

PUBLIC ESTATES AUTHORITY AND MANUEL R. BERINA, JR., IN HIS CAPACITY AS THE ACTING GENERAL MANAGER OF THE PUBLIC ESTATES AUTHORITY, PETITIONERS, VS. BOLINAO SECURITY AND INVESTIG...

G.R. NO. 158812. October 05, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Before this Court is a Petition for Review of the Court of Appeals Decision[1] dated May 30, 2002 which affirmed that of the Makati Regional Trial Court, Branch 58, dated April 22, 1992 declaring null and void the award by the Philippine Estates Authority (PEA) of a bid in favor of Masada Security Agency and declaring Bolinao Security and Investigation Service Inc. as the winning bidder for the April 10, 1991 bidding for security services.

On February 1, 1990, the PEA, a government corporation, through its then Acting General Manager Luis B. Pangilinan, Jr., entered into a Contract for Security Services[2] with Bolinao Security and Investigation Services, Inc. (Bolinao Security), to secure and protect PEA's properties, personnel and premises at Villa Porta Vaga Subdivision, Cavite City. The contract was effective February 1, 1990 until January 31, 1991, extendible at the option of PEA.[3]

In December 1990, PEA published in several newspapers an Invitation to Bid[4] for the services of three hundred seven (307) regular and well-trained guards for its establishments, facilities, and other properties in Metro Manila including those in Cavite City. The Invitation to Bid read:

INVITATION TO BID

Interested bidders are invited to participate in the public bidding for Security Services for the following areas:

- (1) 6th and 7th Floor, Legaspi Towers 200, Makati, Metro Manila
- (2) Central Business Park (CBP) - I Pasay City
- (3) Freedom Islands I and II - Parañaque, Metro Manila
- (4) Fisherman's Wharf, Parañaque, Metro Manila
- (5) Aguinaldo Blvd. (Coastal Road or R-I) - Parañaque-Las Piñas, Metro Manila
- (6) Lopez, Bernabe, Madrigal-Relocation Sites - Las Piñas
- (7) Financial Center Area - Pasay City
- (8) Villa Porta Vaga (Cañacao Bay) - Cavite City

Interested bidders may request for copies of the Terms of Reference for this bidding, from the Administrative Department of PEA, beginning on Dec. 17, 1990 up to Dec. 21, 1990 during regular working hours from 9:00 AM-6:00 PM.

All sealed bids must be received by the PEA Prequalification Bids and Awards Committee on or before 10:00

AM of December 27, 1990 at the 7th Floor, Legaspi Towers 200, Paseo de Roxas, Makati, Metro Manila and will be publicly opened and read on the said bidding date at the same address, in the presence of attending bidders or their duly authorized representatives and the general public. A Pre-bid conference will be conducted by the PBAC on Dec. 24, 1990 at 10:00 AM. Attendance to this Pre-bid conference is mandatory.

PEA reserves the right to reject any proposal or waive any defects or formality, impose additional terms and conditions and accept the proposal most advantageous to the Government. (Emphasis supplied)[5]

The Terms of Reference (TOR) for Security Services[6] listed the following documents which an interested party should submit to PEA to qualify to bid:

- (a) Certified xerox copy of Current License to Operate;
- (b) Certified xerox copy of Articles of Incorporation;
- (c) Description of the organization, including its objectives and the names, nationality and experience of key officials;
- (d) Certified list of firearms, communication equipment, service vehicles and other equipment with their corresponding licenses to operate said equipment;
- (e) List of existing clients;
- (f) Detailed financial statements (balance sheets and profits and loss statements) as of September 1990 and Income Tax Return duly filed and received by the Bureau of Internal Revenue (BIR);
- (g) Certification of up-to-date payments of Social Security Services (SSS) Contributions;
- (h) Bank certification of standby credit in the amount of TWO MILLION PESOS (P2,000,000.00);
- (i) Certification of deposit from Philippine National Bank (PNB) or any reputable bank equivalent to one (1) monthly salary of three hundred seven (307) guards to be used exclusively for their salaries.(Emphasis and underscoring supplied)[7]

On December 19, 1990, a pre-bid conference was held attended by twenty-one (21) interested security agencies. Following the conference, Bid Bulletin No. 1 dated December 21, 1990 amending, clarifying and/or supplementing the TOR was issued to all prospective bidders.

On the scheduled bidding on December 27, 1990, only six (6) out of the twenty-one (21) interested bidders showed up, namely: Integrity Security and Intelligence Service (Integrity Security); Bolinao Security; Odin Security Agency, Inc.; Masada Security Agency, Inc. (Masada Security); Catalina Security Agency, Inc. and Montillano Security Agency.

