

NPM No. 103-2016

15 November 2016

MR. JEREMY BAYAN
Jembayan.lguperez@gmail.com

Re: Withdrawal of Performance Security


Dear Mr. Bayan:

This refers to your electronic mail (e-mail)¹ requesting for guidance on whether a winning bidder who is found to have submitted fraudulent eligibility documents may be allowed to withdraw its Performance Security after the issuance of the Notice to Proceed (NTP) but prior to delivery of the subject matter of the contract.

A Performance Security is a guarantee that the winning bidder will faithfully perform its obligations under the contract in accordance with the Bidding Documents, it shall post a Performance Security prior to the signing of the contract.² Subject to the conditions of the contract, the procuring entity (PE) may only release the Performance Security to the winning bidder after the issuance of the Certificate of Final Acceptance of the project, subject to the following conditions:

- a) Procuring Entity has no claims filed against the contract awardee or the surety company;
- b) It has no claims for labor and materials filed against the contractor; and
- c) Other terms of the contract.

However, the PE must ensure that the Performance Security is replaced by a warranty covering the defects liability period in accordance with Section 62 of the 2016 IRR of RA 9184. Hence, upon submission of the Performance Security, and the subsequent execution of the contract and issuance of the NTP, the Performance Security may not be withdrawn by the winning bidder as it already operates to guarantee the existing contract between the contracting parties.

Accordingly, the winning bidder may not be allowed to withdraw its Performance Security after the issuance of the Notice to Proceed because it stands to guarantee the contract entered into by the procuring entity and the winning bidder. 

¹ August 18, 2016.

² Section 39.1 of the 2016 IRR of RA 9184.

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

Very truly yours,



DENNIS S. SANTIAGO
Executive Director 

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