



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 083-2017

29 December 2017

ATTY. ALBERT D. PAWINGI
Chairperson, Bids and Awards Committee
PROVINCIAL LOCAL GOVERNMENT UNIT OF IFUGAO
3rd Floor PEO Building, Capitol Compound,
Lagawe, Ifugao

Re: Performance Security -

Dear Atty. Pawingi:

This refers to your letter seeking clarification on the correct interpretation of Section 40 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Government Procurement Reform Act. Particularly, you inquire whether the posting of Performance Security is mandatory and if the Bids and Awards Committee (BAC) may continue its bidding process although there is an issue raised by the winning bidder.

It is represented that in one of your infrastructure project procurement, the bidder filed a request for reconsideration that he be allowed to post a surety bond instead of cash, certified (cashier's or manager's) check or a bank guarantee as provided in the Bid Data Sheet of the bidding documents issued to the bidders. The Provincial Governor denied the request and insisted on the strict interpretation that Surety Bond is not allowed as it is not one of the acceptable forms of performance security in the bidding documents.

We wish to clarify that the posting of the performance security is a mandatory requirement. Section 39 of RA No. 9184 mandates that prior to the signing of contract, the winning bidder shall, as a measure to guarantee the faithful performance of and compliance with his obligations under the contract prepared in accordance with the Bidding Document, be required to post a performance security in such form and amount as specified in the Bidding Documents.

In the 2009 IRR, under Section 39.2, the Procuring Entity (PE) shall indicate in the Bidding Documents at least two (2) acceptable forms of performance security taken from the two (2) categories that bidders may opt to use; whereas in the 2016 IRR, the PE cannot anymore indicate and limit the acceptable forms of bid or performance securities in its bidding documents. The option as to what form to use is given to the winning bidder, and the allowable forms of performance security that the winning bidder may post are as follows: cash or cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit, or surety bond.

From the foregoing, if the procurement opportunity was advertised after the effectivity of the 2016 IRR, which was on October 28 2017, the surety bond posted by the winning bidder should be allowed and accepted, being one of the allowable forms of performance security, and he should not be disqualified for posting the same.

As to whether the procurement process can continue in the event that a request for reconsideration or protest is filed, we note that the procurement activities shall proceed, as the request for reconsideration shall not stay or delay the bidding process, but the protest should first be resolved before any award can be made, in the event that a protest is filed.

Lastly, Section 40 of the 2016 IRR shall not apply where the bidder was able to post the required performance security in any form, within the period stipulated in the IRR or in the Bidding Documents.

We hope that this opinion issued by the GPPB-TSO 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 there be other concerns, please do not hesitate to contact us.

(sgd.)

~~DENNIS S. SANTIAGO~~
Executive Director *VMM*

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