

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*

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**NPM No. 136-2004**

October 20, 2004

**ENGR. JOSEPH FREDERICK A. PEPITO**  
President  
New Ormoc Builders Association  
Brgy. Don Felipe Larrazabal,  
Ormoc City, Leyte

**Re : Request for Suspension of the Imposition of Warranty Security for  
Infrastructure Projects**

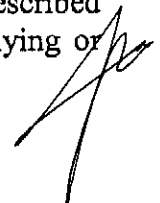
Dear Engr. Pepito:

This refers to your letter to the Honorable Mayor Eric C. Codilla, dated July 28, 2004, forwarded to our office through Regional Director Imelda C. Laceras of the Department of Budget and Management – Regional Office VIII, which we received on October 5, 2004, requesting for the suspension of the imposition of warranty security for infrastructure projects under Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A). The sole substantive issue that needs to be resolved is as follows:

Whether or not the Government Procurement Policy Board (GPPB) is authorized to grant suspension of the implementation of any provision of R.A. 9184 and its IRR-A

**Authority of GPPB to Defer Imposition of Warranty Security**

We wish to inform you that the GPPB has had the chance to discuss the issue at hand under Policy Matter 004-2004, dated March 25, 2004 where it opined that the implementation of the said law is absolute and mandatory after its effectivity on October 8, 2003. Furthermore, it was mentioned therein that the GPPB has no authority to grant exemptions from the implementation of R.A. 9184 and its IRR-A as it is "bereft of a legislative delegated authority to determine within its discretion or 'to ascertain, under and pursuant to law, some circumstances on which the law by its own terms, makes its own action depend, or to find the facts or conditions properly prescribed under which a law as passed will or will not operate, that is, for putting in effect, applying or suspending a law.'"<sup>1</sup>



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<sup>1</sup> Cruz, *Philippine Administrative Law*, 1998 Ed. pp. 33-34 citing 73 *CJS Public Administrative Bodies*, Sec.31.

Based on the foregoing, although we understand and empathize with your plight of having difficulty complying with the mandate of the law, we cannot disregard its implementation on account of the grounds you have provided in your letter.

Section 62.2 of the IRR-A does not limit the forms of warranty security to surety bonds and bank guarantees. Other types of form are shown in the schedule provided under the said Section 62.2, to wit:

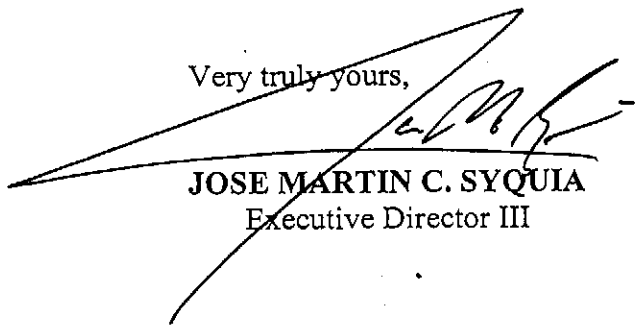
Form of Warranty	Minimum Amount in % of Total Contract Price
1. Cash deposit, cash bond or letter of credit	Five percent (5%)
2. Bank guarantee	Ten percent (10%)
3. Surety bond	Thirty percent (30%)

In the event, therefore, that no insurance company or banks issue bonds or bank guarantees, contractors are not left without recourse since other forms of warranty security are accepted, such as cash deposit, cash bond or letter of credit. Moreover, contractors are not precluded from posting a warranty security in any or a combination of the forms provided in the above-quoted schedule.

Lastly, so as not to be incommodious to contractors, 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.

Please be guided accordingly.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director III

Copy furnished:

**MS. IMELDA C. LACERAS**  
Regional Director  
Department of Budget and Management  
Regional Office VIII

**HON. ERIC C. CODILLA**  
Mayor  
City of Ormoc