

Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Intramuros, Manila

DEPARTMENT ORDER NO. 18-A
Series of 2011

DATE:	11/18/11
TIME:	10:22 am
RECEIVED BY:	ben

**RULES IMPLEMENTING ARTICLES 106 TO 109
OF THE LABOR CODE, AS AMENDED**

By virtue of the power vested in the Secretary of Labor and Employment under Articles 5 and 106 to 109 of the Labor Code of the Philippines, as amended, the following regulations governing contracting and subcontracting arrangements are hereby issued:

Section 1. Guiding principles. Contracting and subcontracting arrangements are expressly allowed by law and are subject to regulations for the promotion of employment and the observance of the rights of workers to just and humane conditions of work, security of tenure, self-organization and collective bargaining. Labor-only contracting as defined herein shall be prohibited.

Section 2. Coverage. These Rules shall apply to all parties of contracting and subcontracting arrangements where employer-employee relationships exist. It shall also apply to cooperatives engaging in contracting or subcontracting arrangements.

Contractors and subcontractors referred to in these Rules are prohibited from engaging in recruitment and placement activities as defined in Article 13(b) of the Labor Code, whether for local or overseas employment.

Section 3. Definition of terms. The following terms as used in these Rules, shall mean:

(a) "**Bond/s**" refers to the bond under Article 108 of the Labor Code that the principal may require from the contractor to be posted equal to the cost of labor under contract. The same may also refer to the security or guarantee posted by the principal for the payment of the services of the contractors under the Service Agreement.

(b) "**Cabo**" refers to a person or group of persons or to a labor group which, in the guise of a labor organization, cooperative or any entity, supplies workers to an employer, with or without any monetary or other consideration, whether in the capacity of an agent of the employer or as an ostensible independent contractor.

(c) "**Contracting**" or "**Subcontracting**" refers to an arrangement whereby a principal agrees to put out or farm out with a contractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.

(d) "**Contractor**" refers to any person or entity, including a cooperative, engaged in a legitimate contracting or subcontracting arrangement providing either services,

skilled workers, temporary workers, or a combination of services to a principal under a Service Agreement.

(e) "**Contractor's employee**" includes one employed by a contractor to perform or complete a job, work, or service pursuant to a Service Agreement with a principal.

It shall also refer to regular employees of the contractor whose functions are not dependent on the performance or completion of a specific job, work or service within a definite period of time, i.e., administrative staff.

(f) "**In-house agency**" refers to a contractor which is owned, managed, or controlled directly or indirectly by the principal or one where the principal owns/represents any share of stock, and which operates solely or mainly for the principal.

(g) "**Net Financial Contracting Capacity (NFCC)**¹" refers to the formula to determine the financial capacity of the contractor to carry out the job, work or services sought to be undertaken under a Service Agreement. NFCC is current assets minus current liabilities multiplied by K, which stands for contract duration equivalent to: 10 for one year or less; 15 for more than one (1) year up to two (2) years; and 20 for more than two (2) years, minus the value of all outstanding or ongoing projects including contracts to be started.

(h) "**Principal**" refers to any employer, whether a person or entity, including government agencies and government-owned and controlled-corporations, who/which puts out or farms out a job, service or work to a contractor.

(i) "**Right to control**" refers to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

(j) "**Service Agreement**" refers to the contract between the principal and contractor containing the terms and conditions governing the performance or completion of a specific job, work or service being farmed out for a definite or predetermined period.

(k) "**Solidary liability**" refers to the liability of the principal, pursuant to the provision of Article 109 of the Labor Code, as direct employer together with the contractor for any violation of any provision of the Labor Code.

It also refers to the liability of the principal, in the same manner and extent that he/she is liable to his/her direct employees, to the extent of the work performed under the contract when the contractor fails to pay the wages of his/her employees, as provided in Article 106 of the Labor Code, as amended.

(l) "**Substantial capital**" refers to paid-up capital stocks/shares of at least Three Million Pesos (P3,000,000.00) in the case of corporations, partnerships and cooperatives; in the case of single proprietorship, a net worth of at least Three Million Pesos (P3,000,000.00).

¹ Refers to the formula set out in the Implementing Rules and Regulations of Republic Act No. 9184, or An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes.

