



RESOLUTION NO. 15-2012

APPROVING THE GUIDELINES FOR THE ESTABLISHMENT OF NEGATIVE LIST OF SURETY AND/OR INSURANCE COMPANIES

WHEREAS, pursuant to Section 63 of RA 9184 and its IRR, it is the Government Procurement Policy Board's (GPPB) function, among others, to protect national interest in all matters affecting public procurement, having due regard to the country's regional and international obligations; and formulate and, amend, whenever necessary, the IRR and the corresponding standard forms for procurement;

WHEREAS, pursuant to Sections 27.2, 39.2, and 62.2.3.3 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, Surety Bond is one of the acceptable forms of bid, performance and warranty securities, provided it is callable upon demand and accompanied by an Insurance Commission Certificate stating that the surety and/or insurance company is authorized to issue such security;

WHEREAS, the GPPB recognizes the rising concern on the number of procuring entities experiencing difficulties in claiming proceeds from surety bonds submitted as bid, performance or warranty securities, resulting to procuring entities' clamour for the issuance of guidelines for the establishment of Negative List of surety and/or insurance companies;

WHEREAS, the proposal to come up with a system for accreditation of surety and/or insurance companies was taken up by the Inter-Agency Technical Working Group Meeting (IATWG) in its 4th Regular Meeting on 12 May 2011, with the IATWG noting the need to take into consideration the mandate and authority of the Insurance Commission (IC) to regulate and supervise the insurance industry;

WHEREAS, the GPPB made proper representations and worked in close coordination with the IC in crafting the proposed Guidelines;

WHEREAS, in a meeting held between the GPPB-TSO and the IC on 6 October 2011, the IC agreed to the establishment of negative list of surety and/or insurance companies in lieu of the originally proposed accreditation system because of its position that accreditation by another agency may be considered duplication of its mandate to regulate the business of insurance;

WHEREAS, the IC agreed to the creation of a Special Group consisting of IC and GPPB-TSO officials tasked with the formulation of the guidelines that would apply to all agencies;

WHEREAS, a series of coordination meetings between GPPB-TSO and the IC were held to discuss underlying issues in the formulation and promulgation of the Guidelines, which resulted to the submission by the GPPB-TSO of the first draft of the Guidelines to the Special Group for comments and suggestions;

WHEREAS, in its 8th Regular Meeting held on 15 June 2012, the IATWG agreed to recommend the approval of the Guidelines to the GPPB;

WHEREAS, on 20 June 2012 copies of the Guidelines were furnished to non-life insurance associations composed of the Philippine Association of Surety Underwriters (PHILASURER) and Philippine Insurers and Reinsurers Association (PIRA), as stakeholders, for their information and consideration;

WHEREAS, in its 6th Regular Meeting held on 29 June 2012, after careful deliberations and consideration of the recommendations of the IC and the official stand of identified stakeholders, the GPPB resolved to approve the proposed Guidelines;

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to confirm, adopt and approve, as **WE** hereby confirm, adopt and approve the following:

- 1) Issuance of the Guidelines for the Establishment of Negative List of Surety and/or Insurance Companies, attached hereto and made an integral part hereof as **Annex “A”**; and
- 2) Issuance of the prescribed forms of surety bonds issued as bid, performance, or warranty security of bidders in government procurement transactions.

This resolution shall take effect immediately.

APPROVED this 29th of June 2012 at Pasig City, Philippines

(Sgd.)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(Sgd.)

DEPARTMENT OF EDUCATION

(Sgd.)

DEPARTMENT OF ENERGY

(Sgd.)

DEPARTMENT OF FINANCE

(Sgd.)

DEPARTMENT OF HEALTH

(Sgd.)

**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

(Sgd.)

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

(Sgd.)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

**DEPARTMENT OF TRADE AND
INDUSTRY**

(Sgd.)

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

(Sgd.)

PRIVATE SECTOR REPRESENTATIVE

Attested by:

(Sgd.)

