

RESOLUTION APPROVING AND ADOPTING BID SECURING DECLARATION AS AN ADDITIONAL FORM OF BID SECURITY

WHEREAS, Section 63 of Republic Act (RA) 9184 mandates the Government Procurement Policy Board (GPPB) to formulate and amend, whenever necessary, the Implementing Rules and Regulations and the corresponding standard forms for procurement;

WHEREAS, Section 27 of RA 9184 provides that all bids shall be accompanied by a bid security following the specific amounts and allowable forms prescribed under the Implementing Rules and Regulations (IRR) of RA 9184;

WHEREAS, Section 27 of the IRR of RA 9184 provides the following schedule showing the allowable forms of bid security and their corresponding amount:

Form of Bid Security	Amount of Bid Security (Equal to Percentage of the ABC)
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank;	Two Percent (2%)
b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank;	
c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security;	Five percent (5%)
d) Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security

WHEREAS, the existing forms have substantial monetary value that is considered cause for the increase of bid prices and transactional costs both on the part of the bidder and the procuring entity;

WHEREAS, allowing a form of bid security that has no or insignificant monetary value, such as a Bid Securing Declaration will increase bidders' participation; decrease the transactional costs; and, reduce bid prices;

WHEREAS, the use of Bid Securing Declaration is recognized by multilateral development partners and is used by other countries as a form and modality of bid security;

WHEREAS, the Government Procurement Policy Board and the Inter-Agency Technical Working Group discussed the matter, and, after careful deliberation, favorably considered the use of Bid Securing Declaration as an additional form of bid security with the objective of increasing bidders' participation; cutting transactional costs in public procurement; and, further harmonizing existing rules and regulations with international best procurement practices;

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to confirm, adopt and approve, as **WE** hereby confirm, adopt and approve the following:

1. Amendment of Section 27.5 of the IRR of RA 9184 to read:

In lieu of a bid security mentioned in Section 27.2 above, the bidder may submit a Bid Securing Declaration that is an undertaking which states, among others, that the bidder shall enter into contract with the procuring entity and furnish the required performance security within ten (10) calendar days, or less, as indicated in the Bidding Documents, from receipt of the Notice of Award, and committing to pay the corresponding fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein as required in the guidelines issued by the GPPB.

2. Insertion of a new Section 27.6 reflecting the provisions of the original Section 27.5 of the IRR of RA 9184, to wit:

27.6. In no case shall bid security or Bid Securing Declaration be returned later than the expiration of the bid validity period indicated in the Bidding Documents, unless it has been extended in accordance with Section 28.2 of the IRR.

3. GUIDELINES FOR THE USE OF BID SECURING DECLARATION AS AN ADDITIONAL FORM OF BID SECURITY, attached hereto as **Annex "A"**, and made an integral part hereof.

This resolution shall take effect immediately.

APPROVED this 27th day of January 2012 at Pasig City, Philippines

(Sgd.)

DEPARTMENT OF BUDGET AND
MANAGEMENT

NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY

DEPARTMENT OF EDUCATION

(Sgd.)

DEPARTMENT OF FINANCE

**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

(Sgd.)

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

(Sgd.)

**DEPARTMENT OF TRADE AND
INDUSTRY**

PRIVATE SECTOR REPRESENTATIVE

(Sgd.)

DEPARTMENT OF ENERGY

(Sgd.)

DEPARTMENT OF HEALTH

(Sgd.)

**DEPARTMENT OF NATIONAL
DEFENSE**

(Sgd.)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

(Sgd.)

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

Attested by:

(Sgd.)

DENNIS S. SANTIAGO
Board Secretary, GPPB
Executive Director, GPPB-TSO

GUIDELINES ON THE USE OF BID SECURING DECLARATION

1. SCOPE AND APPLICATION

These Guidelines shall govern the use of Bid Securing Declaration as an additional form of bid security under the Implementing Rules and Regulations (IRR) of Republic Act No. 9184, otherwise known as “The Government Procurement reform Act”.

These guidelines shall apply to all branches, constitutional commissions and offices, agencies, departments, bureaus, offices, and instrumentalities of the Government, including government-owned and/or controlled -corporations (“GOCCs”), government financial institutions (“GFIs”), state universities and colleges (“SUCs”), and local government units (“LGUs”).

2. GUIDING PRINCIPLES

In order to enhance competition and bidders’ participation, reduce transactional costs, and promote economy in procurement activities of the government, the use of a Bid Securing Declaration shall be an alternative to the existing forms of bid security under the IRR.

The bidder shall have the option to use a Bid Securing Declaration or any other bid security in the form and amount enumerated under Section 27.2 of the IRR.

3. DEFINITION

3.1. Bid Securing Declaration is an undertaking by a prospective bidder, committing to pay the corresponding fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein.

3.2. The Bid Securing Declaration shall comply with the standard format attached hereto as Annex “A” and shall be submitted to the procuring entity in the manner prescribed under Sections 25 and 27 of the IRR.

4. PERIOD OF EFFECTIVITY

4.1. The Bid Securing Declaration shall be valid for a reasonable period determined by the Head of the Procuring Entity concerned and indicated in the bidding documents, which in no case shall exceed one hundred twenty (120) calendar days from the date of the opening of bids, unless duly extended by the bidder upon the request of the Head of the Procuring Entity.

