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**NPM No. 075-2004**

May 24, 2004

**MR. ROMEO T. HERNANDEZ**  
Provincial Accountant  
Office of the Provincial Accountant  
Province of Bukidnon

**Re : Position Paper of the Bukidnon League of Government Accountants ("BULGA") Recommending the Amendment of Section 62 (a) of Republic Act No. 9184 ("R.A. 9184")**

Dear Mr. Hernandez:

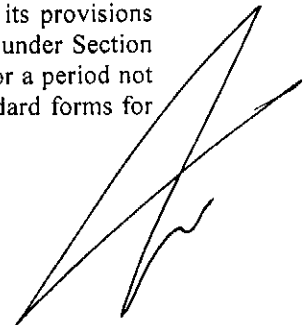
This refers to your letter dated April 15, 2004, addressed to the Chairperson of the Government Procurement Policy Board ("GPPB"), which we received on May 4, 2004, attached to which is a copy of the Position Paper of the BULGA on the requirement of warranty for the procurement of goods under Section 62 (a) of R.A. 9184, and its counterpart provision under Section 62.1 of its Implementing Rules and Regulations Part A ("IRR-A").

In said Position Paper, the BULGA recommends that the warranty required under the aforementioned provision of R.A. 9184 and its IRR-A shall be imposed only on procurement of goods amounting to Two Hundred Fifty Thousand Pesos (Php 250,000.00) and above except on highly technical goods.

**Rule Making Power of the GPPB**

The IRR-A of R.A. 9184 was promulgated by the GPPB jointly with the Joint Congressional Oversight Committee, pursuant to a delegated authority under Sections 63 and 75 of R.A. 9184<sup>1</sup>. Furthermore, the GPPB is given the authority to amend, whenever necessary such implementing rules and regulations. It must not be forgotten, however, that

<sup>1</sup> SEC. 75. *Implementing Rules and Regulations and Standard Forms.* – Within sixty(60) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the GPPB, jointly with the members of the Oversight Committee created under Section 74 hereof. The said rules and regulations shall be approved by the President of the Philippines. For a period not later than thirty (30) days upon the approval of the implementing rules and regulations, the standard forms for Procurement shall be formulated and approved.



while the GPPB is imbued with quasi-legislative or rule-making power, such power must be confined only to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. It is axiomatic that the delegate, in exercising the power to promulgate and amend implementing regulations, cannot contradict the law. The Supreme Court has consistently ruled that administrative regulations under legislative authority by a particular department must be in harmony with the provision of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulation, of course, the law itself cannot be extended. An administrative agency cannot amend an act of Congress.<sup>2</sup>

In view of the foregoing, we regret to inform you that the recommendation of the BULGA through its Position Paper cannot be acted upon by the GPPB as it is beyond its conferred quasi-legislative authority. Section 62 (a) of R.A. 9184 is quoted hereunder, 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 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)

<sup>2</sup> People vs. Maceren, 79 SCRA 450 [1977]; Santos v. Estenzo, 109 Phil. 419, 422; Teoxon v. Members of the Board of Administrators, L25619, June 30, 1970, 33 SCRA 585; Manuel v. General Auditing Office, L-28952, December 29, 1971, 42 SCRA 660; Deluao v. Casteel, L-21906, August 29, 1969, 29 SCRA 350.

By virtue of this requirement, procuring entities are now 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 rule 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 aforementioned provision of Section 62 (a) of R.A. 9184, which is reiterated in Section 62.1 of the IRR-A, has no specific price threshold as to when warranty for goods may be applicable. Consequently, the GPPB cannot introduce amendments to Section 62.1 of the IRR-A as recommended by BULGA, since it would in effect modify and expand the statutory basis of such provision.

Furthermore, it may be worthy to note that the crafters of R.A. 9184 and its IRR-A deem it necessary to insert this innovative rule on the requirement of warranty from the contract awardee, such that it will be applicable to all types and amounts of procurement to protect the proprietary interest of the Government since the said requirement provides for guaranty and immediate indemnity in case the goods 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 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.

We trust that this clarifies matters.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director