(m) **“Trilateral Relationship”** refers to the relationship in a contracting or subcontracting arrangement where there is a contract for a specific job, work or service between the principal and the contractor, and a contract of employment between the contractor and its workers. There are three (3) parties involved in these arrangements: the principal who decides to farm out a job, work or service to a contractor; the contractor who has the capacity to independently undertake the performance of the job, work or service; and the contractual workers engaged by the contractor to accomplish the job, work or service.

Section 4. Legitimate contracting or subcontracting. Contracting or subcontracting shall be legitimate if all the following circumstances concur:

(a) The contractor must be registered in accordance with these Rules and carries a distinct and independent business and undertakes to perform the job, work or service on its own responsibility, according to its own manner and method, and free from control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

(b) The contractor has substantial capital and/or investment; and

(c) The Service Agreement ensures compliance with all the rights and benefits under Labor Laws.

Section 5. Trilateral relationship in contracting arrangements; Solidary liability. In legitimate contracting or subcontracting arrangement there exists:

(a) An employer-employee relationship between the contractor and the employees it engaged to perform the specific job, work or service being contracted; and

(b) A contractual relationship between the principal and the contractor as governed by the provisions of the Civil Code.

In the event of any violation of any provision of the Labor Code, including the failure to pay wages, there exists a solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code and other social legislation, to the extent of the work performed under the employment contract.

However, the principal shall be deemed the direct employer of the contractor's employee in cases where there is a finding by a competent authority of labor-only contracting, or commission of prohibited activities as provided in Section 7, or a violation of either Sections 8 or 9 hereof.

Section 6. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, labor only contracting shall refer to an arrangement where:

(a) The contractor does not have substantial capital or investments in the form of tools, equipment, machineries, work premises, among others, and the employees recruited and placed are performing activities which are usually necessary or desirable to the operation of the company, or directly related to the main business of the principal within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal; or

(b) The contractor does not exercise the right to control over the performance of the work of the employee.

Section 7. Other Prohibitions. Notwithstanding Section 6 of these Rules, the following are hereby declared prohibited for being contrary to law or public policy:

A. Contracting out of jobs, works or services when not done in good faith and not justified by the exigencies of the business such as the following:

- (1) Contracting out of jobs, works or services when the same results in the termination or reduction of regular employees and reduction of work hours or reduction or splitting of the bargaining unit.
- (2) Contracting out of work with a "Cabo".
- (3) Taking undue advantage of the economic situation or lack of bargaining strength of the contractor's employees, or undermining their security of tenure or basic rights, or circumventing the provisions of regular employment, in any of the following instances:
 - (i) Requiring them to perform functions which are currently being performed by the regular employees of the principal; and
 - (ii) Requiring them to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal, contractor or from any liability as to payment of future claims.
- (4) Contracting out of a job, work or service through an in-house agency.
- (5) Contracting out of a job, work or service that is necessary or desirable or directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent.
- (6) Contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization as provided in Art. 248 (c) of the Labor Code, as amended.
- (7) Repeated hiring of employees under an employment contract of short duration or under a Service Agreement of short duration with the same or

different contractors, which circumvents the Labor Code provisions on Security of Tenure.

- (8) Requiring employees under a subcontracting arrangement to sign a contract fixing the period of employment to a term shorter than the term of the Service Agreement, unless the contract is divisible into phases for which substantially different skills are required and this is made known to the employee at the time of engagement.
- (9) Refusal to provide a copy of the Service Agreement and the employment contracts between the contractor and the employees deployed to work in the bargaining unit of the principal's certified bargaining agent to the sole and exclusive bargaining agent (SEBA).
- (10) Engaging or maintaining by the principal of subcontracted employees in excess of those provided for in the applicable Collective Bargaining Agreement (CBA) or as set by the Industry Tripartite Council (ITC).

B. Contracting out of jobs, works or services analogous to the above when not done in good faith and not justified by the exigencies of the business.

Section 8. Rights of contractor's employees. All contractor's employees, whether deployed or assigned as reliever, seasonal, week-ender, temporary, or promo jobbers, shall be entitled to all the rights and privileges as provided for in the Labor Code, as amended, to include the following:

- (a) Safe and healthful working conditions;
- (b) Labor standards such as but not limited to service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay as may be provided in the Service Agreement or under the Labor Code;
- (c) Retirement benefits under the SSS or retirement plans of the contractor, if there is any;
- (d) Social security and welfare benefits;
- (e) Self-organization, collective bargaining and peaceful concerted activities; and
- (f) Security of tenure.

