

ATLANTICA FIRE SAFETY SYSTEMS, INC., PETITIONER, VS. EMILIO S. DE QUIROS, JR., IN HIS CAPACITY AS THE HEAD OF THE PROCURING ENTITY, SOCIAL SECURITY SYSTEM, JUDY FRANCES A. SEE, ...

Ponente: CRUZ, R.A., J.

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CRUZ, R.A., J.:

THE CASE

This is a Petition for Certiorari filed under Rule 65 of the Rules of Court which seeks to reverse the Resolution dated August 6, 2012[1] of Respondent Emilio de Quiros, Jr., and the July 4, 2012 Resolution[2] of the Respondents Members of the Bids and Awards Committee II (BAC) of the Social Security System for allegedly having been rendered with grave abuse of discretion, amounting to lack or in excess of their jurisdiction.[3]

A portion of the July 4, 2012 Resolution reads:

x x x

1. The Bids and Awards Committee (BAC), under its Resolution No. 2012-077-6 dated 28 June 2012, resolved to:

a. Deny your request for reconsideration dated 09 June 2012 which the BAC Secretariat received thru fax on 19 June 2012 at 5:55 p.m. beyond the three (3) calendar day period within which to file your motion for reconsideration.

b. Noted your failure to submit written answer and request for a hearing on or before the 25 June 2012 deadline, as required in our letter to you dated 19 June 2012.

c. Recommend to the SSS President and CEO the following administrative penalties:

i. Blacklisting for a period of one (1) year from 03 July 2012 to 02 July 2013 from participating in the bidding of all government projects.

ii. Fofeiture of bid security in the form of Surety Bond issued by BOI/MS Insurance Corporation in the amount of Two Hundred Twenty Four Thousand Nine Hundred Sixty Six Pesos and 54/100 (P224,966.54).

2. The SSS President and CEO approved the recommendation on 03 July 2012.

x x x

The August 6, 2012 Resolution provides:

x x x

After careful consideration of the recommendation of BAC II and the documents AFSSI submitted, the Request for Reconsideration is found to have no merit and therefore hereby denied. The imposition of the following administrative penalties for violation of Section 69 of the Government Procurement Reform Act (R.A. 9184) and its Revised Implementing Rules and Regulations is hereby affirmed:

1) Blacklisting from participating in the bidding of all government projects for a period of one (1) year;

2) Fofeiture of bid security in the form of Surety Bond issued by BOI/MS Insurance Corporation in the amount of Two Hundred Twenty Four Thousand Nine Hundred Sixty Six Pesos and 54/100 (P224,966.54).

x x x

THE ANTECEDENTS

Petitioner Atlantica Fire Safety Systems, Inc. (Atlantica) is a corporation existing and duly organized under Philippine laws engaged in the business of supply and installation of fire suppression systems.[4]

Respondent Emilio S. De Quiros (De Quiros) is the President and CEO of the procuring entity, Social Security System (SSS). Respondents Judy Frances A. See, Gamelin Z. Ocson, Marissu G. Bugante, Nicholas C. Balbuena, Alberto C. Alburo, Sylvette C. Sybico, and Dorenda M. Dasmarinas-Pan are being sued in their capacity as members of the Bids & Awards Committee (BAC) of the SSS. The Respondent Government Procurement Policy Board (GPPB) is being impleaded as a nominal party.

In the early part of 2012, Atlantica participated in the bidding for the supply and installation of Fire Suppression System for the various rooms of the SSS Main Building, East Avenue, Quezon City.[5]

There were three procurement activities that transpired for the supply and installation of this Fire Suppression System. The first was on the initial competitive bidding on the “Supply and Installation of FM-200 Fire Supression System at COD Server and UPS Room and Network Equipment Room at SSS Main Office Building.” Atlantica secured Bidding Documents but did not participate in the bidding. The lone bidder thereof, however, was later post-disqualified.[6]

The second procurement activity involved the same project of the SSS.[7] On March 1, 2012, Atlantica was considered as the single rated bidder. In a letter[8], It was required by the BAC to submit documents, which included, among others, its tax clearance, within three (3) calendar days from notice.[9] Atlantica was also post-disqualified for submitting an expired tax clearance. Atlantica filed a Request for Reconsideration dated March 12, 2012 but was denied by the BAC in its March 14, 2012 Resolution. Atlantica did not file its protest.[10] The second bidding was declared a failure. Hence, the SSS resorted to Negotiated Procurement. This was the third procurement activity pertaining to the same Fire Suppression System project of the SSS which was resorted to after the two failed bidding processes.

