service Chief
Senate

Dear Ms. Bajamunde:

This refers to your letter dated August 13, 2004, which we received through facsimile on August 18, 2004, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, specifically on Section 62.1 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. SALVADOR C. MALANA III
Procurement Management Officer V

