

NPM No. 089-2016

15 November 2016

MS. CECILE B. GUTIERREZ

Deputy Executive Director for Management Services

Chairperson, Bids and Awards Committee

PHILIPPINE COMMISSION ON WOMEN (PCW)

1145 J. P. Laurel St.,


San Miguel, Manila 1005

**Re: Department of Labor and Employment
(DOLE) Department Order (DO) No. 150-16**

Dear Deputy Executive Director Gutierrez:

This refers to your letter seeking our opinion on whether the GPPB ruling contained in its Resolution Nos. 14-2012 and 26-2013 on the administrative cost for security services contract is still valid, considering that the latest DOLE Order increased further the administrative cost for security services from 10% of the total contract price per DOLE DO No. 18-A¹ to 20% of the total contract price per DOLE DO No. 150-16. Corollarily, you are also inquiring on whether the BAC shall consider bids from interested bidders where the administrative cost is lower than what the DOLE Order requires.

In your letter, you referred to Section 4(b) of DOLE DO No. 150-16, dated 9 February 2016, entitled *Revised Guidelines Governing the Employment and Working Conditions of Security Guards and other Private Security Personnel in the Private Security Industry*, which requires that the Service Agreement shall stipulate, among others, the place of work and terms and conditions governing the contractual arrangement which shall include the agreed amount of the security services to be rendered and the **standard administrative fee of not less than twenty percent (20%) of the total contract cost.**

We note that the minimum administrative fee of 20% of the total contract cost for Service Agreement for security services being imposed by DOLE DO No. 150-16 is similar to the provision of Section 9(b)(ii) of DOLE DO No. 18-A requiring a minimum administrative fee of 10% of the total contract cost for all Service Agreements. In relation to this, the GPPB, through Resolution No. 14-2012 dated 1 June 2012, has declared Section 9(b)(ii) of DOLE DO No. 18-A to be violative of Article IX, Section 31² of Republic Act (RA) No. 9184 and its IRR. 

¹ Issued on 14 November 2011.

² **Section 31. Ceiling for Bid Prices.** – The ABC shall be the upper limit or ceiling for the Bid Prices. Bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. **There shall be no lower limit to the amount of the award.**

At this juncture, we wish to inform you that the position of the GPPB, as contained in its Resolution No. 14-2012, was reiterated through Resolution No. 14-2015 and Circular No. 04-2015, both dated 30 April 2015, and is therefore still valid and existing.

In Policy Matter (PM) Opinion Nos. 03-2012³ and 02-2013⁴, the position of the GPPB relative to the imposition of minimum administrative fee in the Service Agreement was explained, thus:

Considering that the computation for the cost of a service contract/agreement involves factors, the respective amounts of which are set by law, such as those items constituting Reimbursable Costs under Annex "A" of DOLE DO 18-A, requiring servicing agencies to adopt an administrative fee of at least 10% of the total contract cost effectively prohibits them from offering bids lower than the sum of the Total Reimbursable Costs and the 10% administrative cost.

This scenario results in the imposition of floor bid prices, which clearly runs counter to the pronouncement in Section 31 of RA 9184 and its revised IRR that "[t]here shall be no lower limit to the amount of award."

The rule prohibiting the imposition of lower limit to the amount of award, being mandated by Section 31 of RA 9184 and its revised IRR, has been previously upheld by the Supreme Court in the case of *Philippine Sports Commission, et. al. v. Dear John Services, Inc.*⁵. In this case, the High Tribunal declared invalid the provision in the "Instruction to Bidders" that the bid price should not be less than 60% of the Approved Agency Estimate (AAE) in order to ensure compliance with the minimum wage, 13th month pay, state insurance and other benefits imposed by statutes, and to guarantee efficient and effective performance by the winning bidder in the procurement of security guards, using as reference, Section 25⁶ of Executive Order No. 40 and its IRR, which likewise prohibit the BAC from imposing a minimum amount to be offered in the bid.

Similar to the 10% administrative fee imposed under Section 9(b)(ii) of DOLE DO No. 18-A, the 20% administrative fee provided for under Section 4 of DOLE DO No. 150-16 is also a percentage imposition that has for its effect the fixing of a floor price on Service Agreements. In this regard and following the position of the GPPB as stated and explained in the above-mentioned issuances, as well as the case of *Philippine Sports Commission, et. al. v. Dear John Services, Inc.*⁷, we are of the opinion that Section 4 of DOLE DO No. 150-16, insofar as it imposes a minimum administrative fee of 20% of the total contract cost for Service Agreement for security services, likewise runs counter to the provision of Section 31 of RA 9184 and its IRR.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented,

³ Dated 30 November 2012.

⁴ Dated 11 April 2014.

⁵ G.R. No. 183260 dated 4 July 2012.

⁶ Section 25. Ceiling for Bid Price. The approved budget for the contract shall be the upper limit or ceiling for the bid price. Bid prices which exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be no lower limit to the amount of the award. For this purpose, the approved budget for the contract shall be that approved by the head of the agency.

⁷ G.R. No. 183260 dated 4 July 2012.

and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

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