Atlantica was the sole responding bidder during the negotiated procurement. During the post-qualification proceedings, the technical working group for the project discovered that Atlantica submitted a tampered tax clearance. The technical working group recommended to the BAC that Atlantica be considered as non-responsive and be disqualified.[11]

On June 7, 2012, the BAC sent a notice[12] post-disqualifying Atlantica for submitting a tampered and invalid tax clearance.[13] Atlantica requested for consideration in its letter[14] dated June 19, 2012.[15]

Respondent Gamelin Z. Ocson notified Atlantica, thru a letter[16] dated June 19, 2012, that the BAC had been considering suspending and blacklisting Atlantica for having submitted a falsified document, specifically the tax clearance certificate. In the same letter, Atlantica was directed to submit to the BAC its written answer and documentary evidence within five calendar days from receipt thereof.[17] Atlantica denied receiving the facsimile copy of the June 19, 2012 letter which was claimed by the BAC to have been sent on June 20, 2012. Atlantica admitted that it received the original and official copy of the letter during the hearing held before the members of

the BAC on July 20, 2012, after the Resolution[18] dated July 4, 2012 was rendered.[19] In the Resolution, Atlantica was notified that the request for reconsideration on its post-disqualification was denied for having been filed beyond the three-day reglementary period and that the decision shall be final and executory seven days from receipt.

Atlantica received a letter[20] dated July 16, 2012 from SSS President/CEO De Quiros inviting the former to a hearing on July 20, 2012 to be held before the members of the BAC. This hearing is in line with Atlantica's Request for Reconsideration on the imposition of administrative penalties. Atlantica's Treasurer, assisted by counsel, appeared on the scheduled hearing before the members of the BAC.[21]

The BAC directed Atlantica to submit additional documents in support of its request for reconsideration within five days therefrom.[22] A formal directive letter[23] containing the same recommendation dated July 23, 2012 was issued by the BAC. On July 25, 2012, Atlantica submitted additional documents[24], comprised of check vouchers and billing statements with its external auditor.

The BAC submitted a memorandum[25] dated July 26, 2012 to De Quiros recommending that the request for reconsideration be denied and the administrative penalties be imposed upon Atlantica.[26]

On August 6, 2012, De Quiros sent a letter[27] to Atlantica's counsel, informing the latter that the request for reconsideration had been denied and that the administrative penalties were affirmed. Consequently, the Blacklisting Order No. 003-2012[28] was issued by De Quiros.

Atlantica claims that the August 6, 2012 Resolution having been rendered by the head of the procuring entity, and "the same being a denial of a request for reconsideration, a second reconsideration is no longer feasible, thence, the only plain, speedy, and adequate remedy under the law is to file a petition for certiorari." [29] Hence, this Petition for Certiorari under Rule 65 of the Rules of Court.

THE ISSUES

Petitioner Atlantica submits the following issues[30] for Our consideration, to wit:

I.

WITH ALL DUE RESPECT, THE RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY RENDERED THE RESOLUTION DATED JULY 4, 2012 WITHOUT COMPLYING WITH THE PROVISIONS OF SECTION 5.2 OF THE UNIFORM GUIDELINES FOR BLACKLISTING OF MANUFACTURERS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS AND CONSULTANTS;

II.

THAT RESPONDENTS ACTED WHIMSICALLY AND CAPRICIOUSLY WHEN IT [sic] DECIDED THE PETITIONER'S CASE ON THE MERITS WITHOUT AFFORDING HEREIN PETITIONER THE OPPORTUNITY TO CONFRONT AND CROSS EXAMINE [sic] WITNESSES PRESENTED AGAINST IT AS CLEARLY MANDATED BY SECTION 5.2 OF THE UNIFORM GUIDELINES FOR BLACKLISTING OF MANUFACTURERS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS, AND CONSULTANTS;

III.