Section 9. Required contracts under these Rules.

(a) Employment contract between the contractor and its employee. Notwithstanding any oral or written stipulations to the contrary, the contract between the contractor and its employee shall be governed by the provisions of Articles 279 and 280 of the Labor Code, as amended. It shall include the following terms and conditions:

- i. The specific description of the job, work or service to be performed by the employee;
- ii. The place of work and terms and conditions of employment, including a statement of the wage rate applicable to the individual employee; and
- iii. The term or duration of employment that must be co-extensive with the Service Agreement or with the specific phase of work for which the employee is engaged.

The contractor shall inform the employee of the foregoing terms and conditions of employment in writing on or before the first day of his/her employment.

(b) Service Agreement between the principal and the contractor. The Service Agreement shall include the following:

- i. The specific description of the job, work or service being subcontracted.
- ii. The place of work and terms and conditions governing the contracting arrangement, to include the agreed amount of the services to be rendered, the standard administrative fee of not less than ten percent (10%) of the total contract cost.
- iii. Provisions ensuring compliance with all the rights and benefits of the employees under the Labor Code and these Rules on: provision for safe and healthful working conditions; labor standards such as, service incentive leave, rest days, overtime pay, 13th month pay and separation pay; retirement benefits; contributions and remittance of SSS, Philhealth, PagIbig Fund, and other welfare benefits; the right to self-organization, collective bargaining and peaceful concerted action; and the right to security of tenure.
- iv. A provision on the Net Financial Contracting Capacity of the contractor, which must be equal to the total contract cost.
- v. A provision on the issuance of the bond/s as defined in Section 3(m) renewable every year.
- vi. The contractor or subcontractor shall directly remit monthly the employers' share and employees' contribution to the SSS, ECC, Philhealth and Pag-ibig.
- vii. The term or duration of engagement.

The Service Agreement must conform to the DOLE Standard Computation and Standard Service Agreement, which form part of these Rules as **Annexes "A" and "B"**.

Section 10. Duties of the principal. Pursuant to the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting of labor to protect the rights of the workers and to ensure compliance with the provisions of the Labor Code,

as amended, the principal, as the indirect employer or the user of the services of the contractor, is hereby required to observe the provisions of these Rules.

Section 11. Security of tenure of contractor's employees. It is understood that all contractor's employees enjoy security of tenure regardless of whether the contract of employment is co-terminus with the service agreement, or for a specific job, work or service, or phase thereof.

Section 12. Observance of required standards of due process; requirements of notice. In all cases of termination of employment, the standards of due process laid down in Article 277(b) of the Labor Code, as amended, and settled jurisprudence on the matter², must be observed. Thus, the following is hereby set out to clarify the standards of due process that must be observed:

I. For termination of employment based on just causes as defined in Article 282 of the Code, the requirement of two written notices served on the employee shall observe the following:

(A) The **first written notice** should contain:

- (1) The specific causes or grounds for termination;
- (2) Detailed narration of the facts and circumstances that will serve as basis for the charge against the employee. A general description of the charge will not suffice;
- (3) The company rule, if any, that is violated and/or the ground under Art. 282 that is being charged against the employee; and
- (4) A directive that the employee is given opportunity to submit a written explanation within a reasonable period.

"Reasonable period" should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employee an opportunity to study the accusation, consult a union official or lawyer, gather data and evidence, and decide on the defenses against the complaint.

(B) After serving the first notice, the employer should afford the employee ample opportunity to be heard and to defend himself/herself with the assistance of his/her representative if he/she so desires, as provided in Article 277(b) of the Labor Code, as amended.

"Ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him/her and submit

² King of Kings Transport, Inc., Claire dela Fuente, and Melissa Lim, vs. Santiago O. Mamac, G.R. No. 166208, (29 June 2007); and Felix B. Perez and Amante G. Doria v. Philippine Telegraph and Telephone Company and Jose Luis Santiago, G.R. No. 152048, (7 April 2009), (*en banc Decision*).

evidence in support of his/her defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it.

