



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

NPM No. 120-2013

26 December 2013

MR. REY B. CADENA

Director

ADMINISTRATIVE & FINANCIAL MANAGEMENT SERVICE

NATIONAL ANTI-POVERTY COMMISSION (NAPC)

2/F ATI Building, Elliptical Road, Quezon City

Re : Posting of Performance Security by Non-Governmental Organizations (NGOs)

Dear Director Cadena:

This refers to your letter dated 1 October 2013, inquiring whether NGOs selected to perform contracts acquired through Negotiated Procurement (NGO Participation) under Section 53.11 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184 are required to post performance security even if such contract does not involve an infrastructure project.

As represented, NAPC will be contracting civil society organizations as third party monitoring group in support of the Bottom-Up Budgeting Implementation. The monitoring group is composed of organized-citizens groups that will ensure performance accountability by tracking and accounting performance of the project implementors and key stakeholders based on agreed targets. It is in this context that NAPC is inquiring whether the NGOs engaged are required to post performance security after the signing of the Memorandum of Agreement (MOA).

We wish to point out that NGOs may participate in procurement activities of the government following the rules on competitive bidding or any applicable alternative method of procurement. However, as provided in Section 53.11 of the IRR of RA 9184, when an appropriation law or ordinance earmarks an amount to be specifically contracted out to NGOs, procuring entities may enter into a Memorandum of Agreement with an NGO, subject to the guidelines issued by the GPPB, *i.e.*, Guidelines on NGO Participation in Public Procurement¹ (Guidelines).

The Guidelines, particularly Sections 2 and 4.1 thereof, prescribes that selection limited to NGOs may be through Public Bidding or Negotiated Procurement, following the specific rules for each modality provided in Sections 5 and 6 of the Guidelines, respectively. *AK*

¹ Issued by the Government Procurement Policy Board (GPPB) through GPPB Resolution No. 12-2007 dated 29 June 2007.

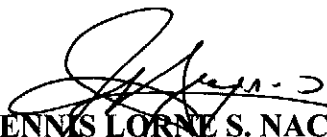
We wish to note that the Guidelines require the posting of performance security in accordance with Section 39 of the IRR of RA 9184 regardless of the modality adopted in selecting the NGO. In the case of Public Bidding, Section 5.4 of the Guidelines requires the procuring entity to observe the other stages of the bidding process specified in the IRR of RA 9184, among which is the contract award where the posting of performance security is required under Section 37.1.4 of the same IRR. In the case of Negotiated Procurement, Section 6.7 of the Guidelines requires the selected NGO to post a performance security upon the signing of the MOA.

It should be noted that the above-cited provisions do not distinguish the application of the requirement for performance security as to the category of procurement. Hence, consistent with the maxim *ubi lex non distinguit nec nos distinguere debemus*², the posting of performance security applies to all categories of procurement, *i.e.*, goods, infrastructure projects, and consulting services.

Based on the foregoing, we wish to clarify that regardless of the category of procurement for a contract where the NGO is engaged using Negotiated Procurement (NGO Participation) under Section 53.11 of the IRR of RA 9184 and Section 6 of the Guidelines, the selected NGO is required to post a performance security upon signing of the MOA.

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 situation presented, and may not be applicable to a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS LORNE S. NACARIO
Officer-in-Charge

//lsdl

² When the law does not distinguish, we must not distinguish.