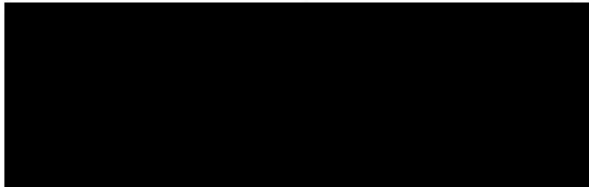


**NPM No. 169-2015**

29 December 2015



**Re: Performance Security**

Dear [REDACTED]

This refers to your letter requesting clarification on the amount of performance security to be posted by one of your winning bidders.

As represented, BCWD issued Notice of Award for its Bulk Water Supply Project Injection points 1 and 2, and required the winning bidder to post a ten percent (10%) performance security. Though the project only requires the winning bidder for the delivery of bulk water, an infrastructure component is necessary before the bidder can deliver the goods; thus, your requirement for a ten percent (10%) performance security. It was noticed in the Bidding Documents that only five percent (5%) performance security is required in the Checklist of Requirements, while ten percent (10%) performance security is indicated in the General Conditions of the Contract. Hence, your request for opinion on which between the five percent (5%) performance security for delivery of goods and the ten percent (10%) performance security for infrastructure projects shall be used.

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. Under Section 39.2<sup>1</sup> of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Procuring Entity (PE) shall indicate in the Bidding Documents at least two (2) acceptable forms of performance security in accordance with the form and amount indicated therein, from which the bidder may choose the form that it will opt to use.

Significantly, for cash, cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank, as acceptable forms of performance security under Section 39.2 of the IRR of RA 9184, the amount to be posted by the winning bidder will vary depending on the classification of procurement project. For

<sup>1</sup> As amended by GPPB Resolution No. 25-2013, dated 30 July 2013.

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goods and consulting services, the amount of performance security shall be equivalent to five percent (5%) of the total contract price; while for infrastructure projects, the percentage is ten percent (10%). Thus, the amount of performance security for these forms depends on whether the procurement project is goods, consulting services or infrastructure projects.


Based on your representation, it is not clear whether the project Bulk Water Supply Project Injection points 1 and 2 is a procurement of goods or infrastructure projects.. In case of projects involving mixed procurements, we wish to clarify, however, that the nature of the procurement, *i.e.*, goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract.<sup>2</sup> This means that if the project Bulk Water Supply Project Injections points 1 and 2 includes both goods and infrastructure component, BCWD should determine the nature of the project early on, *i.e.*, whether the project is categorized as goods or infrastructure project, based on the primary purpose of the contract. At any rate, if BCWD classified the project as goods procurement, the amount of performance security using the above-mentioned forms shall be five percent (5%) of the total contract price. On the other hand, if the procurement was classified as infrastructure project, then, the amount of performance security shall be ten percent (10%) of the total contract price.


We wish to clarify that the amount of performance security, if the form used is either cash, cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank, depends on the nature of procurement project as determined by the PE, that is, five percent (5%) of the total contract price if the nature of the project is either goods or consulting services, or ten percent (10%) of the total contract price if infrastructure projects.

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.

Very truly yours,

(sgd.)

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

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<sup>2</sup> Section 5(aa) of the revised IRR of RA 9184.