THE RESPONDENTS GRAVELY ABUSED ITS [sic] DISCRETION WHEN IT [sic] DENIED PETITIONER'S REQUEST FOR RECONSIDERATION, AND HASTILY RENDERED A RESOLUTION DESPITE THE ABSENCE OF SUBSTANTIAL EVIDENCE.

OUR RULING

The petition is unimpressive.

The crux of this controversy is whether Respondents De Quiros and the BAC acted with grave abuse of discretion when they rendered the assailed July 4, 2012 and August 6, 2012 Resolutions which impose the administrative penalties of blacklisting and the forfeiture of surety bond.

De Quiros and the members of the BAC did not commit any abuse of discretion when they imposed the administrative penalties against Atlantica. These were in accordance with Article XXIII, Sec. 69[31] of the Government Procurement Reform Act (GPRA), to wit:

SEC. 69. Imposition of Administrative Penalties. - (a) In addition to the provisions of Articles XXI and XXII of this Act, the Head of the Procuring Entity, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, for the following violations:

1. Submission of eligibility requirements containing false information or falsified documents.

x x x

(b) In addition to the penalty of suspension, the Bid security or the performance security posted by the concerned bidder or prospective bidder shall also be forfeited.

(c) The Head of the Procuring Entity may delegate to the BAC the authority to impose the aforementioned administrative penalties. (emphasis supplied)

While Atlantica admits submitting a tampered tax clearance certificate[32] during the post-qualification stage, it questions the propriety of the proceedings conducted and the penalties imposed against it.

Atlantica argues that its right to due process was violated when the July 4, 2012 Resolution was rendered by the BAC as it violates Section 5.2[33] of the Uniform Guidelines for the blacklisting of manufacturers, suppliers, distributors, contractors, and consultants (Blacklisting Guidelines).[34] It alleges that there was no hearing conducted before the BAC where it should have been presented the documentary evidence and witnesses against it. Atlantica denies receiving the letter dated June 19, 2012 which required it to submit its written answer and request for hearing. It allegedly received such letter only on July 20, 2012, long after the July 4, 2012 Resolution had been rendered.[35]

The seven cardinal primary rights on administrative due process have been outlined in the landmark case of *Ang Tibay v. Court of Industrial Relations*[36], to wit:

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.

x x x

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

(3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached.

(4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.

A perusal of the Records shows that the Respondents accorded Atlantica these cardinal rights. Thus, We find no violation of Atlantica's right to due process.

The first cardinal right was satisfied thru the letter dated June 19, 2012[37] and thru the July 20, 2012 hearing as prayed by Atlantica in its Request for Reconsideration dated July 11, 2012.[38] In those instances, Atlantica had the opportunity to be heard, or opportunity to explain its side or opportunity to seek a reconsideration of the action or ruling complained of.

The second, third, fourth, fifth, and sixth aspects of the Ang Tibay requirements are “reinforcements of the right to a hearing and are the inviolable rights applicable at the deliberative stage, as the decision-maker decides on the evidence presented during the hearing. These standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision-making.”[39] Here, Records show that the Respondents BAC and De Quiros considered the totality of the evidence presented and that the conclusions reached by the Respondents BAC and De Quiros were based on substantial evidence.

The last requirement relates to the form and substance of the decision of the quasi-judicial body, which “further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based.”[40] The assailed Resolutions dated July 4, 2012 and August 6, 2012 satisfy this requisite. A simple reading of these Resolutions will enable Atlantica to understand how the rule of fairness has been administered in the resolution of the case against it.

Moreover, We find that the BAC complied with the requirements under Section 5.2[41] of the Blacklisting Guidelines. In its letter dated June 19, 2012[42], Atlantica was notified to show cause why it should not be suspended and blacklisted for submitting a tampered tax clearance certificate. The letter further stated that a hearing shall be conducted upon Atlantica's request and that in such meeting, Atlantica may present documentary evidence, verbal testimony, and cross-examine any witness presented against it. It was also specified in the letter that the imposition of the administrative penalties is based on Section 69 of R.A. 9184[43].

