



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

**NPM No. 07-2013**

28 January 2013

**ATTY. KAREN JOY H. VALENCIA-BALA**

*Attorney-at-Law*

2627 Lamayan Street, Sta. Ana, Manila

**Re: No Contact Rule, Post-Qualification and Nature of Contracts**

Dear Atty. Valencia-Bala:

We respond to your letter dated 13 September 2012, requesting our opinion on several issues in relation to the recently concluded competitive bidding conducted by the National Tobacco Administration (NTA) for a project<sup>1</sup> where FNC Food and Beverages Machinery and Technology Services, Inc. (FNC) and AVM Bernardo (AVM) participated. Specifically, you seek clarification on the following matters:

1. Whether by virtue of the “no contact” rule, a bidder may not submit information that may affect the qualifications of any bidder or the winning bidder; and that the Bids and Awards Committee (BAC) cannot entertain such communication even if it does not pertain to the bid submitted by the bidders;
2. Whether the BAC should validate and verify the competence of each qualified and/or winning bidder in the event that it is provided information on the poor performance and track record of the winning bidder; and
3. Whether the information submitted regarding the winning bidder’s past projects should be of the same nature as that of the project being bid out by the Procuring Entity (PE) in order to be considered in validating or verifying the bidder’s qualifications.

**No Contact Rule**

For your guidance, we are of the view that the prohibition stated in Section 32.1 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 is absolute and covers all kinds of information. The rationale of the “no contact” rule is to erase any opportunity for bidders to influence or collude with employees or officials of the PE. Hence, it does not distinguish between the types of information received.<sup>2</sup>

<sup>1</sup> Supply, Install, Commission Machines and Equipment, Chilling and Cold Storage Rooms for the NTA AgriPinoy Tobacco Farmers Food Processing and Trading Center.

<sup>2</sup> NPM No. 20-2006 dated 9 November 2006.

As discussed in an opinion<sup>3</sup> issued by this office, 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.

Bidders who waived their right to utilize the protest mechanism or those whose request for reconsideration and/or protest were subsequently denied are not covered by the prohibition under Section 32.1 of the IRR. Please note that there is nothing in the IRR of RA 9184 that disallows disqualified bidders from informing the BAC relative to the evaluation of the bids of eligible bidders. Since their bids are no longer part of the evaluation, the “no contact rule” need not be applied to them.<sup>4</sup> Hence, disqualified bidders may convey to the BAC any valid, reasonable and lawful information or observation they have pertaining to the bids submitted by qualified bidders.

### **Post-Qualification**

We wish to reiterate our position as stated in NPM 127-2012<sup>5</sup> that the PE, through its BAC, is in the best position to determine the truthfulness and authenticity of the allegations made by a bidder against another bidder. It is clear from Section 34.3 of the IRR that only upon proper verification, validation and ascertainment of the documents submitted and the representations made that the winning bidder is declared legally, technically and financially responsive with the requirements of the project.

### **Nature of Contracts**

Anent your last query, the nature of the project being bid out need not be of the same nature as the winning bidder’s past projects to warrant the need for verification, validation and ascertainment as provided in Section 34.3 of the IRR of RA 9184. As discussed in an earlier opinion<sup>6</sup> issued by this office, the NTA-BAC is not precluded from verifying the allegations made by FNC against AVM on its alleged poor performance and existing accountabilities and from eventually post-disqualifying AVM if such allegations are confirmed to render it legally, technically, and financially unqualified to perform the project. Nonetheless, it bears stressing that the information relayed should be material in determining the qualifications of the bidder. Thus, if the PE, through the BAC, determines that the bidder whose bid is subject to post-qualification, but fails to satisfy any of the legal, technical and financial requirements, then the former must refrain from awarding the contract and the latter should be disqualified.<sup>7</sup>

### **Summary**

Based on the foregoing, we wish to clarify that:

1. The “no contact” rule is absolute and covers all kinds of information.



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<sup>3</sup> NPM No. 03-2012 dated 4 January 2012.

<sup>4</sup> *Id.*

<sup>5</sup> Dated 10 October 2012.

<sup>6</sup> NPM 102-2012 dated 14 August 2012.

<sup>7</sup> NPM 127-2012 dated 10 October 2012.

2. The BAC should verify, validate and ascertain the documentary requirements of the bidder to determine if it is legally, technically and financially capable to undertake a project.
3. The nature of the project to be bid out does not have to be of the same nature as the past projects of the bidder to necessitate the need for the BAC to verify, validate and ascertain the bidder's legal, technical, and financial capabilities during post-qualification. However, such information should be material in determining the qualifications of the bidder.

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 situation 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*

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