

NPM No. 115-2016

6 December 2016



Re: Retention Money for Expendable Goods

Dear Sir/Madam:

This refers to your electronic mail inquiring whether the retention money can be released to the supplier of expendable goods short of one year if the Special Conditions of the Contract (SCC) specifically states that it will only be released after one year from the date of acceptance.

Please be informed that Section 62.1 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 provides that for the procurement of goods, in order to assure that manufacturing defects shall be corrected by the supplier, a warranty security shall be required from the contract awardee for a minimum period of three (3) months in the case of expendable supplies, or a minimum period of one (1) year in the case of non-expendable supplies, after acceptance by the Procuring Entity (PE) of the delivered supplies.

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 10% of the total contract price. **The said amounts shall only be released after the lapse of the warranty period or, in the case of expendable supplies, after consumption thereof;** provided that the supplies delivered are free from patent and latent defects and all the conditions imposed under the contract have been fully met.

It is well-worthy to point out that for expendable supplies, it is clear that the minimum warranty security required is only three (3) months, which may be in the form of a retention money or special bank guarantee, and shall be released after the lapse of the warranty period or after consumption thereof.

Please note that although under the General Conditions of the Contract (GCC) Clause 17 of the Philippine Bidding Documents (PBDs) for the Procurement of Goods¹, a warranty shall be required from the Supplier for a minimum period specified in the Special Conditions of the Contract (SCC), and shall only be released after the lapse of the warranty period

¹ 4th Edition. December 2010.

specified in the SCC, which means that the SCC could provide for a period longer than the minimum, Clause 17.3 of the SCC provides that in the case of expendable supplies, the warranty security may be released three (3) months after acceptance by the Procuring Entity of the delivered goods or after the goods are consumed, whichever is earlier.

Moreover, the Generic Procurement Manual (GPM) for Goods² clarified that if the warranty period is longer than the minimum period of three (3) months for supplies and one (1) year for equipment, the period beyond the minimum period need not be covered by retention money or special bank guarantee. After the lapse of the minimum period, the Procuring Entity must release the retention money or special bank guarantee provided that the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met.

In sum, for expendable supplies, the warranty security posted by the bidder must be released 3 months after acceptance by the PE of the delivered goods or after the goods are consumed, whichever is earlier, provided that all the conditions imposed under the contract have been fully met.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

~~HERNANDEZ SANTIAGO~~
Executive Director V

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² Manual of Procedures for the Procurement of Goods and Services Vol. 2.