Notwithstanding such notice, Atlantica failed to submit a written answer nor requested for a hearing prior to the June 25, 2012 deadline. Thus, on July 4, 2012, the BAC, with the approval of De Quiros, rendered the assailed Resolution[44] imposing the administrative penalties against Atlantica. Atlantica, through counsel, filed a Request for Reconsideration[45] with the BAC. It prayed that the July 4, 2012 Resolution be set aside. Moreover, it sought for a hearing where it may adduce evidence to prove its innocence on the charge of having submitted a falsified tax clearance. Granting such request, Respondent De Quiros scheduled a hearing between Atlantica and the BAC. Thus, Atlantica's claim that it was “surprised” to receive a letter dated July 16, 2012 from De Quiros scheduling a meeting between Atlantica and the BAC is absurd because Atlantica itself, in its Request for Reconsideration, requested for such hearing.[46] Atlantica's allegation that De Quiros' act of setting the case for a hearing after the request for reconsideration was filed, is “seemingly an effort to rectify, if not, to shield the error they

committed”[47] has no basis.

We also note that the assailed Resolution dated August 6, 2012 was rendered after the July 20, 2012 Hearing and after Atlantica submitted its evidence. Thus, Atlantica's claim that it was denied due process is untenable. The hearing itself was an opportunity to defend itself. We emphasize that the staid rule is that in administrative cases, a formal or trial-type hearing is not at all times and in all instances essential.[48] The fact that De Quiros granted the request for such hearing contradicts Atlantica's claim that it was denied due process as it was given a venue to defend its cause before the BAC and an opportunity to present evidence to support its claim of innocence.

Atlantica argues that the hearing was conducted without complying with the requirements under Sec. 5.2 of the Blacklisting Guidelines[49] as there was “no confrontation with evidence nor a cross-examination of the witnesses presented against [Atlantica] transpired, for the simple reason that no evidence or witness was presented by the Respondent members of the BAC in support of their accusation.” Atlantica alleges that the members of the BAC merely propounded a few questions and recommended that Atlantica submit additional documents, which was reiterated in a letter dated July 23, 2012.[50]

Atlantica's argument is untenable. The tampered tax clearance certificate submitted by Atlantica is sufficient to establish a prima facie case for violating the GPRA[51]. Article XXIII, Sec. 69[52] of the GPRA expressly warrants the imposition of administrative penalties for the submission of eligibility requirements containing false information or falsified documents. The tampered tax clearance certificate which Atlantica submitted, by itself, is sufficient for the imposition of penalties such as blacklisting and forfeiture of the surety bond. The tampering had been clearly established during the post-qualification stage of the procurement process, specifically when the Technical Working Group (TWG) sought to verify with the Bureau of Internal Revenue (BIR) the authenticity of the tax clearance certificate submitted by Atlantica. The TWG submitted a Memorandum[53] containing the following discrepancies in the tax clearance certificate as found by the BIR:

Particular As Indicated on the
submitted Document Remarks

1. The Caption Address National Office
Caloocan City National Office
Quezon City

2. Signatory ROBERTO R. TARON
Chief Collection
Enforcement Division ELEANOR N. LITAO
Head, Task Force on Tax Clearance Official Signatory
Effective Jan.2012

3. CED File No. TCC No. 11-H028-10135-2012 07-P300-10135
Per log book record, the referred transaction no. was officially issued to Jenelyn T. Parenas, 9 Tanguille St.
cor. Acacia St., Calendiola Laguna.

4. Tax Clearance Format Issued Format Differs
with new format issued for 2012 New format is different
with the previous years issued.