(C) After determining that termination of employment is justified, the employer contractor shall serve the employee a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) the grounds have been established to justify the severance of their employment.

The foregoing notices shall be served on the employee's last known address.

II. For termination of employment based on authorized causes defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate regional office of the Department of Labor and Employment at least thirty days before the effectivity of the termination, specifying the ground or grounds for termination.

III. If the termination is brought about by the completion of the contract or phase thereof, no prior notice is required. If the termination is brought about by the failure of a probationary employee to meet the reasonable standards of the employer, which was made known to the employee at the time of his/her employment, it shall be sufficient that a written notice is served upon the employee within a reasonable time prior to the expiration of the probationary period.

Section 13. Effect of termination of employment. The termination of employment of the contractor employee prior to the expiration of the Service Agreement shall be governed by Articles 282, 283 and 284 of the Labor Code.

In case the termination of employment is caused by the pre-termination of the Service Agreement not due to authorized causes under Article 283, the right of the contractor employee to unpaid wages and other unpaid benefits including unremitted legal mandatory contributions, e.g., SSS, Philhealth, Pag-ibig, ECC, shall be borne by the party at fault, without prejudice to the solidary liability of the parties to the Service Agreement.

Where the termination results from the expiration of the service agreement, or from the completion of the phase of the job, work or service for which the employee is engaged, the latter may opt for payment of separation benefits as may be provided by law or the Service Agreement, without prejudice to his/her entitlement to the completion bonuses or other emoluments, including retirement benefits whenever applicable.

Section 14. 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 and Employment (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.

Section 15. Requirements for registration. The application for registration as a contractor shall be filed at the DOLE Regional Office in the region where it seeks to principally operate. The applicant shall provide in the application form the following information:

- (a) The name and business address of the applicant and the areas where it seeks to operate;
- (b) The names and addresses of officers, if the applicant is a corporation, partnership, cooperative or a labor organization;
- (c) The nature of the applicant's business and the industry or industries where the applicant seeks to operate;
- (d) The number of regular workers and the total workforce;
- (e) The list of clients, if any, the number of personnel assigned to each client, if any, and the services provided to the client;
- (f) The description of the phases of the contract, including the number of employees covered in each phase, where appropriate; and
- (g) Proof of compliance with substantial capital requirement as defined in Section 3(l) of these Rules.

The application shall be supported by:

- (a) A certified true copy of a certificate of registration of firm or business name from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI), Cooperative Development Authority (CDA), or from the DOLE if the applicant is a labor organization;
- (b) A certified true copy of the license or business permit issued by the local government unit or units where the contractor operates;
- (c) A certified listing, with proof of ownership or lease contract, of facilities, tools, equipment, premises implements, machineries and work premises, that are actually and directly used by the contractor in the performance or completion of the job, work or service contracted out. In addition, the applicant shall submit a photo of the office building and premises where it holds office;

(d) A copy of audited financial statements if the applicant is a corporation, partnership, cooperative or a labor organization, or copy of the latest ITR if the applicant is a sole proprietorship; and

(e) A sworn disclosure that the registrant, its officers and owners or principal stockholders or any one of them, has not been operating or previously operating as a contractor under a different business name or entity or with pending cases of violations of these Rules and/or labor standards, or with a cancelled registration. In case any of the foregoing has a pending case, a copy of the complaint and the latest status of the case shall be attached.

The application shall be verified. It shall include a DOLE certification of attendance to orientation seminar on these Rules and an undertaking that the contractor shall abide by all applicable labor laws and regulations.

Section 16. Filing and processing of application. The application with all supporting documents shall be filed in triplicate in the Regional Office where the applicant principally operates. No application for registration shall be accepted unless all the requirements in the preceding Section are complied with.

Section 17. Verification inspection. Within two (2) working days upon receipt of the application with complete supporting documents, the authorized representative of the Regional Director shall conduct a verification inspection of the facilities, tools, equipment, and work premises of the applicant.

Section 18. Approval or denial of the application. The Regional Office shall deny or approve the application within one (1) working day after the verification inspection.

Applications that fail to meet the requirements set forth in Section 15 of these Rules shall be denied.

