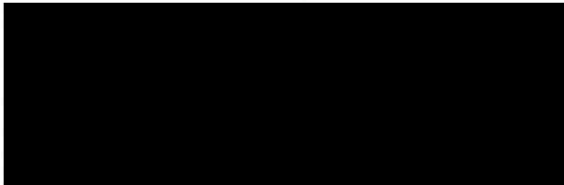


NPM No. 108-2015

2 November 2015



Re: Extension of Bid Security Validity Period

Dear :

This refers to your letter requesting clarification on the necessity of extending the validity period of a bid security if the bid opening was postponed for two weeks.

We wish to clarify that under Section 28 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR), bids and bid securities shall be valid for such reasonable period of time indicated in the Bidding Documents, but in no case shall the period exceed one hundred twenty (120) calendar days from the date of the opening of bids. The law and rules further provide that the duration of each undertaking shall take into account the time involved in the process of bid evaluation and award of contract.

Under Section 28.2 of the IRR of RA 9184, should it become necessary to extend the validity of the bids and bid securities beyond one hundred twenty (120) calendar days, the Procuring Entity (PE) concerned shall request in writing all those who submitted bids for such extension before the expiration date therefor. It entitles, however, the bidders the right to refuse to grant such extension without forfeiting their bid security.

In a previous opinion¹, we discussed the importance of bid validity and bid security validity. We stated that bid validity and bid security validity are material since they signify that the bidders' bid or offer still stands at the time the PE makes an award of contract. We explained that the validity of the bid or offer is vital because the Notice of Award (NOA) or the act of acceptance by the PE will be rendered nugatory and ineffectual when there is no longer an "offer" to accept because under the law on contracts, an offer must be duly accepted during its validity or prior to its revocation. Accordingly, a PE cannot award and enter into a contract with a winning bidder whose bid and bid security validity have already lapsed.

From the foregoing, it is required that the bid security, when submitted to the PE, shall be valid for such number of days indicated in the Bidding Documents and shall remain valid until the issuance of the NOA. In cases of rescheduled bid opening or any time

¹ NPM No. 018-2012, dated 2 February 2012.

extension of a procurement activity, *e.g.* post qualification, bidders are not obligated to automatically extend the validity period of their bids and bid securities, though they may initiate the extensions thereof on their own or *motu proprio*. Upon official request of the PE, for the purpose of ensuring that the bids or offers remain valid, the bidders may consider the extension of the validity of their bids and their bid securities. However, the bidders may opt not to grant such extension, without forfeiting their bid security, but may eventually lose their right to participate in that specific procurement.

All told, it is not necessary to extend the bid and bid security validity periods if the bid opening was postponed for two weeks, unless the PE requests in writing to extend such periods and the bidder still intends to continue its participation in that specific procurement. It cannot be overemphasized that the PE cannot award and enter into a contract with a winning bidder whose bid and bid security validity have already lapsed.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being 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 ^{11/14/13}