

NPM No. 083-2016

15 November 2016

MS. MARIE GENELINE BANISA
COMMISSION ON AUDIT-CORDILLERA ADMINISTRATIVE REGION
 Baguio-La Trinidad-Bontoc Road,
 La Trinidad 2601, Benguet

Re: Bid Security

Dear Ms. Banisa:

This refers to your electronic mail inquiring whether it would be a violation of Section 27.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 and GPPB Resolution No. 03-2012¹ for a Procuring Entity (PE) to require the submission of two forms of bid security from its bidders, which include any of the forms under Sec. 27.2 above, and an additional Bid Securing Declaration (BSD).

At the outset, please note that Sec. 27.2 of the 2016 revised IRR of RA 9184, which became effective last 28 October 2016, now provides that:

Sec. 27.2. The bidder shall submit a Bid Securing Declaration, or any form of Bid Security, in an amount not less than the required percentage of the ABC in accordance with the following schedule:

Form of Bid Security	Amount of Bid Security (Not less than the required percentage of the ABC)
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. For biddings conducted by LGUs, the cashier's/manager's check may be issued by other banks certified by the BSP as authorized to issue such financial instrument. ^(a)	Two percent (2%)
b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: <i>Provided, however, That it shall be</i>	

¹ Dated 27 January 2012.

<p>confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.</p> <p>For biddings conducted by LGUs, bank draft/guarantee, or irrevocable letter of credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument. (a)</p>	
<p>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.</p>	<p>Five percent (5%)</p>

In view thereof, the option to choose which one (1) form of bid security to submit is solely that of the bidders, such that the PE can no longer limit the acceptable forms of bid security in its Bidding Documents as provided under GPPB Resolution No. 25-2013² and clarified in GPPB Circular No. 01-2014³.

Nonetheless, for procurement activities conducted prior to the effectivity of the 2016 revised IRR, including those ongoing procurement activities where the advertisement or invitation for bids was issued prior to such effectivity and the Procuring Entities continued to adopt the procurement procedures, rules, and regulations provided in the revised IRR of 2009, we wish to refer you to our previous opinion⁴ where we had the occasion to clarify that pursuant to the abovementioned Resolution and Circular, PEs are given the option to limit the acceptable forms of bid security in the Bidding Documents, one of which shall be the BSD as a mandatory form to be included, while the other form may be chosen from at least one (1) of the forms of bid security. On the other hand, the prospective bidder is given the choice to post just one form of bid security, that is, a BSD **OR** any other form of bid security indicated by the PE in the Bidding Documents.

To illustrate, the PE shall include BSD as one of the choices; the other form of bid security may be Cashier's Check (or Cash, Manager's Check, Bank Draft/Guarantee, Irrevocable Letter of Credit, Surety Bond, or combination of the identified forms). The prospective bidder shall post **ONLY ONE (1) FORM** of bid security, a BSD OR Cashier's Check as its bid security. Accordingly, the prospective bidder is required only to post one (1) form of bid security, in this example, it could either be a BSD **OR** Cashier's Check.

Thus, bidders are not required to post two (2) forms of bid security. And this is all the more true in the current 2016 revised IRR, where the PEs can no longer limit the acceptable forms of bid security into two. Ultimately, the bidder has the discretion and choice as to what form of bid security it shall post. Accordingly, it is a violation of the rules to require two forms of bid security from the bidders.

² Dated 30 August 2013.

³ Dated 23 May 2014.

⁴ NPM No. 021-2014 dated 17 June 2014.

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.

Very truly yours,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

DENNIS S. SANTIAGO
Executive Director *VMS*

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