

**NPM No. 14-2009**

05 March 2009

**MR. MARCIAL P. LICHAUCO, JR***President and General Manager***911 ALARM, INC.**

2/F DPC Place Bldg.,

2322 Don Chino Roces Ave.,

1231 Makati City, Philippines

**Re: Public Monitoring of Procurement Process**

Dear Sir:

This is in response to your letter dated February 16, 2009 requesting for clarification on certain issues vis-à-vis NPM No. 60-2007.

In sum, you are asking whether or not:

1. Bidders may be allowed by the procuring entity to record all the activities that take place during Pre-Bid Conference and Submission and Opening;
2. If answer to No.1 is in the affirmative, there are restrictions in the manner of recording the same; and
3. Bidders can be denied access to copies of recordings made by the procuring entity.

At the outset, this office maintains the view that, while access to official records may not be prohibited, it may be regulated, inasmuch as the right to information of public concern is a constitutionally enshrined principle. This regulatory discretion includes both the determination of what is of public concern and the manner of access to such information, as well as the observance of restrictions on disclosure of information.<sup>1</sup>

In the case of *Legaspi vs. Civil Service Commission* (G.R. No. 72119, 1987), the Supreme Court said:

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<sup>1</sup> NPM No. 60-2007, 03 December 2007

"A distinction has to be made between the discretion to refuse outright the disclosure of or access to the particular information and the authority to regulate the manner in which the access is to be afforded. The first is the limitation upon the availability of access to the information sought which only the Legislature may impose. The second pertains to the agency charged with the custody of public record."

It is clear from the foregoing, that the procuring government entity does not have the authority to prohibit access by the bidders to bidding documents and activities which, in the determination of the former, are matters of public concern. Thus, the procuring entity cannot prohibit the bidders from attending, observing, and even participating in the Pre-Bid Conference and the Submission and Opening of Bids.

However, the manner in which the bidders would like to record the Pre-Bid Conference and the Submission and Opening of Bids, such as, manually by taking down notes, or electronically through audio or video, would be subject to the sound, regulatory discretion of the procuring entity. Said entity may, thus, restrict the recording of the subject procurement proceedings to mere taking down notes or audio recordings, without violating the right of the bidders to access public information.

In the same vein, should the procuring entity decide to record the proceedings using audio or video technology, access to such recordings is likewise subject to reasonable regulations to be determined by the procuring entity. Thus, it may be the case that the procuring entity would refuse access to such electronically-recorded proceedings, but nonetheless allow bidders to get copies of the minutes thereof, upon payment of reasonable fees, and pursuant to a prior written request by the bidder.

In any event, the procuring entity must ensure that bidders or their representatives are allowed to attend the subject procurement proceedings, as well as make the minutes of said proceedings available, in keeping with the principles of transparency and public monitoring espoused by Republic Act No. 9184 and its Implementing Rules and Regulations Part A.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
for **RUBY U. ALVAREZ**  
Executive Director III



# TECHNICAL SUPPORT

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

Ms. Kathy,  
Kindly see the Revised  
Reply in my shared Docs.  
Filename: All Public Monitoring.  
For your guidance.

February 25, 2009

Bayan,  
Pls. have the revised draft  
printed for signing.

TX.  
1/15/09

March 2, 2009

Ma'am Ennie,

Draft reply for

Inc. Query on

Procurement

911 Alarm  
Public Mon

Process  
Request full  
Kathy

**MR. MARCIAL P. LICHAUCO, JR**  
President and General Manager  
911 Alarm, Inc.  
2/F DPC Place Bldg.,  
2322 Don Chino Roces Ave.,  
1231 Makati City, Philippines

**Re: Public Monitoring**

Dear Sir,

This is in response to your letter dated  
for our opinion on the following questions

1. Do bidders have the right to record  
Meeting and Submission of Bids?

2. If the bidders are allowed to record all the activities that take place, is there  
restriction on the manner in which the bidders record the activities? A  
restricted to just taking notes, or can they also record the pro-  
electronically through audio or video recording?