The BIR duly confirmed that the submitted tax clearance was not issued by their Task Force on Tax Clearance.[54] Moreover, Atlantica's Request for Reconsideration contains an admission that the tax clearance certificate it submitted was falsified, although it denies having knowledge of the actual falsification or tampering committed on the subject tax clearance.[55]

To avoid liability, Atlantica blames its external auditor, claiming that the latter is solely responsible for the procurement of the tax clearance certificate. We are not persuaded. It is Atlantica, the lone responding bidder, which submitted the tampered tax clearance certificate for its own account. Moreover, Atlantica submitted an Ominibus Sworn Statement[56] which contains an attestation under oath that “each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information therein are true and correct.”[57] It also contains an attestation that it “[c]arefully examine[d] all the Bidding Documents.”[58] Thus, it must be held responsible for relying on its external auditor without exercising due diligence in verifying the authenticity of the said document. It cannot seek refuge on the fact that the person who applied for such document is not its employee. On the contrary, it should have kept it more wary and more vigilant in checking the integrity of the documents procured for its behalf.

We agree with the BAC and De Quiros in not giving weight to the documentary evidence submitted by Atlantica because they do not disprove the fact that the tax clearance it submitted was not tampered. The letter to its external auditor[59] seeking for a written explanation, the letter to the BIR[60] asking for a written confirmation on why the tax clearance is considered as tampered, and the letter to the BAC[61] asking for reconsideration are not sufficient to absolve it from liability. Assuming *arguendo* that it is really not aware of the tampering or falsification of the tax clearance, the BAC and De Quiros cannot be imputed with grave abuse of discretion when they imposed the administrative penalties against Atlantica because what the law punishes is the very act of submitting a falsified document. We note that strict compliance with the provisions of the GPRA is geared towards the preservation of the integrity of the procurement process. Besides, one of the governing principles on government procurement is to promote a system of accountability where both the public officials and the private parties that deal with government procurement are, when warranted by circumstances, investigated and held liable for their actions relative thereto.[62] It is often said, “*Dura Lex, sed lex*”, which is translated as “the law is harsh, but that is the law.”

Atlantica asserts that the respondents gravely abused their discretion when they denied its request for reconsideration and “hastily rendered a resolution, despite the absence of substantial evidence”.[63]

We disagree. Case law defines substantial evidence as “such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming.”[64] A perusal of the records tells us that the Respondents' findings and appreciation of the evidence at hand, specifically the tampered tax clearance certificate, is more in accord with reason and common experience as it successfully proved the violation committed under Sec. 69(a)(1) of the GPRA.[65] The tampered tax clearance certificate is a strong and credible evidence for the very reason that such document is submitted and acknowledged by Atlantica itself.

Lastly, the term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[66] To fall within its ambit, the abuse of discretion must be one which is “too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.”[67] There is excess of jurisdiction “where the respondent being clothed with the power to determine the case, oversteps his authority as determined by law.”[68] Atlantica failed to convince Us that Respondents' issuance of the assailed Resolutions imposing administrative penalties against it were done in capricious, whimsical, arbitrary, or despotic manner which would warrant the issuance of a writ of certiorari.

WHEREFORE, in view of the foregoing, this Petition for Certiorari is hereby DISMISSED. The assailed Resolutions dated August 6, 2012 of SSS President and CEO Emilio de Quiros, Jr., and the July 4, 2012 Resolution of the Bids and Awards Committee II of the Social Security System are AFFIRMED.

SO ORDERED.

Salazar-Fernando, R.A., Chairperson, and Gonzales-Sison, M., JJ., concur.

[1] Rollo, pp. 12.

[2] Id. at 13.

[3] Id. at 6, 25.

[4] Id. at 21.

[5] Id. at 26.

[6] Id. at 153-154.

[7] Rollo, p.154.

[8] Id. at 70.

[9] Id. at 27.

[10] Id. at 154.

[11] Id. at 60.

[12] Id. at 72.

[13] Rollo, p.27.

[14] Id. at 73.

[15] Id. at 27.

[16] Id. at 74.

[17] Id. at 27-28.

[18] Id. at 69.

[19] Rollo, p.28.

[20] Id. at 86.

[21] Id. at 30.

[22] Id. at 30.

[23] Id. at 87.

[24] Id. at 88-138.

[25] Rollo, pp.52-54.

[26] Id. at 31.

[27] Id. at 68.

[28] Id. at 67.

[29] Id. at 32.

[30] Id. at 22-23.

