

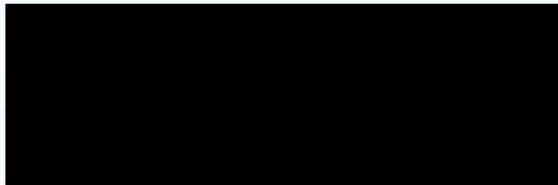


Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 67-2015

12 October 2015



Re: Retention Money

Dear [REDACTED]:

This refers to your letter requesting clarification on the price threshold for the imposition of the ten percent (10%) retention money.

At the outset, we would like to note that the requirement of ten percent (10%) retention money applies only in the procurement of goods and infrastructure projects.

For the procurement of goods, the retention money in an amount equivalent to at least ten percent (10%) of every progress payment covers the warranty obligation under Section 62.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. On the other hand, for the procurement of infrastructure projects, the ten percent (10%) retention money to be retained from every progress payment until fifty percent (50%)¹ of the value of completed works, as determined by the procuring entity, is intended to cover uncorrected discovered defects and third party liabilities.² This retention money, according to the Supreme Court, is a form of security which seeks to ensure that the work is satisfactorily done and on schedule.³

We wish to clarify that in both types of procurement, goods and infrastructure project, RA 9184 and its associated issuances do not provide any price threshold for the imposition of retention money. It does not distinguish whether the amount of contract involves higher or lesser amount of money. Regardless of the contract cost, the ten percent (10%) retention money shall be retained by the Procuring Entity in every progress payment.

It bears stressing, however, that under existing rules, the ten percent (10%) retention money may be substituted after certain requirements are attained. Thus, for the procurement of goods, in lieu of the retention money, the supplier may instead post a Special Bank

¹ If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.

² Section 6.1 and 6.2 of the Contract Implementation Guidelines for the Procurement of Infrastructure Projects.

³ *New Bian Commercial, Inc. etc. v. Office of the Ombudsman, et al.*, G.R. No. 169338, January 20, 2009.

Guarantee equivalent to at least ten percent (10%) of the total contract price to cover the obligation for the warranty.⁴ In the case of infrastructure projects, the contractor may request the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand, of amounts equivalent to the retention money substituted for and acceptable to Government, provided that the project is on schedule and is satisfactorily undertaken.⁵

At this juncture, it is well-worthy to point out that under Section 62 of the IRR of RA 9184, retention money or its substitute, as a form of warranty security, are not required for contracts procured through the following alternative modalities of procurement: a) Shopping under Section 52; and, b) Negotiated Procurement under Sections 53.2 (emergency cases), 53.5 (agency-to-agency), 53.9 (small value procurement), 53.10 (lease of real property), 53.12 (community participation), and 53.13 (UN agencies) of the IRR of RA 9184.⁶

In sum, we wish to clarify that there is no price threshold for the imposition of the ten percent (10%) retention money in the procurement of goods and infrastructure projects. Regardless of the contract cost, it shall be retained by the Procuring Entity for every progress payment, except when the supplier or contractor opted to substitute it by any of the allowable forms of security or when the mode of procurement does not require it under existing rules and regulations.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being 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.)

~~DENNIS M. SANTIAGO~~
Executive Director V *[Signature]*

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⁴ Section 62.1 of the IRR of RA 9184.

⁵ Section 6.2 of the Contract Implementation Guidelines for the Procurement of Infrastructure Projects.

⁶ Section 54.5 of the IRR of RA 9184, as amended by GPPB Resolution 20-2012, dated 27 July 2012.