For alleged "general non-compliance by bidders with bid qualification," PEA's Prequalification Bids and Awards Committee (PBAC) rejected all the 6 bids and thus scheduled a rebidding for security services contract.

In the meantime, after the contract with Bolinao Security expired on January 31, 1991, it was extended monthly by PEA up to July 29, 1991.[8]

The re-bidding was scheduled on April 10, 1991 and all the 21 bidders were again invited to submit their bids. Bid Bulletin No. 2[9] was thereafter issued modifying the TOR originally issued.

On April 3, 1991, a pre-bid conference was held and on April 10, 1991, the bids were opened.

The PBAC's technical working group thereafter issued Bid Evaluation[10] dated June 11, 1991 tabulating the result of the bidding as follows:

BIDDERS LIQUIDATED DAMAGES**(p/ struct.) REMARKS**

1. Integrity Security 25,000 No SSS Clearance
2. Bolinao Security 20,000 No current license to operate
3. Masada 6,500 Complying
4. Odin Security 5,500 Complying
5. Catalina Security 5,000 Complying
6. Montillano Security 5,000 Only application for Permit To Purchase radio eqpt.[11]

The evaluation noted that all the bidders offered a bid price of P1,499,695.00 per month. PEA thus based the award on the amount of liquidated damages representing the total penalty to be paid by the security agency if it failed to prevent the construction of a shanty by a squatter in the Manila Bay reclamation properties of PEA.

The report, noting that Integrated Security submitted the highest bid in terms of liquidated damages but had no SSS clearance, and Bolinao Security submitted the next highest bid but had no current license to operate, recommended that Masada Security which proffered the third highest bid be considered the winning bidder.[12]

Heeding the PBAC's recommendation, PEA awarded the contract to Masada Security effective September 1, 1991 up to April 30, 1993.[13] Bolinao Security whose contract with PEA expired on January 31, 1991 but was, as earlier stated, extended monthly up to July 29, 1991, refused to turn over the PEA properties in Cavite City, however, to Masada Security, prompting PEA to send a demand letter to Bolinao Security to turn over the property to Masada Security.

Bolinao Security insisted to PEA, however, that it should be declared the winning bidder. But PEA explained that the bid of Bolinao Security was rejected because it failed to submit a current license to operate and to award the contract to it despite that would violate Presidential Decree (P.D.) No. 1919.[14]

On September 16, 1991, Bolinao Security filed with the Regional Trial Court of Makati a complaint[15] for annulment of bid award, damages, injunction with special prayer for the issuance of a temporary restraining order against PEA, its Acting General Manager Manuel Berina, Jr., and Masada Security, averring that, among other things, the attempt of Masada Security to take over the Cavite City premises from it based on the result of the bidding was improper, illegal, criminal and violative of the provisions of the Anti-Graft and Corrupt Practices Act.[16]

In its Answer,[17] PEA, denying Bolinao Security's allegations, alleged that the contract for security services for its properties situated in Cavite City with Bolinao Security, as extended, had already been terminated effective September 16, 1991; bidding laws were strictly followed and the bid of Bolinao Security was twice rejected for non-compliance with important requirements of the bidding; Bolinao Security failed to offer the highest liquidated damages; and awarding the contract to Bolinao Security would violate P.D. No. 1919 as well as the "National Accounting and Auditing Manual."

Masada Security, in its Answer with Compulsory Counterclaim,[18] proffered that Bolinao Security had no valid cause of action, hence, not entitled to a writ of preliminary injunction.

By Order of October 14, 1991, the trial court issued a writ of preliminary injunction enjoining the defendants from terminating the contract with Bolinao Security covering PEA's Cavite City property.[19]

After trial on the merits, the trial court, by Decision of April 22, 1992, found for Bolinao Security and declared the contract awarded to Masada Security null and void. The decretal text of the decision reads:

"WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff with the following dispositions:

- 1) The writ of preliminary injunction issued in this case, which enjoins defendants from terminating the existing contract for security services with plaintiff, and from implementing the questioned contract in favor of Masada Security Agency effective September 17, 1991, and from ejecting plaintiff from the Villa Porta Vaga Subdivision, Canacao, Cavite City, is made permanent.
- 2) The award of the bid in favor of defendant Masada Security Agency is declared null and void and plaintiff Bolinao is declared as the winning bidder during the public bidding held on April 10, 1991.
- 3) Directing the defendants to jointly and severally pay to the plaintiff the amount of P50,000.00 as nominal damages, P50,000.00 as exemplary damages; attorney's fees; and the costs of suit.

