



TECHNICAL SUPPORT OFFICE

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NPM No. 25-2005

April 25, 2005

MS. VERONICA G. AMAR
State Auditor II
Cluster IV-Visayas Local Government Sector
Commission on Audit
Victorias City, Negros Occidental

Re : Submission of Affidavit of Commitment in lieu of Warranty

Dear Ms. Amar:

This has reference to your letter dated 1 April 2005 requesting for a written opinion on the issues raised in an earlier letter-query¹ you brought to this office for consideration. On 14 March 2005, we had the occasion to discuss with you on these queries. The issues are as follows:

- a. How can the procuring entity require their contractors to put up a surety bond to cover the 15-year warranty period if no insurance company issues a surety bond for said duration?
- b. Would an affidavit of commitment for the fifteen (15) year warranty period issued by the contractor be acceptable in addition to the surety bond of one year?

These issues were raised with reference to the provision under the Implementing Rules and Regulations Part A (IRR-A), in Section 62.2 thereof, requiring the posting of a warranty security to cover a period of fifteen (15) years in the case of permanent structures, reckoned from the final acceptance of the project by the Government.

Needlessly, the requirement for warranty security under the IRR-A finds basis in Republic Act No. 9184 and hinges on the rule that the contractor shall assume full responsibility for the contract work from the time project construction commenced up to final acceptance by the government and is held responsible for any damage or destruction of the works except those occasioned by force majeure. The warranty

¹ Dated 1 March 2005.

security required, regardless of the form prescribed by the procuring entity, signifies pecuniary relief in the event of failure by the contractor to comply with his obligation according to agreed standards.

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 entity². After final acceptance of the project, a warranty period, the length of which will depend on the nature of the project, will commence.

Emphasis is made that a contractor is required to post a warranty security in any or a combination of the prescribed forms provided under Section 62.2 of the IRR-A for a period appropriate to the kind of procurement concerned. In the case of infrastructure, the period commences from the final acceptance by the procuring entity of the work and from the performance of the contract in the case of goods. The warranty security shall be returned to the contractor only after the lapse of the warranty period. Forms of warranty security available under the Act are as follows:

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 case of security bonds, the difficulty in searching for an insurance company willing to issue a surety bond to cover the warranty period³ provided for under the law is recognized. It is in this light that we suggest, for practical reasons 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 P100 million, with a warranty security in the form of a bank guarantee will amount to P10 million for the first year; P9,333,333.00 for the second year; P8,666,666.00 for the third year; P8 million for the fourth year; and so on.

Issuance of an Affidavit of Commitment

With reference however to the issued affidavit of commitment issued by the bidder, it is quite apparent that the evil sought to be avoided under the law is not cured by the mere issuance of the aforementioned document. Although the affidavit issued by the contractor contains a provision that the contractor shall be held responsible for structural defects and/or failure of the completed project during the effectivity of the

² In case of infrastructure works on Permanent Structures Section 62.2.2 of IRR-A. For semi-permanent structures, five (5) years; and for other structures, two (2) years.

³ Section 62.2.1, IRR-A, R.A. 9184

warranty period, this alone will not suffice nor will an affidavit of commitment for the fifteen (15) year warranty period issued by the contractor in addition to the surety bond for a period of only one year be acceptable, in lieu of the stringent requirements provided for under the law.

The warranty security is for the protection of the interest of the government. The undertaking of the security is primarily to identify or compensate the government for any damage or loss due to faulty or defective completion of projects, in the case of infrastructure. The issuance of such requirement is sought so that the government may be assured of compliance by the contractor of contractual terms and in consequence is enabled to seek redress or remedy. To this purpose, an affidavit of commitment cannot be considered sufficient compliance for the requirement.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III