

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
Telefax Nos. (02) 900-6741 to 44

NPM No. 128-2004

September 30, 2004

MS. RUBY R. ESTEBAN
Regional Director
Department of Budget and Management
National Capital Region
Malacañang, Manila

RECEIVED
DBM-NCR

BY: 4/14
DATE: 9/30/04

Re : **Warranty for the Procurement of Goods under Section 62(a) of Republic Act No. 9184 (R.A. 9184) and Section 62.1 of its Implementing Rules and Regulations Part A (IRR-A)**

Dear Director Esteban:

This refers to your letter dated September 3, 2004, which we received on September 7, 2004 requesting for clarification on a single issue, to wit:

Whether or not the requirement for a warranty under Sections 62 (a) of R.A. 9184 and 62.1 of its IRR-A is applicable to all types of goods procured, regardless of the kind, amount, quantity, and method of procurement used, whether competitive bidding or alternative method of procurement.

Requirement for Warranty, Mandatory

To protect the proprietary interest of the Government, the crafters of R.A. 9184 and its IRR-A deem it necessary to insert an innovative provision that will provide for guarantee and immediate indemnity in case the goods or the construction works procured are found to be defective or of substandard quality. Thus, R.A. 9184 and its IRR-A contain special provisions on warranty in the procurement of goods and infrastructure projects which provide for an upfront or forward assurance that the supplier, manufacturer, or distributor warrants the goods from hidden defects and the procuring entity against eviction therefrom, whereby the happening of any, acts as a signal for the procuring entity to call on the retention money or bank guarantee. For the procurement of goods, Section 62 (a) of R.A. 9184 explicitly provides:

“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 for a specific time after performance of the contract, **a warranty shall be required from the contract awardee for such period of time as may be provided in the IRR, the obligation for which shall be covered by either retention money in the amount equivalent to a percentage of every progress payment, or a special bank guarantee equivalent to a percentage of the total contract price, to be provided in the IRR.** The said amounts shall only be released after the lapse of the warranty period, provided that the Goods supplied are free from defects and all the conditions imposed under the contract have been fully met.” (Emphasis Supplied)

In connection to this, we further quote Section 62.1 of the IRR-A of R.A. 9184, as follows:

“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.” (Underscoring supplied)

By virtue of these provisions, procuring entities are mandated to retain a part of the contract price, or require a bank guarantee from its suppliers, manufacturers or distributors in the procurement of goods. This provision is generic in application and provides for no exception such that even procurement of goods in small amounts and quantity including those acquired through the alternative methods of procurement are subject to this requirement. It must be noted that the above-quoted section has no specific price threshold as to when warranty for goods may be applicable, likewise, it does not restrict the application of warranty exclusively to goods procured under competitive bidding.

At this point, it may be worthy to emphasize the prominent features of Section 62.1 of the IRR-A for your proper guidance in the application of said provision, to wit:

First, warranty under said section applies only to the procurement of goods, which refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationary, materials for construction, or personal property of any kind, including non-personal or contractual services.

Second, the IRR-A provides that warranty period for goods is for a minimum period of three (3) months for supplies and one (1) year for equipment, which will commence after performance of the contract. This connotes that the procuring entity may impose a longer

warranty period depending on the nature of goods, but it cannot shorten the said specified periods;

Third, the warranty for goods shall be covered by either a retention money or a special bank guarantee. No other arrangements or credit instruments are allowed;

Fourth, the amount of retention money should be equivalent to at least ten percent (10%) of every progress payment and, in case of special bank guarantee, it shall be equivalent to at least ten percent (10%) of the total contract price. This denotes that the procuring entity may impose a higher percentage amount of the progress payment or contract price to cover for the warranty but not lower than the percentage provided by the IRR-A ; and

Lastly, the retention money or bank guarantee shall only be released after the lapse of warranty period, provided that the goods supplied are free from latent and patent defects and satisfies the conditions of the contract.

Further, however, we wish to inform you that the aforesaid provision in the IRR-A is being considered as one of the issues to be reviewed for a possible amendment at the end of this year, especially as regards its application on procurement of goods undertaken through Alternative Methods of Procurement. We will inform your office of any further update on the matter.

Conclusion

With the foregoing elucidations, we reiterate that the requirement for a warranty under Sections 62 (a) of R.A. 9184 and 62.1 of its IRR-A is mandatory for all types of goods, regardless of the kind, amount, quantity and method of procurement used for the goods procured.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
Telefax Nos. (02) 900-6741 to 44

September 13, 2004

*Done
9/13/04 requests
for official
written reply*

MS. RUBY R. ESTEBAN
Regional Director
Department of Budget and Management
National Capital Region
Malacañang, Manila

Dear Director Esteban:

This refers to your letter dated September 3, 2004, which we received on September 7, 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 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. SALVADOR C. MALANA III
Procurement Management Officer V