

[GPPB Resolution No. 15-2014, June 20, 2014]

APPROVING THE AMENDMENTS TO SECTIONS 5 AND 6 OF THE GUIDELINES ON THE USE OF BID SECURING DECLARATION

*Adopted: 20 June 2014
Date Filed: 13 February 2015*

WHEREAS, Section 63.1(b) of Republic Act (R.A.) No. 9184 and its Revised Implementing Rules and Regulations (IRR) authorize the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend, whenever necessary, the IRR;

WHEREAS, on 27 January 2012, the GPPB issued **GPPB Resolution No. 03-2012** dated 27 January 2012, which adopted the use of Bid Securing Declaration (BSD) as a form of Bid Security, in order to enhance competition and bidders' participation, reduce transactional costs, and promote economy in public procurement.

WHEREAS, under Section 3.1 of the Guidelines, BSD is an undertaking by a prospective bidder, committing to pay the corresponding fine and be suspended for a period of time from being disqualified to participate in any government procurement activity in the event it violates any of the conditions stated therein.

WHEREAS, under Section 5 of the Guidelines, BSD shall be enforced if the bidder commits any of the following acts:

1. Withdraws its bid during the period of bid validity required in the bidding documents; or
2. Fails or refuses to accept the award and enter into contract or perform any and all the act necessary to the execution of the contract, in accordance with the bidding documents, after having been duly notified of the acceptance of its Bid during the period of bid validity.

WHEREAS, the IRR of RA 9184 provides for other instances when a bid security may be forfeited, to wit:

1. Failure to enter into a joint venture in the event of a contract award, shall be ground for the forfeiture of the bid security (Sec. 23.1(b), IRR of RA 9184);
2. Failure to submit the post-qualification requirements on time or a finding against the veracity of such shall be ground for the forfeiture of the bid security and disqualify the bidder for award (Sec. 34.2, IRR of RA 9184);

3. Bidder refuses or is unable to submit the documents required under Section 37.1 of the IRR or to make good its bid by entering into a contract with the procuring entity or post the required Performance Security within the required period (Sec. 40.1, IRR of RA 9184);
4. When the bidder commits any of the following:
 - a. Submission of eligibility requirements containing false information or falsified documents;
 - b. Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening, or any other stage of the public bidding;
 - c. Allowing the use of one's name, or using the name of another for purposes of public bidding;
 - d. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid;
 - e. Refusal or failure to post the required performance security within the prescribed time;
 - f. Refusal to clarify or validate in writing its bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification;
 - g. Any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor;
 - h. All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons. (Sec. 69.1 and 69.2, IRR of RA 9184)

WHEREAS, Section 69.1(f) of the IRR of RA 9184 refers to the forfeiture of performance security as a result of the termination of contract due to the fault of the bidder;

WHEREAS, aside from the penalty of automatic blacklisting for two (2) years in all government procurement activities, violation of the Bid Securing Declaration shall merit imposition of penalty of a fine in accordance with Section 6(b) of the Guidelines, thus:

1. In case of multiple bidders, the difference between the evaluated bid prices of the bidder with the Lowest Calculated/Highest Rated Bid and the bidder with the next Lowest Calculated/Highest Rated Bid, and so on. However, as regards the bidder with the highest calculated/lowest rated bid, the amount shall be based on the difference between the evaluated bid price and the Approved Budget for the Contract;
2. In case of a single bidder, the difference between the evaluated bid price and the Approved Budget for the Contract.

WHEREAS, during the meeting between the Department of Public Works and Highways (DPWH) and GPPB-Technical Support Office (GPPB-TSO) held on 3 February 2014 regarding DPWH Department Order (D.O) No. 97, the Honorable Secretary Rogelio L. Singson raised his concerns on the efficacy of the BSD, particularly on its fine, ***where the difference between the bid prices is very trivial or small, or in case of a single bidder, where the difference between its bid and the ABC is zero.***

WHEREAS, in the meeting held on 13 June 2014, the Inter Agency Technical Working Group (IATWG) discussed the matter and recommended the following amendments to the Guidelines, to wit:

1. Incorporate the other grounds of forfeiture of bid security provided in the IRR of RA 9184 in Section 5 of the Guidelines;

2. Revise the computation of fine provided in Section 6(b) of the Guidelines, thus:

a. In case of multiple bidders:

i. Two Percent (2%) of the Approved Budget for the Contract (ABC) or the Difference between the evaluated bid prices of the bidder with the Lowest Calculated/Highest Rated Bid and the bidder with the next Lowest Calculated/Highest Rated Bid, and so on, whichever is HIGHER;

ii. As regards the bidder with the Highest Calculated/Lowest Rated Bid, the amount shall be Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the ABC, whichever is HIGHER;

b. In case of a single bidder:

Two Percent (2%) of the ABC or the Difference between the evaluated bid price and the Approved Budget for the Contract, whichever is HIGHER.

3. Include a provision relative to the period within which the bidder has to pay the fine under Section 6 (iii) of the Guidelines;

4. Incorporate the foregoing amendments in the Standard Format of Bid Securing Declaration.

WHEREAS, during the 4th Regular GPPB Meeting on 20 June 2014, the Board discussed the matter, and, after careful deliberation, favorably approved the recommendation of the IATWG. Moreover, violations committed prior to opening of financial envelope shall be meted with a fine equivalent to two percent (2%) of the ABC. The Board emphasized that the imposition of fine is without prejudice to other legal action the government may undertake against the erring bidder;

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers