



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 106-2012

29 August 2012

ARCH. CELERINO S. CUERPO

President

E.M. CUERPO INC.

E.M. Cuerpo Inc. Building, Metropoli Drive
Metropoli Residenza, Bagumbayan
Quezon City

Re: Correct Basis of Performance Security

Dear Arch. Cuerpo:

We respond to your letter dated 10 August 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, E.M. Cuerpo Inc. (EM Cuerpo) participated in the bidding of the National Housing Project (NHA) for the construction of Ten (10) Five-Storey Medium Rise Buildings and Land Development at Camarin, Caloocan City. During the pre-bid conference on 1 August 2012, EM Cuerpo noted that the Performance Security mentioned under the NHA's Bid Data Sheet (BDS) Clause 32.2 and Bid Form was based on a percentage of the Approved Budget for the Contract (ABC). EM Cuerpo thus raised the question on whether the Performance Security should be based on a percentage of the Contract Price or the ABC to the NHA's Bids and Awards Committee (BAC). The BAC Chairman of the NHA manifested addressing this concern through a bid bulletin but failed to do so.

As we have recently opined, Section 39.2¹ of the IRR of RA 9184 is clear that the Performance Security, whether 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.² A similar provision appears under Clause 32.2 of the Instruction to Bidders (ITB) of the Philippine bidding Documents (PBDs) for the Procurement of Infrastructure Projects³.

Likewise, the total contract price is 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 Projects⁴.

¹"The performance security shall be in an amount equal to a percentage of the total contract price in accordance with the following schedule:..." ((Emphasis ours)

²Government Procurement Policy Board Non-Policy Matter 92-2012 dated 23 July 2012.

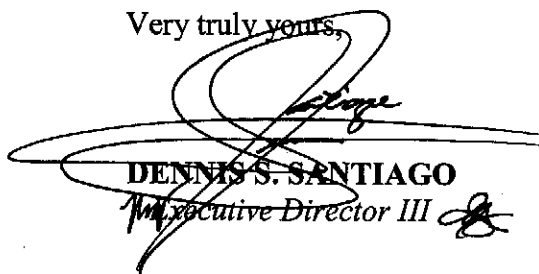
³4th Edition issued on December 2010.

⁴3rd Edition issued on October 2009.

We wish to stress that it is the amount of the Bid Security that must be equal to the corresponding percentage of the ABC under Section 27.2⁵ of the IRR, the Performance Security, on the other hand, is based on the total contract price as aforementioned. Hence, EM Cuerpo'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 that 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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⁵The bid security shall be in an amount equal to a percentage of the ABC in accordance with the flowing schedule:...(Emphasis ours)