

**NPM No. 40-2008**

14 October 2008

**MR. VICENTE V. TAÑEDO***Proprietor***VTJ TRADING**117 14<sup>TH</sup> Avenue, Unit 8, Villa Felicidad Townhouse  
Cubao, Quezon City**Re : Warranty Security for the Procurement of Goods**

Dear Mr. Tañedo:

We respond to your letter dated 8 July 2008 requesting that the ten percent (10%) retention on your collection for the delivery of livestock to the Province of Guimaras be dispensed with.

In your letter, you posited that the Province of Guimaras should not hold on to the ten percent (10%) retention money because of the following reasons:

- a. Other regions and DA's Bids and Awards Committee are not adopting the aforesaid retention policy; and
- b. Under the livelihood program of the government, livestock are given away to farmers without restrictions. Thus, after the delivery of the animals to the farmers, any casualty thereof is no longer the liability of the suppliers inasmuch as the same is already beyond their control.

Please be advised that the framers of Republic Act (R.A) No. 9184 and its Implementing Rules and Regulations Part A (IRR-A) perceived the wisdom in including 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, in order to protect the proprietary interest of the Government. Thus, R.A. 9184 and its IRR-A contain special provisions on warranty in the procurement of goods and infrastructure projects which grant an upfront or forward assurance by the supplier, manufacturer, or distributor that the goods are free from patent and latent defects. Goods are considered defective when they are "*unfit for the use for which it is intended,*" or "*its fitness for such use is diminished to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it...*"<sup>1</sup>

For the procurement of goods, Section 62.1 of IRR-A explicitly provides:

<sup>1</sup> Article 1561, Civil Code of the Philippines

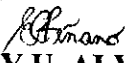
For the procurement of goods, in order to assure that manufacturing defects shall be corrected by the supplier, manufacturer or distributor, as the case may be, **a warranty shall be required from the contract awardee for a minimum period of three (3) months, in the case of supplies, and one (1) year,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

By virtue of the aforesaid provision, 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. However, in exceptional cases and upon prior approval of the procuring entity, the winning supplier may replace the same with a special bank guarantee in the same amount.

Further, please take note that a partial release or reduction of the warranty may be allowed in the case of partial deliveries. In this case, the warranty for goods delivered ahead will lapse earlier than the succeeding deliveries. This will have the effect of having partial releases of the retention money or special bank guarantee to coincide with the lapse of the warranty provision for each delivered lot. However, the warranty must be in the form of retention fee equivalent to ten percent (10%) of every progress payment.<sup>2</sup>

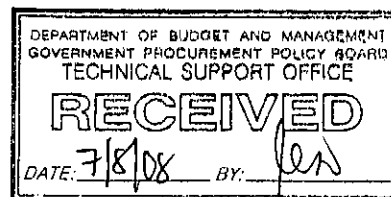
We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
for RUBY U. ALVAREZ  
Executive Director III

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<sup>2</sup> Generic Procurement Manual: Manual of Procedures for the Procurement of Goods and Services, p. 101



## VTJ TRADING

117 14<sup>th</sup> Ave Unit 8 Villa Felicidad Townhouse  
 Cubao Q.C  
 Telephone: 024210144  
 Cellphone: 09189002343

July 8, 2008

**RUBY U. ALVAREZ**  
 Executive Director  
 Government Procurement Policy Board  
 Technical Support Office

*Bryson,*

*Pls. handle. I don't  
 remember that there is  
 a requirement for retention  
 money in the procurement of  
 goods. 18 7/10/08*

Dear Madam:

This is with respect to the delivery of livestock to the Province of Guimaras under your livelihood program.

Ma'am, may I respectfully request that you dispensed with the ten percent (10%) retention on my collection as supplier for the following reasons:

- a. Other regions and DA's bids and award committee do not make any retention as transactions like this are exempted from such relation policy
- b. Under the livelihood program of the government, livestock are given away to farmers without restrictions. Thus, any casualty on the animals arising from poor feeding or shelter, or due to dog or snake bites, is already beyond our control. It would be unfair for us to be obligated for losses and charged to the 10% retention for damages which we no longer have participation. For the same reason, withholding of the retention for ninety (90) days is too long because we should not be subjected to retention in the first place.
- c. There is no point in the retention because after the delivery of the animals to the farmers, any casualty thereof is no longer our liability.

I hope this request be given favorable consideration.

Very Truly Yours,

*[Signature]*  
**VICENTE V. TANEDO**  
 Proprietor  
 VTJ Trading