



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 006-2016

18 March 2016

[REDACTED]
[REDACTED]
[REDACTED]

Re: Acceptable Forms of Performance Security

Dear [REDACTED]

This refers to your electronic mail inquiring whether it is allowed to post a Performance Security in the form of a Security Bond issued by an accredited insurance company by the Insurance Commission of the Philippines.

It is represented that the Department of Health-Regional Office II required the posting of Performance Security in the form of cash or cashier's/manager's check, bank draft/guarantee or an irrevocable letter of credit issued by a Universal or Commercial Bank. Thus, the procuring entity disqualified your company when you posted a Surety Bond as your Performance Security. Hence, this request.

Section 39 of Republic Act (RA) No. 9184 mandates that prior to the signing of the 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 Documents, be required to post a Performance Security in such form and amount as specified in the Bidding Documents.

Previously, Section 39.2 of the revised Implementing Rules and Regulations (IRR) of RA 9184 vests upon the bidder the option to choose among any of the prescribed forms of performance security that it will post with the procuring entity. However, upon the issuance and effectivity of GPPB Resolution No. 25-2013¹, the procuring entities (PEs) have been granted the option to choose the forms of performance security and limit the same to two (2) forms of security that bidders may choose from. Section 39.2 has been amended, to wit:

39.2 The procuring entity shall indicate in the Bidding Documents at least two (2) acceptable forms of performance security taken from two (2) categories below, that bidders may opt to use, the amount of which shall be equal to a percentage of the total contract price in accordance with the following schedule:

...

Based on the foregoing provision, we wish to clarify that PEs have the right to indicate in the Bidding Documents at least two (2) acceptable forms of Performance Security

¹ Dated 30 July 2013.

from which the bidder may choose from. Thus, if the PE indicated in the bidding documents that only cash or cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit are the acceptable forms of Performance Security that its winning bidder may choose from, the latter may not post any other form of Performance Security, in this case a Surety Bond, outside of those Performance Security forms specifically identified by the procuring entity.

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 V

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