



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



RD 982 403 913 ZZ



NPM No. 026-2018

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Re: Forfeiture of Performance Security -

Dear Atty. Manlangit-Santelices,

This refers to your electronic mail (email) requesting for clarification on whether or not a government agency may forfeit the entire amount of the posted performance bond in case of non-completion of the project and blacklisting with the GPPB although the projects are already ninety five percent (95%) and sixty-nine percent (69%) completed, respectively.

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) only render policy and non-policy opinions respectively, on issues purely relating to the interpretation and application of our procurement laws, rules and regulations.¹ It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions² under the law.

Forfeiture of Performance Security –

Section 39 of the 2016 revised Implementing Rules and Regulations³ (IRR) of Republic Act (RA) No. 9184⁴ requires the posting of performance security by the winning bidder prior to the signing of the contract to guarantee the full performance of its obligations provided in the contract. It is posted in favor of the Procuring Entity, and will be forfeited in the latter's favor in the event it is established that the winning bidder is in default in any of its obligations under the contract.⁵

In cases, however, where the contract value is reduced because part of the goods or services or part of the consulting services under the contract had already been *delivered* or

¹ NPM No. 150-2012 dated 11 December 2012.

² Quasi-judicial is defined as the term applied to the actions or discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature. (See Agpalo, Philippine Administrative Law 1999 Ed., p. 216 citing *Lupangco v. CA*, 160 SCRA 848, series of 1988.

³ Took effect on 28 October 2016

⁴ Took effect on 26 January 2003

⁵ Section 39.3 of the 2016 revised IRR of RA 9184

completed, and accepted by the government agency, the Procuring Entity shall allow a proportional reduction in the original performance security. However, this proportional reduction in value of performance security is allowed only when the contract allows for partial deliveries or performance.⁶

The same applies to infrastructure projects when partially completed works under the contract which are usable and accepted by the government agency, and the use of which, in the judgment of the implementing agency or the Procuring Entity, will not affect the structural integrity of the entire project, the said agency or Procuring Entity shall allow a proportional reduction in the original performance security.⁷

In all of these instances, the reductions must be more than ten percent (10%), and the aggregate of such reductions must not be more than fifty percent (50%) of the original performance security.⁸

Based on the foregoing, a government agency shall forfeit the entire performance security in case of non-completion of the project, and blacklist the bidder except in instances where partial delivery or performance is allowed. Thus, the reduction of value of the performance security to be forfeited, in the event it is established that the winning bidder is in default in any of its obligations under the contract, is dependent on whether or not partial delivery or performance is allowed in the Procurement of Goods and Services and Consulting Services; and, the partially completed works in Infrastructure Projects, which were accepted and usable, will not affect the structural integrity of the project.

We hope this opinion 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 you have further questions, please do not hesitate to contact us.

Verv trulv yours.____
(sgd.)

~~DENNIS S. SANTIAGO~~
Executive Director V *may*

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⁶ Generic Procurement Manual (GPM) Volume 2 – Manual of Procedures for the Procurement Goods and Services;
GPM Volume 4 – Manual of Procedures for the Procurement of Consulting Services

⁷ Generic Procurement Manual (GPM) Volume 3 – Manual of Procedures for the Procurement of Infrastructure Projects

⁸ Section 39.7 of the 2016 revised IRR of RA 9184