SO ORDERED." [20] (Underscoring supplied)

On appeal, the Court of Appeals affirmed the decision of the trial court by Decision of May 30, 2002.

In affirming the trial court's decision, the appellate court held that disqualifying Bolinao Security for the simple reason that on the day of the bidding its application for renewal of its license was still being processed was "most unfair, arbitrary and has no legal basis" as the period for processing thereof "is a bureaucratic requirement which sh[ould] not work against the interest of [Bolinao Security], absen[t] any badge of fraud or negligence." [21]

Even assuming that Bolinao Security's pending application for renewal of license did not serve as proof of a current license to operate, the appellate court held that still PEA was estopped when it opened the second envelope containing the bid. [22]

The appellate court went on to declare that the rule that the doctrine of estoppel does not lie against the government is not without exception, it holding that while the State could not be put in estoppel by the mistakes or errors of its officials or agents, the government must not be allowed to deal dishonorably or capriciously with its citizens; [23] and while the government was not precluded from subsequently raising the issue of lack of qualification on the part of Bolinao Security, the same must be supported by law and equity. [24]

Hence, the present petition for review filed on July 24, 1003 by PEA and its Acting General Manager Manuel R. Berina, Jr., [25] raising the following issues:

I

WHETHER OR NOT RESPONDENT BOLINAO SECURITY AND INVESTIGATION SERVICE, INC. IS A QUALIFIED BIDDER, DESPITE ITS NON-COMPLIANCE WITH THE BIDDING REQUIREMENTS.

II

WHETHER OR NOT THE LOWER COURTS' RULINGS CONSTITUTE AN UNJUSTIFIED JUDICIAL INTERVENTION OVER PURELY EXECUTIVE MATTERS AND FUNCTIONS. [26]

PEA argues that, inter alia, the lower courts' rulings constituted an unjustified judicial intervention over purely executive matters and functions; [27] where the invitation to bid provides that the government may reject any or all bids or any part thereof or waive any defects contained therein and accept an offer most advantageous to the government, the highest or lowest bidder, as the case may be, cannot claim the award as a matter of right; [28] it should not be considered in estoppel by opening and reading the bids of Bolinao Security since it (PEA) declared,

aside from its published reservation, that it reserved the right to reject any bid;^[29] and at all events, Bolinao Security failed to submit the most advantageous bid.^[30]

The petition is meritorious.

The issue in the main is whether the thrashing out of Bolinao Security's bid in favor of Masada Security was justified by PEA in view of the former's lack of "current license to operate" at the time of the opening of the bids on April 10, 1991 and PEA's "right to reject any or all bids" stipulation in the Invitation to Bid.

As priorly stated, the contract for security services between Bolinao Security and PEA took effect on February 1, 1990 until January 31, 1991.^[31] As its license to operate was to expire on March 31, 1991, Bolinao Security filed on February 28, 1991 an application for a new license which was granted and issued only on May 16, 1991, after the April 10, 1991 bidding. Evidently, at the time of the bidding, Bolinao Security had no "current license to operate" as required by the TOR.

Bolinao Security argues, however, that since PEA had given it several extensions after its license to operate expired and as its new license was eventually issued on May 16, 1991, such new license should have been given retroactive effect.

At any rate, Bolinao Security argues that while PEA has the right to reject any proposal, it has also the right to waive any defects.

Bolinao Security's position fails.

PEA's granting of extensions to Bolinao Security after its license expired cannot be interpreted as a waiver of the requirement of a current license.

Waiver is defined as the relinquishment of a known right with knowledge of its existence and an intention to relinquish it. Voluntary choice is the essence of waiver.^[32] To be valid and effective, a waiver must in the first place be couched in clear and unequivocal terms which leave no doubt as to the intention of a person to give up a right or benefit which legally pertains to him. It may not causally be attributed to a person when the terms thereof do not explicitly and clearly evidence an intent to abandon a right vested in such person.^[33]

Extension of the effectivity of the security service contract can not be interpreted as an extension of the effectivity of license to operate a security agency. Neither can the new license issued to Bolinao Security be given retroactive effect without running afoul of the rule in public biddings that qualifications of bidders shall be determined at the time of the opening of the bids, and not at any other time. The "National Accounting and Auditing Manual" is explicit on the matter:

SEC. 391. Opening of bids. - Bids shall be opened at the exact hour announced for such opening in the notice or advertisement, and in the presence of all bidders, if possible. Bids for public services or for furnishing supplies, materials, and equipment to the government shall be opened in the presence of a committee to be designated by the head of the office and a representative of the Auditor General who is authorized to secure and identify such papers and samples as will insure the proper safeguard of the interests of the Government.