3. Is the BAC allowed to prevent bidders from recording the official  
the bidding in the Pre-Bid Meeting and Submission of Bids, there  
using audio or video technology, or can they also record the pro-  
provided with copies of the recordings?

In reply to your first question, the office maintains its view, as in  
Matter (NPM) #060-2007, that bidders have the right to record act-  
in the Pre-Bid Conference and the Submission and Opening  
regulation by the government agency in custody of the  
government agency concerned does not have the authority to  
people to public information but it may regulate the manner in  
It is, after all, a right guaranteed by the Constitution.

In the case of *Legaspi vs. Civil Service Commission*  
Supreme Court said:

"A distinction has to be made between the dis-  
the disclosure of or access to the particu-  
authority to regulate the manner in which it

The first is the limitation upon the availability of access to the information sought which only the Legislature may impose. The second pertains to the agency charged with the custody of public record."

As for your second query, the BAC, being the government entity concerned, has full discretion to decide the method by which the said procurement proceedings will be documented or recorded. They may restrict the recording of the information to mere taking down notes or audio recordings without violating the right of the bidders to access public information.

As for your last question, if the BAC chooses to record the proceeding themselves, access to such recordings is likewise subject to reasonable regulation like the payment of fees and submission of letter requests.

Although both the Government Procurement Regulation Act (R.A. No. 9184) and its Implementing Rules and Regulations are silent on the matter, they still provide safeguard provisions that ensure transparency of the procurement activities of the Government. For instance, Section 29 of the GPRA requires that the minutes of the bid opening be made available to the public upon written request and payment of a specified fee. Rule VIII, Section 29 of the Implementing Rules and Regulations allows the bidders or their representatives to attend the opening of bids.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

**RUBY U. ALVAREZ**  
*Executive Director III*

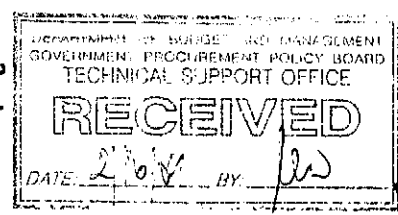


Mrs. Kath,

From draft reply. Check our NPM #60-2007. Although RA 9169 & IRR-A are silent as to allowing bidders to record (video/audio) procurement proceedings, there are safeguards provisions that ensure adherence to the principle of transparency.

February 16-2009

In any event, it is within the discretion whether or not to allow "recording" by the bidders.



Ruby U. Alvarez  
Executive Director  
GPPB Government Policy Procurement Board  
2504 Raffles Corporate Center  
Emerald Ave., Ortigas Center  
Pasig City

76/1/2009 FAX # 900-8741 to 44

Emmie,  
pls. handle, sign in  
my behalf. 2/23

Re: Public Monitoring of Procurement Process

Mam,

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Under the Governing Principals on Government Procurement as contained in IRR-A of RA9184 Sec 3.b) of the IRR-A, states "Public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of the Act and this IRR-A, and that all these contracts are performed strictly according to specifications". Under your NPM #060-2007 you clearly stated that access to official records of the bidding may not be prohibited but may be regulated.

In view of this, and in view of the fact that the Pre-bid Meeting and Submittal of Bids are official acts of the bidding, we would like to ask the following.:

all requirements for withholding of public info.

1. Do bidders have the right to record all activities that take place in the Pre Bid Meeting and Submittal of Bids? *constitutional provision as to access to public information*
2. If Bidders are allowed to record all activities that take place, is there any restriction in the manner in which bidders record the activities. Are they restricted to just taking notes, or may they also record the proceedings electronically thru audio or video recording. *subject to discretion of the BAC*
3. Is the BAC allowed to prevent Bidders from recording the official activities of the bidding in the Pre-Bid and Submittal of Bids, thereby restricting "Public Monitoring of the procurement process? Likewise, if the BAC records the proceedings using audio or video technology, can the BAC deny requests of bidders to be provided with copies of the recordings.

We look forward to a speedy response from the GPPB on this matter.

Very truly yours,  
  
Marcial P. Lichauco Jr.  
President and General Manager

BAC authorized / has implied authority to decide whether such information may be recorded