



Legal Opinion	2023-12
Date:	02 May 2023

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Dear Atty. Ladrillano,

This refers to your letter dated 7 February 2023 received by this Commission on 30 March 2023, seeking legal opinion and clarification on the following matters:

1. What does the thirty percent (30%) performance bond cover? Is it the entire amount of the contract or the portion of the contract only?
2. If there are unfinished works prior the call for the forfeiture, will the performance bond cover only thirty (30%) of the unfinished work or thirty percent of the entire contract?
3. Should the claimable amount be the entire amount reflected in the policy of the performance bond?
4. What will be the basis of the computation of the claimable amount of the performance security? Is there a limit in the participation of the surety in the settlement amount?

After careful evaluation, the following are the Commission's answers to your queries:

- 1. What does the thirty percent (30%) performance bond cover? Is it the entire amount of the contract or the portion of the contract only?**

The thirty percent (30%) performance bond is the performance security which shall be an amount not less than the required percentage of the total contract price pursuant to Section 39 of the Implementing Rules and Regulations of Republic Act No. 9184. Hence, the said thirty percent (30%) is a portion of the contract amount and not the entire contract price. Said thirty percent (30%) is also the maximum liability of the surety company in case of default of the principal.

- 2. If there are unfinished works prior the call for the forfeiture, will the performance bond cover only thirty (30%) of the unfinished work or thirty percent of the entire contract?**

If there are unfinished works prior to the call for the forfeiture, the performance bond will cover the unfinished works pertaining to the

thirty percent (30%). To illustrate, if the total contract price is Three Million Pesos (Php3,000,000.00), the performance bond required to be posted is not less than 30% or One Million Pesos (Php1,000,000.00). The said Performance Security, given that the unfinished work is still 35%, the surety company will settle the unfinished works which is 35% of the One Million Pesos (Php1,000,000.00) or Three Hundred Fifty Thousand Pesos. Likewise, since the Performance Security amounted to Php1,373,163.35 and the unfinished works is at 46.31%, the surety company should settle the amount of Php635,911.95 which is 46.31% of the bondable amount of Php1,373,163.35.

3. Should the claimable amount be the entire amount reflected in the policy of the performance bond?

The claimable amount should only be the unfinished works prior to the call for forfeiture and not the entire amount reflected in the performance bond. Since the unfinished works is at 46.31%, the face amount of the bond which is Php1,373,163.35 shall be multiplied by the 46.31% to arrive at the settlement amount of Php635,911.95

4. What will be the basis of the computation of the claimable amount of the performance security? Is there a limit in the participation of the surety in the settlement amount?

The basis for the computation of the claimable amount of the performance security is the percentage of the unfinished works of the principal upon the forfeiture of the bond. The maximum limit of liability of the surety company shall in no case exceed the face amount of the bond.

Please note that the above 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.

For your information and guidance.

Thank you.

Very truly yours,



RANDY G. SERRANO

Deputy Insurance Commissioner
Legal Services Group

