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CIRCULAR NO. 02-2006

April 10, 2006

TO: Heads of Departments, Bureaus, Offices and Agencies of the National Government, Government Owned and/or Controlled Corporations, Government Financial Institutions, State Universities and Colleges, and Local Government Units

SUBJECT: Revised Rules on Cut-throat Competition (Amendments to the Implementing Rules and Regulations of Republic Act No. 5487)

1.0 Purpose

This circular is issued to advise government agencies of the application and definition of cut-throat competition in accordance with the recent amendments to the Implementing Rules and Regulations of Republic Act No. 5487 (An Act Governing the Organization and Management of Private Security Agencies, Company Guard Forces and Government Security Forces), as provided in the PNP Study Committee Resolution No. 01-2005, dated Nov. 28, 2005, approved by the Chief, PNP on February 21, 2006.

2.0 Coverage

All National Government Agencies (NGAs), Government Owned and/or Controlled Corporation (GOCCs), Government Financial Institutions (GFIs), and State Universities and Colleges (SUCs), and Local Government Units (LGUs).

3.0 Revised Rules on Cut-throat Competition

Pursuant to the recommendations made by the PNP Study Committee to the Chief, PNP, as provided in Study Committee Resolution #01-2005, dated November 28, 2005, hereunder are the amendments to the Implementing Rules and Regulations of R.A. 5487, to wit:

3.1 Section 3.C.d, Rule X

“They shall not indulge in cut-throat competition, an offense committed by undercutting existing contract rate between the Private Security Agency (PSA) and the client regardless of the rate of the present contract/or offering a price below the fixed rates prescribed by law for standard salaries and benefits for the guards and mandated taxes of the minimum cost distribution formula prescribed under the Implementing Rules and Regulations of R.A. 5487 in conformity with existing wage laws.”

3.2 Section 7.g, Rule XVII

“When a PSA has been found to have engaged in cut-throat competition, an offense committed by offering a price below the fixed rates prescribed by law for standard salaries and benefits for the guards and mandated taxes of the minimum cost distribution formula prescribed under the Implementing Rules and Regulations of R.A. 5487, as amended, a penalty of administrative fines shall be imposed upon such erring Private Security Agency in the amount of fifty percent (50%) of the annual contract for the first offense and cancellation of license to operate (LTO) for the second offense. PSA operators whose licenses have been cancelled under this rule shall be barred from obtaining another LTO. For purposes of this section, each contract entered into by a PSA, in violation of this provision shall be considered as a single count and treated as a separate offense”.

“For government contracts, any PSA bidder who shall offer an amount lower than the standard minimum wage and mandated taxes in its financial proposal, shall be automatically disqualified and imposed an administrative penalty of suspension from participating in the public bidding process for having submitted bids containing false information, an act punishable under the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184). In such case, the PSA bidder’s act is contrary to its previous declaration in its certificate of compliance with existing labor laws; a document submitted as part of the bidder’s technical proposal. Provided, further that the said bidder shall also be blacklisted by the government agency concerned, pursuant to the Uniform Guidelines for Blacklisting, issued by the Government Procurement Policy Board (GPPB)”.

In the same manner, a complaint for cut-throat competition shall be filed against the erring PSA with the PADPAO Discipline Committee under Section 3.C.d, Rule X and Section 7.g, Rule XVII of this IRR. The decision of the PADPAO Discipline Committee shall be affirmed and indorsed by the PADPAO Board of Directors to the SAGSD for consideration and imposition of corresponding penalties. Any appeal shall be filed with the Chief, Philippine National Police within ten (10) working days form receipt of the notice of said decision and shall be resolved by the CSG Adhoc Adjudication Board, upon the order of the

C, PNP, within forty-five (45) working days from filing thereof”.

“Likewise , Rule XVII-Protest Mechanism (covering sections 55, 56, 57 & 58) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act. No. 9184 (R.A. 91840 provides for another avenue to protest the decision of the Bids and Awards Committee (BAC)”.

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 aforesaid; 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.

5.0 Furthermore, government agencies are advised to require bidders to indicate in their financial proposal the itemized components of the minimum cost distribution formula to facilitate the evaluation of bids.

6.0 This circular shall take effect immediately.

7.0 For compliance.

ROLANDO G. ANDAYA, JR.

Chairperson, Government Procurement Policy Board

Secretary, Department of Budget and Management