



**NPM No. 002-2026**

09 February 2026



**Re: Clarification on the Requirement of Performance Security for Lease Contracts**

Dear [REDACTED]

This refers to your request<sup>1</sup> for clarification on whether a lessor is required to post a performance security, in case the Procuring Entity opts to renew the contract of lease pursuant to the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 12009.

At the outset, it is clarified that Section 18.3.3 of the IRR of RA No. 12009, which requires the posting of a performance security by a "service provider," must be construed in harmony with the rules governing the applicable mode of procurement, as well as the other relevant provisions of the same IRR.

The renewal of regular and recurring services is recognized under Section 7.3 of RA No. 12009 and its IRR as one of the strategic procurement considerations. It is separate from the modes of procurement provided under Sections 26 to 37 of the same Act. While strategic considerations guide procurement planning decisions, the rules under the applicable mode of procurement govern the procurement process and its requirements.

In the present case, the transaction falls under Negotiated Procurement – Lease of Real Property and Venue, which is subject to a distinct set of rules under RA No. 12009 and its IRR, particularly Section 35.9 thereof. Relatedly, consistent with Circular No. 01-2025<sup>2</sup> which was issued by the Government Procurement Policy Board (GPPB), Procuring Entities shall continue to use guidelines and forms issued under RA No. 9184 and its Revised IRR until the necessary guidelines, forms, and requirements under the relevant provisions of RA No. 12009 and its IRR have been issued by the GPPB. Accordingly, Item IV(M) of the General Guidelines and Item V(9) of the Specific Guidelines for the Negotiated Procurement – Lease of Real Property and Venue under Annex "H"<sup>3</sup> of the 2016 Revised IRR of RA No. 9184 remain applicable.

<sup>1</sup> Received on 28 November 2025.

<sup>2</sup> Policy Guidelines on Section 113 (Transitory Provision) in Relation to Section 115 (Repealing Clause) of Republic Act (RA) No. 12009 and its Implementing Rules and Regulations.

<sup>3</sup> Consolidated Guidelines on Alternative Methods of Procurement.



Notably, neither Section 35.9 of the IRR of RA No. 12009 nor Item IV(M) of Annex "H" requires the posting of a performance security for the lease of real property and venue.

Considering the foregoing, the term "service provider" under Section 18.3.3 of the IRR of RA No. 12009 should not be interpreted to include a lessor engaged in the lease of real property and venue.

Nonetheless, while the governing rules on the lease of real property and venue do not require the posting of a performance security, the Procuring Entity is not precluded from incorporating appropriate contractual safeguards to protect its interests, consistent with applicable provisions on leases and obligations under the Civil Code of the Philippines.

In this connection, given that the lessor's fundamental obligation is to ensure the lessee's peaceful and uninterrupted possession of the property for the duration of the lease, the Procuring Entity may adopt reasonable contractual mechanisms to address risks that could prevent the lessor from fulfilling this obligation. These may include, among others, warranties on ownership and authority to lease, representations regarding the absence of encumbrances that may result in dispossession, and other remedies in case of breach.

Finally, please note that this opinion is issued for guidance purposes only and without prejudice to the determination of the appropriate authorities in the event of actual procurement controversies, which shall be resolved based on specific facts and in accordance with applicable laws, rules, and regulations.

We hope that we have sufficiently addressed the concerns raised.

Very truly yours,

(sgd.)

**ATTY. SOFIA C. YANTO-ABAD**  
Officer-in-Charge, GPPB-TSO//lrd5