4.2. The Bid Securing Declaration shall automatically expire in the following instances:

- a) Upon expiration of the bid validity period, or any extension thereof pursuant to Section 28.2 of the IRR;
- b) When all bidders are declared ineligible or post-disqualified and, upon receipt of the notice therefor, either failed to timely file a request for reconsideration or filed a waiver to avail of said right;
- c) When the bidder declared as the Lowest Calculated and Responsive Bidder/Highest Rated and Responsive Bidder, has furnished the performance security and signed the contract.

5. GROUNDS FOR ENFORCEMENT OF BID SECURING DECLARATION

The Bid Securing Declaration shall be enforced when the bidder commits any of the following:

- a) Withdraws its bid during the period of bid validity required in the bidding documents; or
- b) Fails or refuses to accept the award and enter into contract or perform any and all acts necessary to the execution of the contract, in accordance with the bidding documents, after having been duly notified of the acceptance of its Bid during the period of bid validity.

6. PENALTIES

Commission of any of the acts mentioned in Section 5 of these Guidelines shall merit the following sanctions:

- a) Penalty of automatic blacklisting for two (2) years in all government procurement activities; and
- b) Payment of fine equivalent to the amount subject to the following rules:
 - (i) In case of multiple bidders, the difference between the evaluated bid prices of the bidder with the Lowest Calculated/Highest Rated Bid and the bidder with the next Lowest Calculated/Highest Rated Bid, and so on. However, as regards the bidder with the highest calculated/lowest rated bid, the amount shall be based on the difference between the evaluated bid price and the Approved Budget for the Contract.
 - (ii) In case of a single bidder, the difference between the evaluated bid price and the Approved Budget for the Contract.

7. BLACKLISTING PROCEDURE

Notwithstanding the provisions of the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants, the following provisions shall govern the blacklisting for purposes of this Guidelines:

- 7.1. The procuring entity shall immediately issue the blacklisting order upon determination of the grounds for enforcement of the Bid Securing Declaration provided in Section 5 hereof.
- 7.2. Only in cases where the notice of award is not in conformity with the Bidding Documents may the blacklisted bidder file a motion for reconsideration with the Head of the Procuring Entity within three (3) calendar days from receipt of the blacklisting order.
- 7.3. The blacklisted bidder shall only be delisted upon the expiration of the period of penalty and payment of the fine.

8. EFFECTIVITY

These Guidelines shall take effect immediately after publication in the Official Gazette or a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.

REPUBLIC OF THE PHILIPPINES)
CITY OF _____) S.S.
X-----X

BID-SECURING DECLARATION

Invitation to Bid/Request for Expression of Interest No. ¹: [Insert reference number]

To: [Insert name and address of the Procuring Entity]

I/We², the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Bid Security, which may be in the form of a Bid-Securing Declaration.
2. I/We accept that: (a) I/we will be automatically disqualified from bidding for any contract with any procuring entity for a period of two (2) years upon receipt of your Blacklisting Order; and, (b) I/we will pay the applicable fine provided under Section 6 of the Guidelines on the Use of Bid Securing Declaration³, if I/we have committed any of the following actions:
 - (i) Withdrawn my/our Bid during the period of bid validity required in the Bidding Documents; or
 - (ii) Fail or refuse to accept the award and enter into contract or perform any and all acts necessary to the execution of the Contract, in accordance with the Bidding Documents after having been notified of your acceptance of our Bid during the period of bid validity.
3. I/We understand that this Bid-Securing Declaration shall cease to be valid on the following circumstances:
 - (a) Upon expiration of the bid validity period, or any extension thereof pursuant to your request;
 - (b) I am/we are declared ineligible or post-disqualified upon receipt of your notice to such effect, and (i) I/we failed to timely file a request for reconsideration or (ii) I/we filed a waiver to avail of said right;
 - (c) I am/we are declared as the bidder with the Lowest Calculated and Responsive Bid/Highest Rated and Responsive Bid⁴, and I/we have furnished the performance security and signed the Contract.

¹ Select one and delete the other.

² Select one and delete the other. Adopt same instruction for similar terms throughout the document.

³ Issued by the GPPB through GPPB Resolution 03-2012 on 27 January 2012.

⁴ Select one and delete the other.

IN WITNESS WHEREOF, I/We have hereunto set my/our hand/s this ____ day of [month] [year] at [place of execution].

**[Insert NAME OF BIDDER'S
AUTHORIZED REPRESENTATIVE]
[Insert signatory's legal capacity]
Affiant**

SUBSCRIBED AND SWORN to before me this __ day of [month] [year] at [place of execution], Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her [insert type of government identification card used], with his/her photograph and signature appearing thereon, with no. _____ and his/her Community Tax Certificate No. _____ issued on _____ at _____.

Witness my hand and seal this ____ day of [month] [year].

NAME OF NOTARY PUBLIC

Serial No. of Commission _____

Notary Public for _____ until _____

Roll of Attorneys No. _____

PTR No. __, [date issued], [place issued]

IBP No. __, [date issued], [place issued]

Doc. No. ____

Page No. ____

Book No. ____

Series of ____.