

NPM No. 29-2013

27 March 2013

ENGR. ROGELIO M. AMBA
Chairman, Bids and Awards Committee (BAC)
BUKIDNON STATE UNIVERSITY (BSU)
Malaybalay City, Bukidnon, 8700

**Re: Department of Labor and Employment (DOLE) Department Order (DO)
No. 18-A**

Dear Engr. Amba:

This is in response to your letter dated 8 October 2012, seeking our advice on the following concerns involving DOLE DO No. 18-A¹ in relation to Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR):

1. What items should be included in the minimum cost distribution formula?
2. Whether the BAC can disqualify a bidder for failing to present proof of its compliance to Section 14² of DOLE DO No. 18-A considering that it was not included in the Instruction to Bidders (ITB) and no Bid Bulletin was issued; and
3. Whether a private security agency participating in government procurement may be required to register under Section 14 of DOLE DO No. 18-A, even if its registration under Section 17³ of DOLE DO No. 18-02 has not yet expired.

Minimum Cost Distribution Formula

As regards your first query, we advise that you inquire with the Security Agencies and Group Supervision Division (SAGSD) of the Philippine National Police (PNP) as it is

¹ Series of 2011 issued on 14 November 2011.

² **Mandatory Registration and Registry of Legitimate Contractors.** Consistent with the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor to protect the rights of workers, it shall be mandatory for all persons or entities, including cooperatives, acting as contractors, to register with the Regional Office of the Department of Labor (DOLE) where it principally operates.

Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

Accordingly, the registration system governing contracting arrangements and implemented by the Regional Offices of the DOLE is hereby established, with the Bureau of Working Conditions (BWC) as the central registry.

³ **Renewal of registration of contractors or subcontractors.** All registered contractors or subcontractors may apply for renewal of registration every three years. For this purpose, the Tripartite Industrial Peace Council (TIPC) as created under Executive Order No. 49, shall serve as the oversight committee to verify and monitor the following:

- (a) Engaging in allowable contracting activities; and
- (b) Compliance with administrative reporting requirements.

the appropriate agency that can assist you in clarifying the components required in computing the minimum cost distribution formula, as provided in the IRR of RA 5487⁴.

Compliance with Section 14 of DOLE DO No. 18-A

RA 9184 and its IRR mandate that all bidders interested to participate in government procurement should comply with existing labor laws and standards. Section 25 of the IRR of RA 9184 supports the enforcement of labor laws and social legislation by requiring bidders to submit a sworn statement, which includes among others, a statement that they comply with labor laws and standards.⁵

Except those that are in direct contravention of RA 9184 and its IRR, bidders are expected to comply with existing labor laws and standards as these laws are deemed incorporated in the offer, promise and responsibilities of the bidder under procurement laws, rules, and regulations. Thus, there is no need for Procuring Entities to identify, name, and enumerate specific labor laws and standards, such as DOLE DO No. 18-A, since compliance with this issuance is expected among participating bidders in government procurement. It must be stressed, however, that the BAC shall ascertain, verify and validate during post-qualification that the bidder is indeed compliant with labor laws and standards.

DOLE Registration Requirement

Anent your last query, we regret that we are not in a position to render an opinion on the registration requirements of the DOLE under Section 14 of DOLE DO No. 18-A and Section 17 of DOLE DO No. 18-02. For further clarification on this subject, we suggest that you directly seek the opinion of DOLE as it is the appropriate government agency with the authority to make determinations and/or clarifications on the matter.

Summary

In view of the foregoing, we wish to clarify the following:

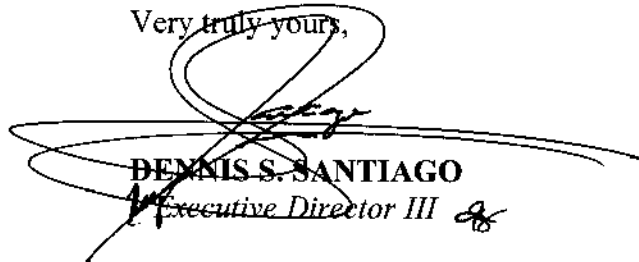
1. BSU is advised to seek guidance from the SAGSD in clarifying the components of the minimum cost distribution formula;
2. Except for laws that are contrary to RA 9184 and its IRR, the compliance of participating bidders with all existing labor laws and standards such as DOLE DO No. 18-A is presumed and expected under RA 9184 and its IRR; and
3. BSU should seek the advice of the DOLE on the difference in the registration requirements under Section 14 of DOLE DO No. 18-A series of 2011, and Section 17 of DOLE DO No. 18-02 series of 2002.

