



RESOLUTION NO. 14-2012

DECLARING SECTION 9(b)(ii) of DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) DEPARTMENT ORDER NO. 18-A VIOLATIVE OF ARTICLE IX, SECTION 31 OF REPUBLIC ACT NO. 9184 AND ITS REVISED IMPLEMENTING RULES AND REGULATIONS (IRR)

WHEREAS, Republic Act (RA) No. 9184, entitled “An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes,” took effect on 26 January 2003, while its revised Implementing Rules and Regulations (IRR) took effect on 2 September 2009;

WHEREAS, the Government Procurement Policy Board (GPPB), under Section 63 of RA 9184 and its IRR, is mandated to formulate and amend public procurement policies, rules and regulations, and amend the IRR, whenever necessary;

WHEREAS, DOLE has represented that it had a meeting with the Philippine Association of Detective and Protective Agency Operators (PADPAO) for the purpose of hearing the allegation of cutthroat competition among private security agencies that provide janitorial and security services to government agencies;

WHEREAS, DOLE has issued Department Order No. 18-A¹ dated 14 November 2011, Section 9(b)(ii) of which provides that in the Service Agreement between the principal and the contractor, the terms and conditions governing the contracting arrangement shall include the agreed amount of the services to be rendered and that, the standard administrative fee of not less than ten percent (10%) of the total contract cost shall be imposed. To further facilitate the proper computation of the benefits to security guards and janitors, DOLE also prepared a computation matrix attached to DOLE DO 18-A to serve as reference and guidance during the evaluation and selection of bidders;

WHEREAS, DOLE Undersecretary Rebecca C. Chato sent a letter dated 5 January 2012, requesting the GPPB to issue an advisory² enjoining all government agencies to ensure that the bidder with the Lowest Calculated and Responsive Bid (LCRB) complies with labor and social legislation, and to append DOLE DO 18-A to the advisory that will be disseminated to all government agencies;

WHEREAS, in the Joint Meeting of the GPPB and IATWG held on 27 January 2012, the members of the GPPB raised the concern that providing for the minimum administrative cost of ten percent (10%) does not guarantee the rightful payment of wages to the security guards and janitors, and may instead result to contractors earning more, while there is no actual security that the employees will be paid their rightful wages. On the other hand, the GPPB, in response to the DOLE request, issued Circular No. 01-2012 dated 27 January 2012 reminding Procuring Entities to ensure that winning bidders in government contracts where

¹ Rules Implementing Articles 106 to 109 of the Labor Code, as Amended.

² GPPB Circular 01-2012 dated 27 January 2012 was issued mandating government procuring entities to comply with existing labor laws and standards and social legislations. In addition, the matter subject of this Policy Opinion was discussed with Undersecretary Rebecca C. Chato of DOLE on 13 February 2012, and eventually calendared on several GPPB meetings until a DOLE representative attended the GPPB meeting on 1 June 2012.

engagement of labor is a necessary component, should comply with existing labor laws and standards and social legislations;

WHEREAS, representatives from GPPB-Technical Support Office (GPPB-TSO) have met with DOLE Undersecretary Rebecca C. Chato on 13 February 2012, relative to her request for the issuance of GPPB advisory on DOLE DO No. 18-A, and the impact of Section 9(b)(ii) relative to the setting of administrative fee of not less than ten percent (10%) on Section 31 of RA 9184 and its IRR, specifically on the prescription of having a lower limit or floor on the amount of the award;

WHEREAS, during the IATWG meeting held on 17 February 2012, GPPB-TSO was requested to reconcile Section 9(b)(ii) of DOLE DO No. 18-A with RA 9184;

WHEREAS, during the IATWG and GPPB meetings held on 13 April and 27 April 2012, respectively, the members were informed that the GPPB-TSO coordinated with representatives of DOLE but the latter has not yet presented its position on DOLE DO No. 18-A before the GPPB. It was reiterated in the meetings that fixing a minimum administrative fee of 10% under DOLE DO No. 18-A has the effect of establishing a floor price, which is prohibited under Section 31 of RA 9184 and its IRR;

WHEREAS, during the IATWG meeting held on 13 May 2012, it was recommended that GPPB shall inquire with DOLE whether it can present its position relative to the validity of DOLE DO No. 18-A during the scheduled GPPB meeting on 1 June 2012; otherwise, the members will be constrained to act according to its mandate;

WHEREAS, during the GPPB meeting held on 1 June 2012, Atty. Romeo Montefalco from the Bureau of Labor Relations presented DOLE's official position on the validity of DOLE DO No. 18-A and maintained that the same is a valid issuance and not contrary to RA 9184. However, the GPPB maintained a contrary position and agreed to issue a Policy Matter Opinion and a Board Resolution declaring that it could not append DOLE DO No. 18-A to the advisory that will be disseminated to all government agencies as Section 9(b)(ii) of DOLE DO No. 18-A is contrary to Section 31 of RA 9184 and its IRR.

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, affirm, and approve, as **WE** hereby confirm, affirm, and approve, the issuance of a Policy Matter Opinion expressing the position that the GPPB could not support the dissemination of DOLE DO No. 18-A in its entirety as its Section 9(b)(ii) is violative of Article IX, Section 31 of RA 9184 and its IRR.

This resolution shall take effect immediately.

APPROVED this 1st day 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

DEPARTMENT OF HEALTH

(Sgd.)

DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT

(Sgd.)

DEPARTMENT OF NATIONAL
DEFENSE

(Sgd.)

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