Section 19. Registration fee. Payment of registration fee of Twenty-Five Thousand Pesos (P25,000.00) shall be required upon approval of the application.

Upon registration, the Regional Office shall return one set of the duly-stamped application documents to the applicant, retain one set for its file, and transmit the remaining set to the Bureau of Working Conditions (BWC) within five (5) days from registration.

Section 20. Validity of certificate of registration of contractors. The contractor shall be deemed registered only on the date of issuance of its Certificate of Registration.

The Certificate of Registration shall be effective for three (3) years, unless cancelled after due process. The same shall be valid in the region where it is registered.

In case the contractor has Service Agreements or operates outside the region where it is registered, it shall request a duly authenticated copy of its Certificate of Registration from the registering Regional Office and submit the same to the DOLE Regional Office where it seeks to operate, together with a copy of its Service Agreement/s in the area, for purposes of monitoring compliance with these Rules.

Section 21. Renewal of registration. All registered contractors shall apply for renewal of their Certificates of Registration thirty (30) days before the expiration of their registration to remain in the roster of legitimate service contractors. The applicant shall pay a registration renewal fee of Twenty-Five Thousand Pesos (P25,000.00) to the DOLE Regional Office.

Copies of all the updated supporting documents in letters (a) to (e) of Section 15 hereof shall be attached to the duly accomplished application form, including the following:

(a) Certificate of membership and proof of payment of SSS, Philhealth, BIR, ECC and Pag-Ibig contributions for the last three (3) years, as well as loan amortizations; and

(b) Certificate of pending or no pending labor standards violation case/s with the National Labor Relations Commission (NLRC) and Department of Labor and Employment (DOLE). The pendency of a case will not prejudice the renewal of the registration, unless there is a finding of violation of labor standards by the DOLE Regional Director.

Section 22. Semi-annual reporting. The contractor shall submit in triplicate its subscribed semi-annual report using a prescribed form to the appropriate Regional Office. The report shall include:

(a) A list of contracts entered with the principal during the subject reporting period;

(b) The number of workers covered by each contract with the principal;

(c) Proof of payment of remittances to the Social Security System (SSS), the Pag-Ibig Fund, Philhealth, Employees Compensation Commission (ECC), and Bureau of Internal Revenue (BIR) due its employees during the subject reporting period and of amortization of declared loans due from its employees; and

(d) A certified listing of all cases filed against the contractor before the NLRC and DOLE.

The Regional Office shall return one set of the duly-stamped report to the contractor, retain one set for its file, and transmit the remaining set to the Bureau of Working Conditions (BWC) within five (5) days from receipt thereof.

Section 23. Grounds for cancellation of registration. The Regional Director shall, upon a verified complaint, cancel or revoke the registration of a contractor after due process, based on any of the following grounds:

- (a) Misrepresentation of facts in the application;
- (b) Submission of a falsified or tampered application or supporting documents to the application for registration;
- (c) Non-submission of Service Agreement between the principal and the contractor when required to do so;
- (d) Non-submission of the required semi-annual report as provided in Section 22 (Semi-annual reporting) hereof;
- (e) Findings through arbitration that the contractor has engaged in labor-only contracting and/or the prohibited activities as provided in Section 7 (Other Prohibitions) hereof;
- (f) Non-compliance with labor standards and working conditions;
- (g) Findings of violation of Section 8 (Rights of contractor's employees) or Section 9 (Required contracts) of these Rules;
- (h) Non-compliance with SSS, the HDMF, Pag-Ibig, Philhealth, and ECC laws; and
- (i) Collecting any fees not authorized by law and other applicable rules and regulations.

Section 24. Due process in cancellation of registration. Complaint/s based on any of the grounds enumerated in the preceding Section against the contractor shall be filed in writing and under oath with the Regional Office which issued the Certificate of Registration.

The complaint/s shall state the following:

- (a) The name/s and address/es of the complainant/s;
- (b) Name and address of the contractor;
- (c) The ground/s for cancellation;
- (d) When and where the action complained of happened;
- (e) The amount of money claim, if any; and
- (f) The relief/s sought.