DENNIS S. SANTIAGO
Board Secretary, GPPB
Executive Director, GPPB-TSO



ANNEX “A”

GUIDELINES FOR THE ESTABLISHMENT OF NEGATIVE LIST OF SURETY AND/OR INSURANCE COMPANIES

1. POLICY STATEMENT

- 1.1 Pursuant to Sections 27.2, 39.2 and 62.2.3.3 of Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, surety bond is one of the acceptable forms of bid, performance, and warranty securities, provided it is callable upon demand and accompanied by an Insurance Commission Certificate stating that the surety and/or insurance company is authorized to issue such bond or security.
- 1.2 In view of the prevalence of instances when procuring entities are unable to claim on surety bonds submitted by bidders, there exists pressing need to protect procuring entities and ensure the reliability of surety bonds as an acceptable form of bid security.
- 1.3 The GPPB shall prepare, maintain, and update a Negative List based on the submitted names by different procuring entities, and shall be posted in the GPPB website, which shall include the name/s of the erring surety and/or insurance companies and the effectivity of their suspension.

2. PURPOSE

- 2.1 These Guidelines are formulated to provide the necessary steps and procedures on the establishment of a list of surety and/or insurance companies that have failed to honor their obligations on the surety bond they issued as bid, performance, and/or warranty securities of bidders participating in public procurement.
- 2.2 It may also serve as the first step and/or basis of government agencies in filing of complaints against erring surety and/or insurance companies with the Insurance Commission.

3. SCOPE AND APPLICATION

- 3.1 These Guidelines shall apply to procurement activities of all branches, constitutional commissions and offices, national government agencies (NGAs), departments, bureaus, offices, and other instrumentalities of the Government, including government-owned and/or controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs) requiring the submission of bid, performance, or warranty security.

4. DEFINITION OF TERMS

- 4.1. **Suretyship** is an agreement whereby a party called the surety company guarantees the performance by another party called the principal or obligor, *i.e.*, bidder, of an obligation or undertaking in favor of a third party called the obligee, *i.e.*, procuring entity. It includes official recognizances, stipulations, bonds or undertakings issued by any company by virtue of and under the provisions of Act No. 536, as amended by Act No. 2206.
- 4.2. **Surety Company** includes all individuals, partnerships, associations, or corporations, including government-owned or controlled corporations or entities, engaged as principals in the insurance or suretyship business, including insurance companies issuing surety bonds, and have an existing Certificate of Authority issued by the Insurance Commission.
- 4.3. **Surety Bond** refers to a bond issued by a surety company to guarantee the performance by the bidder of an obligation or undertaking in favor of the procuring entity, *i.e.*, bid security, performance security, or warranty security.
- 4.4. **Callable on Demand** refers to the surety company's absolute, primary, and direct responsibility and liability to the procuring entity for an obligation that is accessory or collateral to the valid principal obligation contracted by a bidder by virtue of the surety's undertaking to be bound solidarily with the bidder.
- 4.5. **Bid Security** refers to the guaranty, in the form and amount prescribed, that the successful bidder shall, within ten (10) calendar days or less, as indicated in the Instructions to Bidders, from receipt of the notice of award, enter into contract with the procuring entity and furnish the performance security required in Section 39 of the IRR, except when Section 37.1 of the IRR allows a longer period.
- 4.6. **Performance Security** refers to the guaranty posted prior to the signing of the contract for the faithful performance by the winning bidder of its obligations under the contract in accordance with the Bidding Documents in an amount equal to the percentage of the total contract price in accordance with the schedule provided in Section 39.2 of the IRR.
- 4.7. **Warranty Security** refers to the guaranty that the contractor shall perform his responsibilities as prescribed in Section 62.2.3.1(a) of the IRR against "Structural Defects" or "Structural Failures" for infrastructure projects.

5. GROUNDS FOR INCLUSION IN THE NEGATIVE LIST

The following are the grounds for the inclusion of a surety company in the Negative List:

- a) Refusal or failure of the surety company to honor the claim against the surety bond upon written demand of the procuring entity for whom the same was issued;
- b) Issuance by the surety company of an illegal, fraudulent, false, deceptive, or illegal surety bond to serve as bid, performance, or warranty security of the bidder participating in government procurement transactions; or
- c) A surety company determined by the Insurance Commission to be included in the list.

