

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**Technical Support Office**

*Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City*  
*Telefax Nos. (02) 900-6741 to 44*

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**NPM No. 148-2004**

December 7, 2004

**MS. LETICIA O. CLEMENTE**  
City Budget Officer  
Chairperson Bids and Awards Committee  
Baguio City

**Re : Submission and Acceptance of Bids Lower than the Philippine Association of Detective and Protective Agency Operators Inc. ("PADPAO") Rate**

Dear Ms. Clemente:

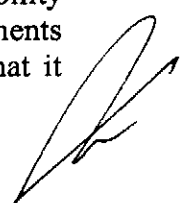
This refers to your letter dated September 22, 2004, which we received through facsimile on September 29, 2004, addressed to the undersigned, requesting for clarification on Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A).

The specific issue for resolution is as follows:

Whether or not the city Government of Baguio should only accept bids that follow the prescribed rates of the Philippine Association of Detective and Protective Agency Operators Inc. ("PADPAO") in its procurement of security services.

**Technical Requirement During Bid Submission**

In the procurement of goods, the new procurement law enumerates the basic documentary requirements that must be submitted by a bidder for purposes of the eligibility checking, including the technical and financial bid opening. The enumerated requirements are not exclusive since the procuring entity may still require additional documents that it deems necessary for the type and nature of the procurement at hand.



As regards the procurement of security services, which is considered as goods procurement under our jurisdiction, the submission of a certificate of compliance with labor laws and standards<sup>1</sup> is not only a technical bid requirement but is also a fundamental condition for the bidder to be declared as technically complying. Witness the particular provision, to wit:

A. For the procurement of goods:

1. The Bid Security as to form, amount and validity period;

xxx    xxx    xxx

8. Certificate from the bidder under oath of its compliance with existing labor laws and standards, in the case of procurement of services; and

xxx    xxx    xxx

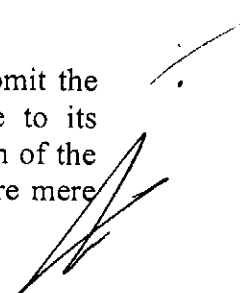
Accordingly, Republic Act No. 5487 (R.A. 5487), otherwise known as the "Private Security Agency Law," (PSAL) by its very nature can be aptly considered as a labor regulation as it governs the relationship between the private security agencies and their security guards, an association akin to the concept of employer-employee relationship contemplated under the Labor Code of the Philippines. Stressing the obligatory force of R.A. 5487 as a labor regulation, Wage Order No. RB-CAR-09 for Baguio City was issued to guide security agencies as to the appropriate rates for security services.

Having discussed the foregoing, security agencies should observe the provisions of R.A. 5487 and the Wage Order by giving the right amount of compensation due to the security guards, and to ultimately comply with the technical requirement of submitting a certificate of compliance with labor laws and standards. In accordance therewith, the procuring entity may also require from the bidders the submission of a salary schedule of their respective guards to ensure their compliance with the mandate of the law by giving the guards their due.

Henceforth, a certification to this effect shall form part of the technical bid requirements that the procuring entity shall require the bidders to submit.

### **Effect of Non-Submission of the Technical Requirement**

Insofar as R.A. 9184 and its IRR-A is concerned, the bidder's failure to submit the certificate of compliance with existing labor laws and standards shall give rise to its disqualification to further participate in the procurement at hand. The disqualification of the bidder is based on the application of the non-discretionary pass or fail criteria where mere presence or absence of the required documents is taken into consideration.



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<sup>1</sup> Section 25.3[A](8), IRR-A

## **PADPAO Rate**

R.A. 5487 promulgated on June 13, 1969, was particularly enacted to regulate the business activities of private detective, watchman or security guard agencies in the Philippines. It also provides for the Code of Conduct that the officers and operators of private security agencies must observe in the conduct of their business.

Rule X, Sec. 3[C](d) of the PSAL Implementing Rules and Regulations (IRR) prohibits cut-throat competition among its members. The relevant provision is stated hereunder, to wit:

They shall not indulge in **cut-throat competition** by undercutting the existing contract rates between the Private Security Agency (PSA) and the client and/or the minimum contract rate prescribed under the PADPAO Memorandum Agreement in conformity with existing minimum wage laws. (Emphasis supplied).

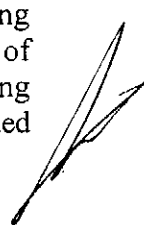
Relative to the afore-cited provision, Rule XVII, Part 3, Section 7(g) of R.A. 5487 provides for the administrative sanctions in case of cut-throat competition, to wit:

When a private security agency has been found to have engaged in **cut-throat security services with its client or a price lower than the standard minimum rates for security services adopted by Philippine Association of Detective and Protective Agency Operators, Inc., with the concurrence of the Chief, Philippine National Police**, a penalty of administrative fines shall be imposed upon such erring Private Security Agency in the amount of twenty thousand (P20,000.00) for the first offense; forty (P40,000.00) for the second offense and cancellation of license to operate for the third offense. In case of fines, the erring PSA shall not be allowed to serve the questioned client. PSA Operators whose licenses has been cancelled under this rule shall be barred from obtaining another LTO. (Emphasis supplied.)

Based on the foregoing, it is clear that all bonafide PADPAO members must comply with the PADPAO rate and must not submit a bid lower than such prescribed rate because it is considered as engaging in cut-throat competition, an act expressly punishable under R.A. 5487.

## **Procuring Entity's Duty**

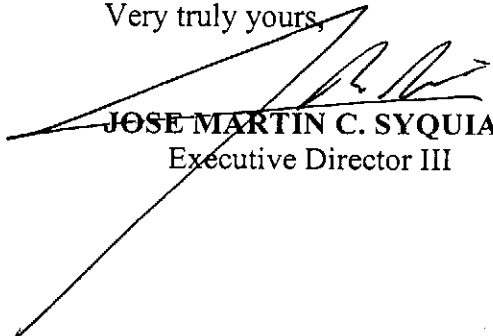
Notwithstanding the fact that R.A. 9184 expressly provides for the standard bidding documents, the procuring entity is still vested with the power to require the submission of additional documents. Accordingly, at the on set of the procurement process, the procuring entity must indicate as part of the technical specifications that it will disqualify all submitted



This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director III

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**REGISTRY RECEIPT**

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**PHILIPPINES**

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**DEC 23 2004**

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November 9, 2004

**MS. LETICIA O. CLEMENTE**  
City Budget Officer  
Chairperson Bids and Awards Committee  
Baguio City

Dear Ms. Clemente:

This refers to your request for the status of your letter, dated September 22, 2004, regarding the issue whether or not the City Government of Baguio should only accept bids that follow the prescribed rates of the Philippine Association of Detective and Protective Agency Operators Inc. (PADPAO) in its procurement of security services.

In order to properly address your concern, we are presently studying the applicable laws, rules and regulations relevant to your request, namely, Republic Acts 5487 and 9184 and its respective Implementing Rules and Regulations.

Rest assured that we shall be responding to your request in writing at the earliest possible time.

For your information.

Very truly yours,

  
**ATTY. SALVADOR C. MALANA III**  
Head, Legal and Policy Group