Upon receipt of the complaint, the Regional Director shall direct the contractor, with notice to the complainant, to file a verified answer/counter affidavit within ten (10) calendar days without extension, incorporating therein all pertinent documents in support of his/her defenses, with proof of service of a copy to the complainant. Failure to file an answer/counter affidavit shall constitute a waiver on the part of the respondent. No motion to dismiss shall be entertained.

The Regional Director or his duly authorized representative may conduct a clarificatory hearing within the prescribed ten (10) calendar days within which to file a verified answer/counter affidavit.

Within the said ten (10) calendar days period, the contractor shall make the necessary corrections/rectifications on the violations that are immediately rectifiable upon its own initiative in order to be fully compliant.

The Regional Director may avail himself of all reasonable means to ascertain the facts of the case, including conduct of inspection, where appropriate, and examination of informed persons.

The proceedings before the Regional Office shall be summary in nature.

The conduct of hearings shall be terminated within fifteen (15) calendar days from the first scheduled clarificatory hearing. The Regional Director shall resolve the case within ten (10) working days from the date of the last hearing. If there is no necessity to conduct a hearing, the case shall be resolved within ten (10) working days from receipt of the verified answer/counter affidavit.

Any motion for reconsideration from the Order of the Regional Director shall be treated as an appeal.

Section 25. Appeal. The Order of the Regional Director is appealable to the Secretary within ten (10) working days from receipt of the copy of the Order. The appeal shall be filed with the Regional Office which issued the cancellation Order. The Office of the Secretary shall have thirty (30) working days from receipt of the records of the case to resolve the appeal. The Decision of the Secretary shall become final and executory after ten (10) days from receipt thereof by the parties. No motion for reconsideration of the Decision shall be entertained.

Section 26. Effects of cancellation of registration. A final Order of cancellation shall divest the contractor of its legitimate status to engage in contracting/subcontracting.

Such Order of cancellation shall be a ground to deny an application for renewal of registration to a contractor under the Rules.

The cancellation of the registration of the contractor for engaging in labor-only contracting or for violation of any of the provisions of these Rules involving a particular Service Agreement will not, however, impair the validity of existing legitimate job-contracting arrangements the contractor may have entered into with other principals

prior to the cancellation of its registration. Any valid and subsisting Service Agreement shall be respected until its expiration; thereafter, contracting with a delisted contractor shall make the principal direct employer of all employees under the Service Agreement pursuant to Articles 106 and 109 of the Labor Code.

Section 27. Effects of finding of labor-only contracting and/or violation of Sections 7, 8 or 9 of the Rules. A finding by competent authority of labor-only contracting shall render the principal jointly and severally liable with the contractor to the latter's employees, in the same manner and extent that the principal is liable to employees directly hired by him/her, as provided in Article 106 of the Labor Code, as amended.

A finding of commission of any of the prohibited activities in Section 7, or violation of either Sections 8 or 9 hereof, shall render the principal the direct employer of the employees of the contractor or subcontractor, pursuant to Article 109 of the Labor Code, as amended.

Section 28. Retaliatory measures. Pursuant to Article 118 of the Labor Code, as amended, it shall be unlawful for the principal, contractor, or any party privy to the contract or services provided to refuse to pay or reduce the wages and benefits, and discharge or in any manner discriminate against any worker who has filed any complaint or instituted any proceeding on wages (under Title II, Book III of the Labor Code), labor standards violation, or has testified or is about to testify in such proceedings.

Section 29. Enforcement of labor standards and working conditions. Consistent with Article 128 (Visitorial and Enforcement Power) of the Labor Code, as amended, the Regional Director through his/her duly authorized representatives, shall conduct routine inspection of establishments engaged in contracting arrangement regardless of the number of employees engaged by the principal or by the contractor. They shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of the Labor Code and of any labor law, wage order, or rules and regulations issued pursuant thereto.

The findings of the duly authorized representative shall be referred to the Regional Director for appropriate action as provided for in Article 128, and shall be furnished the collective bargaining agent, if any.

Based on the visitorial and enforcement power of the Secretary of Labor and Employment in Article 128 (a), (b), (c), and (d), the Regional Director shall issue compliance orders to give effect to the labor standards provisions of the Labor Code, other labor legislation, and these Rules.

