



Department of Budget and Management  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**

**NPM No. 03-2012**

4 January 2012

**MR. DAVID D. ATANACIO**

*Operations Manager*

**BESSANG PASS SECURITY AGENCY, INC.**

Unit 423 Sofia Tower, 85 Don A. Roces Ave.,

Roxas District, Quezon City

**Re: No Contact Rule**

Dear Mr. Atanacio:

We respond to your letter dated 20 October 2011 requesting for an opinion on whether sending a communication or letter to the Bids and Awards Committee (BAC) after opening of bids constitutes a violation of the 'no contact rule' under Section 32.1 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

As represented, an observation was made by your agency that the lowest bidder submitted a bid that is below the PADPAO rates, which is disadvantageous to the security guards and to the government. Thus, an inquiry is made whether the information may be communicated to the BAC without violating the aforementioned rule.

Settled is the rule that members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making or accepting any communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award. In line with this, we wish to reiterate our discussion in Non-Policy Opinion No. 20-2006<sup>1</sup> that the prohibition under Section 32.1 of the IRR of RA 9184 is absolute and covers all kinds of information relating to the evaluation of bids. The rationale for this rule is to avoid any opportunity for qualified bidders to influence or collude with employees or officials of the procuring entity into skewing the award of contract in their favor.

We wish to clarify, however, that the 'no contact rule' applies only to those whose bids are being evaluated by the BAC after passing the preliminary examination of bids. As such, until a decision to award a contract is made by the BAC through the issuance of a Notice of Award, no communication should be made by bidders whose bids are being evaluated to veer away from perceptions of bias or favor.

We wish to note, however, that there is nothing in the rules that disallows disqualified bidders from informing the BAC relative to the evaluation of the bids of eligible bidders.

<sup>1</sup> 9 November 2006

Since their bids are no longer part of the evaluation, the “no contact rule” need not be applied to them. However, if they have availed of the protest mechanism under Section 55 of the IRR to question their disqualification, then they are still within the confines of the aforementioned prohibition since the opportunity for contract award is still present should a favorable decision is obtained.

In other words, bidders who waived their right to utilize the protest mechanism or those whose request for reconsideration/protest was subsequently denied are not covered by the prohibition under Section 32.1 of the IRR. Hence, they may convey to the BAC any valid, reasonable and lawful information or observation they have pertaining to the bids submitted by the qualified bidders.

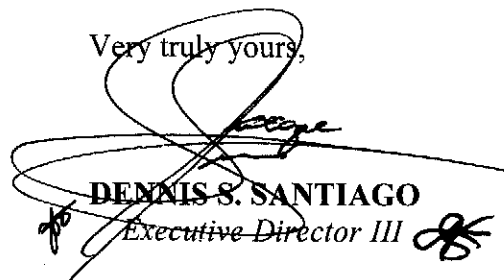
We also wish to note that in a recent opinion<sup>2</sup>, we stated that a mere inquiry or follow up on the status of a procurement activity is not within the scope of the prohibited communication contemplated under the rule, thus, it may be accepted and responded to by the BAC. It must be emphasized that the response thereto should only indicate the status of the procurement activity and not include any other information relative to the evaluation of bids.

In view of the foregoing, it is our considered view that other than for purposes of inquiring on the status of the proceeding, bidders whose bids are being evaluated by the BAC are prohibited to make any communication with the BAC pertaining to the evaluation of bids from the time bids are opened until a Notice of Award is issued. On the other hand, a disqualified bidder may provide valid, reasonable and lawful information on matters pertaining to the bids being evaluated, provided that such bidder has no pending request for reconsideration or protest relative to his/her disqualification.

We hope our advice sufficiently addresses your concerns. Note that this opinion is being rendered on the basis of the facts and particular circumstances as presented.

Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director III*

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<sup>2</sup> Non-Policy Matter No. 17-2011 dated 28 September 2011.