

**GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE**

NPM No. 92-2012

23 July 2012

ENGR. JOSEPH V. ASCUTIA

President

JV ASCUTIA CONSTRUCTION CORPORATION (JVACC)

Unit 224, Cityland Pioneer Building,
Pioneer Street, Mandaluyong City

Re: Basis of Performance Security

Dear Engr. Ascutia:

We respond to your letter dated 13 July 2012 seeking our advice on the correct basis for Performance Security under Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

As represented, JVACC participated in the bidding of the National Housing Authority (NHA) for the construction of one (1) unit covered court and multipurpose center at Towerville Phase 6 Residence Site, Brgy. Gaya-gaya, City of San Jose del Monte, Bulacan, with an Approved Budget for the Contract (ABC) of Six Million Fifty Six Thousand Two Hundred Sixty Eight Pesos (Php6,056,268.00). During the bid opening on 12 July 2012, JVACC was initially declared eligible, and its financial bid was determined to be the lowest. However, the Bids and Awards Committee (BAC) disqualified JVACC on the ground that the latter's Performance Security was based on the total contract price of the project. The NHA-BAC insists that the basis of the Performance Security should be the ABC.

For your guidance, Section 39.2 of the IRR of RA 9184 is clear that the Performance Security, whether it is in the form of cash, cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit, surety bond callable upon demand, or any combination thereof, should be equal to the percentage of the total contract price. A similar provision on Performance Security appears under Clause 32.2 of the Instruction to Bidders (ITB) of the Philippine Bidding Documents (PBDs) for the Procurement of Infrastructure Projects¹. We wish to inform you that the total contract price is likewise the basis used for determining Performance Security under Section 39.1 of IRR Part A, and Clause 32.2 of the associated PBDs for the Procurement of Infrastructure Projects².

¹ 4th Edition issued on December 2010.

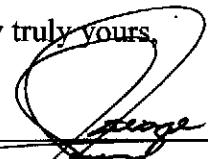
² 3rd Edition issued on October 2009.

It bears stressing that it is the amount of Bid Security that must be equal to the corresponding percentage of the ABC under Section 27.2 of the IRR while Performance Security is based on the total contract price as aforementioned.

Based on the foregoing, JVACC's position that the amount of Performance Security should be based on the total contract price, and not on the ABC, is correct and accurate.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented, and may not be applicable to 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 III

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