[31] Government Procurement Reform Act, Art. XXIII, Sec. 69.

[32] Rollo, p.71.

[33] Section 5.2, Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants.

5.2 Notification

Upon verification of the existence of grounds for blacklisting, the BAC shall immediately notify the contractor concerned in writing, advising him that:

- a) a complaint for suspension and blacklisting has been filed against him, or he has been considered by the BAC for suspension and blacklisting, stating the grounds for such;
- b) he has the opportunity to show cause why he should not be suspended and blacklisted;
- c) a hearing shall be conducted before the BAC, upon his request, where he may present documentary evidence, verbal testimony and cross-examine the witnesses presented against him; and
- d) the consequences of being suspended and blacklisted. Within five (5) calendar days from receipt of notification, the contractor shall submit its written answer with documentary evidence to the BAC with a manifestation for request of hearing to determine questions of fact, if he so desires. No time extension shall be allowed.

Should the contractor fail to answer within the same period, the BAC shall issue a resolution recommending to the Head of the Procuring Entity the immediate suspension of the contractor from participating in any bidding process of the agency and the forfeiture of his bid security.

[34] Rollo, p.35.

[35] 35-36.

[36] Ang Tibay v. CIR, 69 Phil. 635 (1940).

[37] Rollo, p.65.

[38] Id. at 79.

[39] Bautista v. Comelec, G.R. Nos. 154796-97, October 23, 2003.

[40] Solid Homes, Inc. v. Laserna, G.R. No. 166051, April 8, 2008.

[41] Supra note 33.

[42] Rollo, p.74.

[43] ARTICLE XXIII

ADMINISTRATIVE SANCTIONS

SEC. 69. Imposition of Administrative Penalties. - (a) In addition to the provisions of Articles XXI and XXII of this Act, the Head of the Procuring Entity, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, for the following violations:

1. Submission of eligibility requirements containing false information or falsified documents.
2. Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.
3. Allowing the use of one's name, or using the name of another for purposes of public bidding.
4. Withdrawal of a Bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.
5. Refusal or failure to post the required performance security within the prescribed time.
6. Termination of the contract due to the default of the bidder.

Refusal to clarify or validate in writing its Bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification.

Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.

All other acts that tend to defeat the purpose of the Competitive Bidding.

(b) In addition to the penalty of suspension, the Bid security or the performance security posted by the concerned bidder or prospective bidder shall also be forfeited.

(c) The Head of the Procuring Entity may delegate to the BAC the authority to impose the aforementioned administrative penalties.

[44] Rollo, p.69.

[45] Id. at 78.

[46] Id. at 81.

[47] Id. at 36.

[48] Mendoza v. Comelec, G.R. No. 188308, October 15, 2009.

[49] Supra note 33.

[50] 37-38.

[51] An Act Providing for the Modernization, Standardization, and Regulation of the Procurement Activities of the Government and for Other Purposes [Government Procurement Reform Act], Republic Act No. 9184 (2002).

[52] Supra note 43.

[53] Rollo, p.58-59.

[54] Id. at 59.

[55] Id. at 79.

[56] Id. at 167-168.

[57] Id. at 167.

[58] Id. at 168.

[59] Rollo, p.75.

[60] Id. at 76-77.

[61] Id. at 78-81.

[62] Government Procurement Reform Act, Art.1 Sec.3(d).

[63] Rollo, p.38.

[64] Orbase v. Office of the Ombudsman, G.R. No. 175115, December 23, 2009.

[65] SEC. 69. Imposition of Administrative Penalties. - (a) In addition to the provisions of Articles XXI and XXII of this Act, the Head of the Procuring Entity, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, for the following violations:

1. Submission of eligibility requirements containing false information or falsified documents.

x x x

[66] Office of the Ombudsman v. Magno, G.R. No. 178923, November 27, 2008.

[67] Romy's Freight Service v. Castro, et al. (citing Lim v. Executive Secretary, G.R. No. 151445, April 11, 2002).

[68] Nepomuceno v. Court of Appeals, G.R. No. 126405, February 25, 1999 (citing Rocha v. Crossfield).

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