Section 30. Duty to produce copy of contract between the principal and the contractor. The principal or the contractor shall be under an obligation to produce

a copy of the Service Agreement in the ordinary course of inspection. The contractor shall likewise be under an obligation to produce a copy of any contract of employment when directed to do so by the Regional Office Director or his/her authorized representative.

Section 31. Tripartite implementation and monitoring of compliance; Use of registration fees. A region-based tripartite monitoring team on the observance of labor standards in contracting and subcontracting arrangements shall be constituted as a subcommittee of the Regional Tripartite Industrial Peace Council (RTIPC) within fifteen (15) days from the effectivity of these Rules. It shall submit a quarterly regional monitoring report to the DOLE Secretary and to the National Tripartite Industrial Peace Council (NTIPC). The Bureau of Working Conditions (BWC) shall ensure the implementation of this provision, and shall conduct capacity building to the members of the regional tripartite monitoring team.

For this purpose, a portion of the collected registration fees shall be used in the operation of the region-based tripartite monitoring team, including in the development of an internet-based monitoring system and database. It shall likewise be used for transmittal of the monthly report of all registered contractors to the Bureau of Local Employment (BLE), and in generating labor market information.

Section 32. Oversight function of the National TIPC. The National Tripartite Industrial Peace Council (NTIPC) as created under Executive Order No. 49, Series of 1998, as amended, shall serve as the oversight committee to verify and monitor the following:

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

Section 33. Collective bargaining and/or Industry Tripartite Council (ITC). Nothing herein shall preclude the parties in collective bargaining agreements (CBAs) to determine the functions that can or cannot be farmed out or contracted out to a legitimate contractor, including the terms and conditions of the workers' engagement under the arrangement, provided the provisions of these Rules are observed.

In industries with established Industry Tripartite Councils (ITCs), the tripartite partners may agree, through a voluntary code of good practices, on the functions or processes that can or cannot be contracted out to a legitimate contractor.

Section 34. Financial Relief Program; Tripartite Co-Regulation Engagement. A Financial Relief Program or Unemployment Assistance Fund shall be established for employees under a Service Agreement or employees in transition from one Service Agreement to the next. For this purpose, the National Tripartite Industrial Peace Council (NTIPC), upon the effectivity of this issuance, shall constitute a Local Service Provider Tripartite Working Group (LSP-TWG) composed of representatives of the stakeholders in the industry. The LSP-TWG shall:

(a) Recommend the mechanics and details in setting up the Financial Relief Program or Unemployment Assistance Fund with proposed funding sources before end of June 2012; and

(b) Draw-up the terms of a Tripartite Co-Regulation Engagement in ensuring full compliance with labor laws for approval/endorsement by the NTIPC, including a proposed Table of Progressive Rate of Increases in the minimum capitalization requirement at reasonable intervals to ensure that only legitimate contractors can engage in subcontracting arrangement.

Section 35. Enrollment in DOLE programs on improving compliance with labor standards. For purposes of ensuring compliance with labor standards, the principal and subcontractors covered by these Rules are encourage to enroll and participate in the DOLE Kapatiran Work Improvement for Small Enterprise (WISE)-TAV Program (Department Advisory No. 06, dated 07 March 2011) and/or in the Incentivizing Compliance Program (Department Order No. 115-11).

Section 36. Contracting or subcontracting arrangements in the Construction and Other Industries. Contracting or subcontracting arrangements in the Construction Industry, under the licensing coverage of the Philippine Construction Accreditation Board (PCAB), shall be covered by the applicable provisions of these Rules and shall continue to be governed by Department Order No. 19, Series of 1993 (*Guidelines Governing the Employment of Workers in the Construction Industry*); Department Order No. 13, Series of 1998 (*Guidelines Governing the Occupational Safety and Health in the Construction Industry*); and DOLE-DPWH-DILG-DTI and PCAB Memorandum of Agreement-Joint Administrative Order No. 1, Series of 2011 (on coordination and harmonization of policies and programs on occupational safety and health in the construction industry).

In industries covered by a separate regulation of the DOLE or other government agency, contracting or subcontracting therein shall be governed by these Rules unless expressly provided otherwise.

Section 37. Prohibition on DOLE officials or employees. Any official or employee of the DOLE or its attached agencies is prohibited from engaging or having any interest in any contracting or subcontracting business.