Before the actual opening of the sealed bids, the committee shall acquaint itself with the conditions imposed by the notice or advertisement upon all prospective bidders, especially those with reference to the personal qualifications of the contractor, if any; the amount and character of deposits to be submitted with the bid, etc. No bid presented after the expiration of the time set for the opening shall be received. Bids shall be in sealed envelopes only. Bids by telegram, telephone, radiogram, or open bids shall not be accepted; they are not valid. A bid opened which does not meet in full the conditions or requirements of the notice or advertisement shall be disqualified and shall not be considered in any award to be made, but notation thereof shall be entered in the

abstract of proposals giving the reason or reasons for the disqualification of such bid. An imperfect bid, i.e., a bid which does not comply with all the conditions or requirements in the notice or advertisement, or complies with them partly but not in full may not be perfected after the time set for the opening of the bids has already elapsed, much less after the bids have been opened. Bids which offer other conditions than those specified in the advertisement such as in the quantity, quality or manner of rendering the service, or supplying the materials or supplies being bidden, or the time of performance under the resulting contract, etc., will likewise be ineligible for an award, but the proposal will be noted in the abstract with a memorandum why the said proposal has been disqualified for an award. (Emphasis supplied)

Thus, in *Republic v. Capulong*,^[34] the therein private respondent bidder urged this Court to consider a 1952 Opinion of the Secretary of Justice which declared that the failure of the lowest bidder to secure a license as a transportation operator at the time of the opening of the bids did not affect its bid. In debunking the therein private respondent's appeal, this Court held that the invitation to bid issued by the then Department of Agriculture and Natural Resources contained no requirement that the bidder must be a duly licensed transportation operator at the time of the opening of the bids,^[35] in stark contrast to the requirement involved in the instant case.

And in *C & C Commercial v. Menor*,^[36] this Court upheld Nawasa's rejection of the bid to supply asbestos cement pressure proffered by C and C Commercial which did not submit the required tax clearance certificate.

Bolinao Security's argument that PEA was estopped from questioning its qualifications, it asserting that by opening the second/bid envelope, the eligibility and qualification requirements of the bidding were deemed complied with, does not persuade.

Bid Bulletin No. 2^[37] expressly provides:

TERMS OF REFERENCE FOR
SECURITY SERVICES
BID BULLETIN NO. 2

This Bid Bulletin No. 2 is hereby issued for your information and inclusion in the Terms of Reference already issued, as follows:

1. Section A. Bid Price

Delete the entire section and substitute the following:

"Section A. Bid/Tender"

1) Bid Price

All prices quoted shall not be below the existing minimum rate prescribed by PC-SUSSUA-PADPAO.

2) Submission

Bids shall be submitted in two (2) sealed envelopes with the name of the project to be bid and the name of the bidder in capital letters addressed to the PBAC. They shall be marked "Do not open before 2:00 P. M. of 10 April 1991."

The first envelope shall contain the following information/documents:

a) Obligations of Contractor as specified in Section C.^[38]

b) Bid Security in the proper form and amount.

It shall be opened first to determine the contractor's compliance with the above requirements. Non-compliance with any of the above requirements shall automatically disqualify the bid submitted.

The second envelope shall contain the following information/documents:

- a) Bid Price
- b) Breakdown of Bid Price
- c) Amount of Liquidated Damages

It shall be opened only if the contractor has complied with the requirements needed in the first envelope.
(Emphasis and Footnote supplied)

In *Information Technology Foundation of the Philippines v. Commission on Elections*,^[39] the question of qualification or eligibility of a bidder in a public bidding conducted by the Commission on Elections (COMELEC) to procure election automation machines was in issue.

The public bidding conducted by the COMELEC observed a two-envelope/two-stage system. The bidder's first envelope or the Eligibility Envelope was to establish the bidder's eligibility to bid and its qualifications to perform the acts if accepted. The second envelope contained the Bid Envelope itself.

The COMELEC's Request for Proposal (RFP) to procure the election automation machines stated, however, that "the eligibility envelopes of prospective [b]idders shall be opened first to determine their eligibility. In case any of the requirements specified in Clause 20 is missing from the first bid envelope, the BAC shall declare said prospective [b]idder as ineligible to bid. Bid envelopes of ineligible [b]idders shall be immediately returned unopened."^[40]

The winning bidder's Bid Envelope was opened by the COMELEC despite its lack of qualification or eligibility. This Court, however, disqualified such winning bidder.

