NPM No. 120-2016

6 December 2016

ATTY. DENMARK M. RILLERA
Attorney II
LAND TRANSPORTATION OFFICE (LTO) – REGION I
Aguila Road, San Fernando, La Union 2500

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

Dear Atty. Rillera:

This refers to your letter seeking clarification on the application of the provisions 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*, particularly Section 4(b) thereof, which provides:

> "**Section 4. Service Agreements.** – The SSC/PSA and/or the principal shall produce or submit the original copy of the Service Agreement when directed to do so by the Regional Director or his/her duly authorized representative. The Service Agreement must conform to the DOLE Standard Computation and Standard Service Agreement, as provided for under this Guidelines. The Service Agreement shall stipulate, among others:
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> x x x
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> b. The place of work and terms and conditions governing the contracting 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***; (Emphasis ours)
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> x x x."

As represented, you intend to procure security services for CY 2017. Hence, this request for clarification on the application of Section 4(b) of DOLE DO No. 150-16 to your procurement project.

We note that the quoted provision imposes a minimum administrative fee of 20% of the total contract cost for Service Agreement for security services. Such imposition is similar

to the provision of Section 9(b)(ii) of DOLE DO No. 18-A[1] requiring a minimum administrative fee of 10% of the total contract cost for all Service Agreements. In relation to this, we wish to clarify that the GPPB, through Resolution No. 14-2012 dated 1 June 2012, has determined Section 9(b)(ii) of DOLE DO No. 18-A to be violative of Article IX, Section 31[2] of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR). This position of the GPPB was reiterated through Resolution No. 14-2015 and Circular No. 04-2015, both dated 30 April 2015.

In Policy Matter (PM) Opinion Nos. 03-2012[3] and 02-2013[4], 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.
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> 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. vs. 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 25[6] 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 rate 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 various issuances, as well as the case of *Philippine Sports Commission,*

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[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.***

[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.

et. al. vs. 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, 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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[7] G.R. No. 183260 dated 4 July 2012.