Section 38. Non-impairment of existing contracts; Non-diminution of benefits. Subject to the provisions of Articles 106 to 109 of the Labor Code, as amended, the applicable provisions of the Civil Code and existing jurisprudence, nothing herein shall impair the rights or diminish the benefits being enjoyed by the parties to existing contracting or subcontracting arrangements.

The effectivity of Certificates of Registration acquired under Department Order No. 18, Series of 2002, issued on 21 February 2002, shall be respected until expiration.

Section 39. Supersession. All rules and regulations issued by the Secretary of Labor and Employment inconsistent with the provisions of these Rules are hereby superseded.

Section 40. Separability Clause. If any provision or portion of these Rules are declared void or unconstitutional, the remaining portions or provisions hereof shall continue to be valid and effective.

Section 41. Effectivity. This Department Order shall be effective fifteen (15) days after completion of its publication in a newspaper of general circulation.

Manila, Philippines, 14 November 2011.


ROSALINDA DIMAPILIS-BALDOZ
Secretary

**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			
<p>1. ABOVE RATES ARE EXCLUSIVE OF VALUE ADDED TAX</p> <p>2. UNWORKED REGULAR HOLIDAYS WILL BE BILLED AT ABOVE RATE FOR 8 HOURS REGULAR WORK DAY AS AND WHEN SUCH HOLIDAY DO OCCUR</p>			

SERVICE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This agreement made and entered into by and between:

_____, a corporation / partnership / sole proprietorship / cooperative duly organized and existing under Philippines laws, with plant addresses at _____ represented by its President, _____, hereinafter referred to as the "PRINCIPAL".

- and -

_____, a corporation / partnership / sole proprietorship / cooperative duly organized and existing under Philippine laws, with office address at _____ represented by _____, hereinafter referred to as the "SERVICE PROVIDER or CONTRACTOR".

WITNESSETH

WHEREAS, the **CONTRACTOR**, duly registered with Certificate of Registration No. _____ issued by DOLE Regional Office No. ___ on _____, is an independent service provider with substantial capital, equipment, and expertise, primarily engaged in the business of providing _____ services;

WHEREAS, the **PRINCIPAL** is need of a **SERVICE PROVIDER** or **CONTRACTOR** to _____;

WHEREAS, the **CONTRACTOR** has offered its service and expertise to perform specific and/or specialized jobs/services/work for the **PRINCIPAL** and the **PRINCIPAL** has accepted the offer;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed as follows:

A. Description of the Job, Work or Service

The Service Agreement should state in as much detail as necessary what the Principal/User enterprise expects the subcontractor to do. The work description should include all relevant requirements, such as any time periods involved, deadlines, contingencies and milestones.

B. Place of Work; Compliance with Labor Standards and Occupational Health and Safety, and Administrative Fee

The place of work and terms and conditions governing the contracting arrangement, to include the agreed amount of the services to be rendered, the standard administrative fee of not less than ten percent (10%) of the total contract cost shall be provided.

Compliance with all the rights and benefits of the employees under the Labor Code and Department Order No. 18-A, Series of 2011, on: safe and healthful working conditions; labor standards such as, service incentive leave, rest days, overtime pay, 13th month pay and separation pay; retirement benefits; contributions and remittance of SSS, Philhealth, Pagibig

Fund, and other welfare benefits; the right to self-organization, collective bargaining and peaceful concerted action; and the right to security of tenure, must be provided.

The contractor or subcontractor shall directly remit monthly the employers' share and employees' contribution to the SSS, ECC, Philhealth and Pag-ibig.

C. Capacity to Carry Out the Contract

The Net Financial Contracting Capacity of the contractor, which must be equal to the total contract cost as defined in Section 3(g) of Department Order No. 18-A, Series of 2011, must be stated.

D. Payment

The Service Agreement should state in detail the terms of payment. In case of periodic payment, the agreement should state the dates payments are due and the amount due at each date. The Agreement can also include the method of payment and the applicable charges/penalty in case of delay by either party.

E. Bond

The issuance of the bond/s as defined in Section 3(m) of DO 18-A, Series of 2011, renewable every year, as agreed upon by the parties, shall be stated.

F. Term or duration of the Service Agreement

IN WITNESS WHEREOF, the parties have signed these presents at _____ on _____.