6. PROCEDURAL GUIDELINES FOR INCLUSION IN THE NEGATIVE LIST

6.1 Initiation

6.1.1 Once a bidder has been duly determined to have defaulted in the performance of its obligations as prescribed under Sections 27.1, 39.1 and 62.2.3.1 of the IRR, the head of the procuring entity (HOPE), upon recommendation of the Bids and Awards Committee (BAC) or the Implementing Unit (IU), shall forfeit the surety bond issued as bid, performance, or warranty security.

6.1.2 The procuring entity shall notify the bidder and the concerned surety company relative to the act/s committed by the bidder which would result to the forfeiture of the surety bond, and shall make a claim on the surety bond.

6.2 Verification

Upon denial of the claims on the surety bond or if the surety company committed any of the grounds enumerated under Section 5 above, the BAC/IU, shall, within a period of seven (7) calendar days, verify the existence of the aforementioned grounds and shall prepare and submit a Verified Report to the HOPE.

6.3 Show Cause Order

6.3.1 Upon receipt of the Verified Report and determination of the validity of the action, the HOPE shall issue a Show Cause Order to the surety company:

- a) stating the grounds for its issuance;
- b) requiring the surety/insurance company to show cause within seven (7) calendar days;
- c) informing the surety/insurance company of the effects of inclusion in the Negative List;
- d) providing a copy of the Verified Report; and
- e) providing other special instructions, when necessary.

6.3.2 Within a period of seven (7) calendar days from receipt of the Show Cause Order, the concerned surety company shall submit to the HOPE a Verified Position Paper stating why the company should not be included in the Negative List.

6.4 Decision

6.4.1 Upon receipt of the Verified Position Paper, the HOPE shall assess, review and decide the matter, based on the representations made and evidence submitted, within a non-extendible period of ten (10) calendar days.

6.4.2 If the surety company fails, either by inaction or by default, to show cause after the lapse of the seven (7) day period, the HOPE shall issue a decision to include the concerned surety company in the Negative List.

6.4.3 If the HOPE determines that the surety company committed any of the afore-stated grounds, it shall issue a decision to include surety company's in the Negative List. Otherwise, the HOPE shall dismiss the case. In either case, the decision of the HOPE shall clearly and distinctly state the facts, evidence and the law upon which it is based.

6.4.4 The HOPE may, at any time before receipt of the surety company's Verified Position Paper, withdraw the Show Cause Order if the claims on the surety bond has been settled by the surety company concerned.

6.5 Notice of Decision

The HOPE shall immediately serve a written notice of the Decision to the surety/insurance company, and upon receipt by the surety/insurance company thereof, furnish a copy of the Decision to the Insurance Commission and the GPPB, through its Technical Support Office (TSO), indicating the following:

- a) name of the surety companies;
- b) surety bond number;
- c) contract of suretyship;
- d) ground/s for its inclusion; and
- e) effects of inclusion.

6.6 Inclusion in the Negative List

6.6.1 Upon receipt of a copy of the Decision, the GPPB, through its TSO, shall include the name of the surety company in the Negative List and shall post the same at the GPPB website for a period of two (2) years, which may thereafter be extended to another period of two (2) years upon notice from the procuring entity that the surety/insurance company remains in default.

6.6.2 Upon inclusion in the Negative List, the GPPB, through its TSO, shall immediately notify the surety company of such status.

7. EFFECT OF INCLUSION IN THE NEGATIVE LIST

- 7.1 The inclusion in the Negative List 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.
- 7.2 The 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.
- 7.3 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.

8. DELISTING

The GPPB-TSO shall remove a surety company from the Negative List even before the expiration of the period upon the advice of the PE or by the IC in cases where the IC had amicably settled the matter or adjudicated the issue with finality, unless the surety or insurance company remains in default, and/or the PE has duly elevated the matter to a higher authority or court on appeal or certiorari.

9. AMENDMENTS

- 9.1 In the implementation of these guidelines, the GPPB may introduce modifications thereto through the amendment of its specific provisions as the need arises.
- 9.2 Any amendment to these guidelines shall be applicable to government projects after the effectivity of the said amendment.

10. EFFECTIVITY

These Guidelines shall take effect immediately after its publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.