



Republic of the Philippines  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
**CENTRAL OFFICE**  
Manila

097.7 DPWH  
09-03-2020

September 2, 2020

**DEPARTMENT MEMORANDUM** )

**CIRCULAR NO.** 76 )  
**Series of 2020** 09.03.20 )

**FOR/TO :** Senior Undersecretary  
Undersecretaries  
Assistant Secretaries  
Regional Directors  
District Engineers  
All BAC Chairpersons and Members  
Heads of BAC Secretariats  
This Department

For information and guidance of all concerned Bids and Awards Committees, BAC Secretariats and the respective Heads of Procuring Entities in the Central, Regional, and District Engineering Offices, attached is a copy of **Legal Opinion 2020-08** dated August 19, 2020, issued by **Insurance Commissioner Dennis B. Funa** with the subject: **"Effect of Inclusion of a Surety Company in the Negative List of the Government Procurement Policy Board"**.

Said Legal Opinion of the Insurance Commission may be downloaded from the **DPWH website**: <http://dpwhweb>. If an office cannot access the DPWH website, a hard copy may be obtained from the Records Management Section, HRAS, upon request.

For dissemination to all concerned.

**MARICHU A. PALAFOX, CESO III**  
Assistant Secretary for Support Services

Encl: Insurance Commission Legal Opinion 2020-08, August 19, 2020

12.1 MPOA/MVSG



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



**AUG 25 2020**  
By: Guamir 1947

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|--------------------|----------------|
| Legal Opinion No.: | 2020-08        |
| Date:              | 19 August 2020 |

**Ms. ARDELIZA R. MEDENILLA, MNSA, CESO I**  
Undersecretary for Support Services

and, **Ms. MA. VICTORIA S. GREGORIO**  
OIC-Director, Procurement Service

**Department of Public Works and Highways**  
Central Office  
Manila

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| Department of Public Works and Highways |                    |
| PROCUREMENT SERVICE                     |                    |
| Date: <u>AUG 26 2020</u>                | Time: <u>11:00</u> |
| Received by: <u>[Signature]</u>         |                    |
| Reference No.: <u>12-11-812-180-05</u>  |                    |

**SUBJECT: Effect of Inclusion of a Surety Company in the Negative list  
of the Government Procurement Policy Board (GPPB)**

Dear **Undersecretary Medenilla and Ms. Gregorio:**

This is to acknowledge receipt of your letter dated 10 February 2020, received by this Commission on 14 February 2020, contents of which are duly noted.

Pursuant to the Guidelines for the Establishment of Negative List of Surety and/or Insurance Companies<sup>1</sup>, the effect of Inclusion in the Negative List posted in the website of the Government Procurement Policy Board (GPPB) are the following:

1. It shall result in the **rejection** of the surety bonds issued by the suspended surety/insurance company submitted as bid, performance or warranty security in the relevant procurement activities of NGAs, GOCCs, GFIs, SUCs, and LGUs during the period of inclusion and suspension.
2. The **Bids and Awards Committee (BAC)** shall ensure that surety bonds issued as bid, performance or warranty security submitted **are not issued by surety companies included in the list**. Any bidder who submits a surety bond issued by a surety company in the Negative List shall be declared ineligible.
3. Considering that surety companies are subject to the jurisdiction and supervision of the Insurance Commission, the list **may** serve as basis for the pursuit of complaint/s filed before the Insurance Commission, if any.

The Insurance Commission (IC) is of the position that it is one of the primary responsibilities of the BAC of the procuring government agency, unit, corporation, or instrumentality (Procuring Entity) to ensure that its surety providers (Surety) are operating in

<sup>1</sup> In, Appendix 28 of the Implementing Rules and Regulations of Republic Act (R.A.) 9184, otherwise known as the "Government Procurement Act."



compliance with applicable laws and regulations of the Philippines. This includes the monitoring of publications such as the Negative List posted online by the GPPB. The Procuring Entity has the right to reject the security or bond issued by Surety should it be found in the GPPB's Negative List during the time it has been acquiring its services.

However, it should be noted that the Certifications we issue for Surety Bonds under R.A. 9184 are contingent upon the validity of the Certificate of Authority (CA) granted pursuant to the Amended Insurance Code and relevant guidelines, which include but are not limited to the minimum capitalization and networth requirements imposed by the IC. While the inclusion in the GPPB's Negative List may serve as basis to file a complaint or action for suspension of an insurer's license or CA, the IC must ensure that due process is observed before an insurer would be restricted from doing business. Hence, we posit that these mentioned bonds, and the certifications issued in relation thereto by the Suretyship Unit continue to be valid despite the temporary restrictions brought about by the negative listing of TRISCO last December 2019.

We would like to also note that a recent visit made to the GPPB website has shown that the Travellers Insurance Corporation has been removed from its negative listing<sup>2</sup>. Meanwhile, Centennial Guarantee Assurance Corporation which is still included in the Negative List has been issued a Servicing License with Servicing License No. 2019/91-R and is therefore restricted from conducting new business, except for:

- a. Accepting periodic premium payments from its policyholders, or
- b. Granting policy loans and paying cash surrender values of outstanding policies to its policyholders, or
- c. Reviving lapsed policies of its policyholders, and
- d. Such other related services.<sup>3</sup>

In view of the foregoing, we hope that we have sufficiently addressed your concern.

Thank you.

Very truly yours,

**DENNIS B. FUNA**  
Insurance Commissioner



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<sup>2</sup> Visited <https://www.gppb.gov.ph/negativelist.php>, on Monday, February 24, 2020 20:16:06 GMT +0800 (Philippine Standard Time).

<sup>3</sup> Pursuant to IC CL No. 2014-14, entitled "Definition and Licensing of "Servicing Insurance Companies."