Legal Opinion No.:	**2021-05**
Date:	**02 March 2021**

ATTY. RAQUEL M. LADRILLANO
Chief of Office
Office on Halls of Justice
Office of the Court Administrator
SUPREME COURT OF THE PHILIPPINES
7th Floor Centennial Building,
Padre Faura Street,
Ermita, Manila

SUBJECT : Query on the period of validity of performance securities issued pursuant to Republic Act (R.A.) No. 9184, otherwise known as the "Government Procurement Reform Act"

Dear **Atty. Ladrillano:**

This pertains to your letter dated 19 November 2020 requesting for the Insurance Commission's assistance and legal opinion regarding the period of validity of performance securities which were issued pursuant to R.A. No. 9184, otherwise known as the "Government Procurement Reform Act". More specifically, your office seeks clarification as to the following:

(1) What is the validity of the policy if it states that it is valid until issuance of final acceptance or co-terminus with the final acceptance of the project by the Court? Will the same be for a certain period, i.e., one (1) year and will necessitate renewal if the project is still not accepted or completed after one (1) year?

(2) Will the policy expire if not renewed despite the indicated validity of until issuance of the final acceptance?

As stated in your letter, the Supreme Court requires, as part of the requirements for its infrastructure projects, the winning bidders/contractors to post performance

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security/bond which shall remain valid until the issuance of certificate of acceptance by the Court. Upon review of the policies issued, the validity thereof states either:

(a) "one (1) year validity from issuance"; or
(b) "until issuance of the final acceptance of the project"; or
(c) "co-terminus with the final acceptance."

While the Court presumes that the validity of the policy is until issuance of the final acceptance without the need of renewal, it was relayed by surety companies that despite the foregoing language, the policy is only valid for one (1) year and will need to be renewed if the project will exceed the one (1) year period, otherwise the policy will expire.

Upon careful consideration of the matters raised, hereunder are the Commission's findings.

OUR OPINION

I

<u>As to your first query, a bond that states that it is valid "until issuance of the final acceptance of the project" or "co-terminus with the final acceptance" remains valid until such acceptance, even if such period extends beyond one (1) year, provided that the applicable premium is duly paid.</u>

Section 39, Rule XI of the 2016 Revised Implementing Rules and Regulations of R.A. 9184 ("the IRR") requires the Performance Security or Performance Bond to **remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance**. The performance security may be released by the Procuring Entity after the issuance of the Certificate of Final Acceptance, subject to the following conditions:

(a) Procuring Entity has no claims filed against the contract awardee or the surety company;
(b) It has no claims for labor and materials filed against the contractor; and
(c) Other terms of the contract.

In this regard, the bond contemplated in the IRR is considered as a continuing bond, as discussed in Section 179 of the Insurance Code, as amended, to wit:

"**Section 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 nonacceptance 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."

While non-insurance products, including bonds, are typically issued for a period of one (1) year, it must be noted that the Insurance Code, as amended, recognizes the validity of bonds beyond one (1) year. The performance security contemplated in Section 39.4 of the IRR, which "shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance" is in the nature of a continuing bond. Applying Section 179 of the Insurance Code, as amended, such bond may be extended beyond a period of one (1) year or until the issuance of the final acceptance of the procuring entity, and shall remain valid during such period provided that the applicable premium is duly paid.

II

As to your second query, a bond will expire if the same is not extended despite the indicated validity being "until issuance of the final acceptance".

Please note, however, that bonds intended to cover a period of more than one (1) year need not be renewed but merely need to be extended, subject to the application of Section 179 of the Insurance Code, as amended, as well as Sections 3 and 4 of Insurance Commission (IC) Circular Letter (CL) No. 2018-47 or the "Amended Rules and Regulations on the Issuance of Bonds", to wit:

"**3. Renewals.** With respect to bond renewals or extension that are to run for more than one year, the premium to be charged shall be pro-rated for the entire duration of its extended term computed at the applicable rate per annum.

4. Continuing Bonds. For continuing bonds with an indefinite term, the annual premium at the applicable rate per annum shall be charged in full, and the same renewal premium shall be payable in advance for each renewal period of one year."

Hence, in order for the performance bond to remain valid, 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, in accordance with Section 64 of the Insurance Code, as amended, to wit:

"Section 64. No policy of insurance other than life shall be cancelled by the insurer except upon prior notice thereof to the insured, and no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following:

(a) **Nonpayment of premium**; x x x"

As required by Section 64 of the Insurance Code, as amended, a surety company must first issue a Notice of Cancellation to the principal (in this case, the contractor) before it may cancel the bond by reason of non-payment of premium. The surety company may likewise notify the obligee (in this case, the government) as a matter of business prudence.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

For your information and guidance.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner