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

CN: AJA16-0061

Legal Opinion No.	:	LO-2018-02
Date	:	January 25, 2018

ENGR. JOSEFINO M. MELGAR, JR.
District Engineer
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
Mindoro Occidental District Engineering Office
Regional Office IV-B
Mamburao, Occidental Mindoro

<u>Subject</u>: **Request for Legal Opinion Regarding the Wordings of Performance Bond "Up to Final Acceptance of the Project"**

Dear Engr. Melgar:

This refers to your request for legal opinion regarding the interpretation on the words "up to final acceptance of the project" provided as the expiration date in the Performance Bond.

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

I. Whether or not the wordings "up to final acceptance of the project" provided as the expiration date in the Performance Bond is valid;

II. Whether or not in the event that the project is extended (with approved suspensions/time extensions), the contractor is required to post a new bond.

Our Opinion

I

On the first issue, this Commission answers in the affirmative.

Non-life insurance products, which include bonds, are usually issued for a period of one year. However, Section 39.5 of the 2016 Revised Implementing Rules and Regulations requires that Performance Bond shall remain valid until issuance by the procuring entity of the Final Certificate of Acceptance. In this regard, said bond is considered as a continuing bond.

Please take note of the provision in Section 179 of the Amended Insurance Code regarding continuing bond, which states that:

> "SEC. 179. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, except where the obligee has accepted the bond, in which case the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the surety: Provided, that if the contract of suretyship or bond is not accepted by, or filed with the obligee, the surety shall collect only a reasonable amount, not exceeding fifty percent (50%) of the premium due thereon as service fee plus the cost of stamps or other taxes imposed for the issuance of the contract or bond: Provided, however, That if the non- acceptance of the bond be due to the fault or negligence of the surety, no such service fee, stamps or taxes shall be collected.
>
> **In the case of a continuing bond, the obligor shall pay the subsequent annual premium as it falls due until the contract of suretyship is cancelled by the obligee or by the Commissioner or by a court of competent jurisdiction, as the case may be**."

The Insurance Code recognizes the validity of the bond even beyond one year. The term "up to final acceptance of the project" as the expiration date of the Performance Bond denotes that the bond is more than one year or may be extended to such period. Applying the above provision, the said bond is valid as long as the applicable premium is duly paid.

II

As to the second issue, this Commission answers in the negative.

In the event that a project is extended, the contractor need not post a new bond since the Performance Bond is valid until the issuance of certificate of final acceptance.

Nonetheless, it must be noted that the corresponding premium must be continuously paid until the certificate of final acceptance has been issued, otherwise the surety company has the right to demand for the cancellation of the said performance bond.

Please note that the opinion rendered by this Commission is 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