⁴ An Act Governing the Organization and Management of Private Security Agencies, Company Guard Forces and Government Security Forces, as amended.

⁵ Section 2.0 of Circular 01-2012 dated 3 August 2012.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

//LSD3/11/17



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BIDS AND AWARDS COMMITTEE

October 8, 2012

Legal and Secretariat Division
Government Procurement Policy Board (GPPB)
Unit 2506, Raffles Corporate Center, F. Ortigas Jr. Road,
Ortigas Center, Pasig City 1605

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Sir/Madam:

In view of our evaluation of the result of the bidding of the Procurement of Security Services, may we be clarified of some issues that is vital to the decision that we will soon make. Below are our queries:

Query No. 1. Referring to DOLE Department Order 18-A, Annex "A" which is herein attached, and to Section 3.3 and 4.0 of GPPB Circular No. 02-2006 quoted below,

"3.3 Section 19, Rule IV

"Compensation, Social Benefits and Mandated Taxes. The employer Private Security/Training/Detective Agency, Company Guard Force, Government Guard Unit shall ensure the compensation of the following benefits and taxes due their respective security personnel as required by law:

a. Guard salaries and benefits-

- 1) salary and wage prescribed in the minimum wage law;
- 2) mandated health and medical but limited to annual physical examination;
- 3) mandated insurance benefits;
- 4) mandated Pag-ibig benefits;
- 5) mandated separation and retirement pay benefits; and other mandated by law.

b. Mandated taxes-

- 1) value added tax; and
- 2) other taxes as may be mandated thereafter.

Relative thereto, no watchman security guard or private detective shall be paid a salary compensation and social benefits less than that is prescribed by existing laws, rules and regulations including those that may be promulgated relative thereto. The amount prescribed therein shall be earmarked and set aside for the purpose aforesated; thus the same shall hereafter be segregated from the monies received by the agency from its clients as an amount reserved for the remuneration of the guard or detective".

4.0 *In view of the foregoing amendments, all private security agencies participating in the bidding for government contracts may offer different bid prices without being charged of cut-throat competition, in accordance with the Rules for the Procurement of Goods under Republic Act No. 9184 (R.A. 9184); provided further that they do not go below the standard salaries and benefits for the guards and the mandated taxes in the minimum cost distribution formula."*



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It can be noticed that in Annex "A" of DOLE Department Order No. 18-A, it did not include "mandated health and medical but limited to annual physical examination". Our query is, What items should be included in the minimum cost distribution formula?

- Query No. 2 (Still referring to the Bidding of Security Services) May the Bids and Awards Committee disqualify a bidder for failing to present proof of its compliance of Section 14 of DOLE Department Order no. 18-A even if the said document (Registration Certification) was not included in the Instruction to Bidders (ITB) nor was there any Bid Bulletin issued? However, it was stated during the Pre-bidding Conference that the bidders must comply with all existing laws.
- Query No. 3 Is a private Security Agency participating in the government bidding required to register under Section 14 of DOLE Dept. Order no 18-A even if its registration under Section 17 of DOLE Dept. Order no. 18-02 series of 2002 has not yet expired?

Thank you in anticipation of your prompt reply to the above queries.

Very truly yours,

Engr.  M. AMBA
BAC Chairman

**STANDARD COMPUTATION
(For Skilled or Unskilled Workers)**

		Daily Rate	
		Day Shift	Night Shift
Daily Basic Salary Rate			
Number of Days per Month			
REIMBURSABLE COSTS:			
(A) Payable Directly to Servicemen			
a. Basic Salary – at daily rate for the equivalent of No. of days per month			
b. Night Differential Premium Pay – 10% of basic salary			
c. Emergency cost of living allowance			
d. 13 th month pay – 1/12 of basic salary			
e. Service Incentive Leave Pay – 5 days per year at basic salary rate			
	Subtotal A		
	Subtotal B		
(B) Payable to the government Employee Share of:			
a. Social Security Premiums			
b. Philhealth Premiums			
c. ECC Insurance Premiums			
d. Pag-Ibig Fund Contribution			
	Subtotal C		
TOTAL REIMBURSABLE COSTS – B+C			
ADMINISTRATIVE COST 10%			
CONTRACT / BILLING RATE – per month			
CONTRACT / BILLING RATE – per day			
CONTRACT / BILLING RATE - per hour			

- ABOVE RATES ARE EXCLUSIVE OF VALUE ADDED TAX
- UNWORKED REGULAR HOLIDAYS WILL BE BILLED AT ABOVE RATE FOR 8 HOURS REGULAR WORK DAY AS AND WHEN SUCH HOLIDAY DO OCCUR