



Republic of the Philippines  
Department of Finance  
**INSURANCE COMMISSION**  
1071 United Nations Avenue  
Manila



Legal Opinion No.	IO-2018-01
Date	January 5, 2018

**ENGR. NOEL R. DALENA**  
*Acting General Manager*  
**Metropolitan Cebu Water District**  
Lapu-Lapu – Magallanes Sts.  
Cebu City

**Subject:** Legal Opinion on the Proper Interpretation of Section 39.2 (c) Rule XI of the 2016 Implementing Rules and Regulations of Republic Act No. 9184 Pertaining to Performance Bonds.

---

**Dear Engr. Dalena:**

This refers to your request for opinion regarding the proper interpretation of Section 39.2 (c) Rule XI of the 2016 Implementing Rules and Regulations of Republic Act No. 9184 pertaining to Performance Bonds.

Specifically, you raised the following issue for this Commission's consideration:

*“Does the certification by the Insurance Commission need to be specific to every awarded project? Or will the generic certification already incorporated in the issued bond, that the insurance company is authorized by the Commission to issue securities, suffice?”*

### **Our Opinion**

Section 39.2 paragraph (c) of the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184<sup>1</sup> requires that the surety bond, which is callable on demand, must be duly certified by the Insurance Commission as issued by a surety or insurance company authorized to issue **such security**, referring to the specific surety bond issued for a particular project, *viz*:

---

<sup>1</sup> The Government Procurement Act

**Section 39.2.** The performance security shall be in an amount not less than the required percentage of the total contract price in accordance with the following schedule:

FORM OF PERFORMANCE SECURITY	AMOUNT OF PERFORMANCE SECURITY (NOT LESS THAN THE REQUIRED PERCENTAGE OF THE TOTAL CONTRACT PRICE)
xxx  c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission <b>as authorized to issue such security.</b>	xxx  Thirty percent (30%)

(Emphasis supplied.)

Therefore, since the surety bond is project specific, the certification coming from this Commission should likewise be project specific.

Similarly, the Government Procurement Policy Board issued NPM 017-2012 dated 2 February 2012 which addressed the issue on certifications issued by this Commission, viz:

"2012-02-02  
 NPM 017-2012  
 Requesting Entity: Innove Communications, Inc.  
 Issues Concern: Certification issued by the Insurance Commission

#### Details

Clarification as regards the prescribed format and the required information of the certification that should accompany a surety bond submitted as a bid or performance security provided in Sections 27 and 39.

With respect to the format of the certification, please be informed that since the authority to issue such certification belongs with the Insurance Commission, it has the prerogative to determine the format therefor.

As regards the content of the certification, please note that as discussed in a previous opinion and in compliance with Sections 27.2 (c) and 39.2 (c), the certification which must be submitted by the bidder together with the surety bond must (i) unequivocally state that the surety or insurance company is specifically authorized to issue surety bonds callable on demand, and (ii) must be issued by the Insurance Commission. Further, we wish to note that **since the surety bond required under Sections 27.2 (c) and 39.2 (c) is required to be project specific, the certification from the Insurance Commission must also be project specific.**"

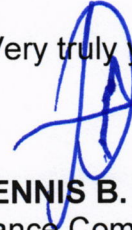
(Emphasis and underscoring supplied.)

In view thereof, certifications issued by this Commission on performance securities issued by surety or insurance companies in accordance with the 2016

Revised Implementing Rules and Regulations of Republic Act No. 9184 are project specific.

Please note that the opinion rendered by this Commission based solely on the particular facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in other cases whether for similar or dissimilar circumstances.

Very truly yours,



**DENNIS B. FUNA**  
Insurance Commissioner