So must Bolinao Security be disqualified.

The basic rule in public bidding that bids should be evaluated on the basis of the required documents submitted before and not after the opening of bids must be strictly observed in order to safeguard a fair, honest and competitive public bidding.^[41]

At all events, as PEA argues, assuming *arguendo* that Bolinao Security was deemed to have complied with the current license requirement, since the Invitation to Bid expressly provided that "PEA reserves the right to reject any proposal or waive any defects or formality, impose additional terms and conditions and accept the proposal most advantageous to the Government," Bolinao Security voluntarily submitted itself to the terms and conditions thereof and acknowledged the said right of the government.

In *Bureau Veritas v. Office of the President*,^[42] this Court through the erudite expatiation of Justice Melencio-Herrera discussed profoundly the legal implications of the "right to reject any or all bids" in an invitation to bid, viz:

xxx It must be stressed, as held in the case of *A.C. Esguerra & Sons v. Aytona, et al.* (L-18751, 28 April 1962, 4 SCRA 1245), that in an "invitation to bid, there is a condition imposed upon the bidders to the effect that the bidding shall be subject to the right of the government to reject any and all bids subject to its discretion. In the case at bar, the government has made its choice and unless an unfairness or injustice is shown, the losing bidders have no cause to complain nor right to dispute that choice. This is a well-settled doctrine in this jurisdiction and elsewhere."

This discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function. The discretion given to the authorities on this matter is of such wide latitude that the Courts

will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award (*Jalandoni v. NARRA*, 108 Phil. 486 [1960]). xxx The choice of who among the bidders is best qualified to perform this task should be left to the sound discretion of the proper Government authorities in the executive branch since they are in a better position than the Courts to make the determination owing to the experience and knowledge that they have acquired by virtue of their functions. The exercise of this discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the Government agencies concerned, not by the Courts. The role of the Courts is to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making.

It is only upon a clear showing of grave abuse of discretion that the Courts will set aside the award of a contract made by a government entity. Grave abuse of discretion implies a capricious, arbitrary and whimsical exercise of power xxx. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as to act at all in contemplation of law, where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility xxx.

xxx. In the "Invitation to Prequalify and Bid" xxx, the CISS Committee made an express reservation of the right of the Government to "reject any or all bids or any part thereof or waive any defects contained thereon and accept an offer most advantageous to the Government." It is well-settled rule that where such reservation is made in an Invitation to Bid, the highest or lowest bidder, as the case may be, is not entitled to an award as a matter of right (*C & C Commercial Corp. v. Menor*, L-28360, 27 January 1983, 120 SCRA 112). Even the lowest Bid or any Bid may be rejected or, in the exercise of sound discretion, the award may be made to another than the lowest bidder (*A. C. Esguerra & Sons v. Aytona*, supra, citing 43 Am. Jur., 788). (Emphasis and underscoring supplied)

Similarly, in *National Power Corporation v. Philipp Brothers Oceanic, Inc.*,^[43] this Court declared that where the right to reject is so reserved, the lowest bid or any bid for that matter may be rejected on a mere technicality. And where the government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, the losing bidder has no cause to complain nor right to dispute that choice unless an unfairness or injustice is shown. Citing *Celeste v. Court of Appeals*,^[44] this Court went on to declare:

Verily, a reservation of the government of its right to reject any bid, generally vests in the authorities a wide discretion as to who is the best and most advantageous bidder. The exercise of such discretion involves inquiry, investigation, comparison, deliberation and decision, which are quasi-judicial functions, and when honestly exercised, may not be reviewed by the court. xxx (Emphasis supplied)

Only recently, this Court in *JG Summit Holdings, Inc. v. Court of Appeals*^[45] held:

It is a settled rule that where the invitation to bid contains a reservation for the Government to reject any or all bids, the lowest or the highest bidder, as the case may be, is not entitled to an award as a matter of right for it does not become a ministerial duty of the Government to make such an award. Thus, it has been held that where the right to reject is so reserved, the lowest bid or any bid for that matter may be rejected on a mere technicality, that all bids may be rejected, even if arbitrarily and unwisely, or under a mistake, and that in the exercise of a sound discretion, the award may be made to another than the lowest bidder. And so, where the Government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, the losing bidder has no cause to complain nor right to dispute that choice, unless an unfairness or injustice is shown. (Emphasis and underscoring supplied)^[46]

Clearly, as spelled out in the foregoing disquisitions, the government is granted broad discretion in choosing who among the bidders can offer the "most advantageous" terms and courts will not interfere therewith or direct the committee on bids to do a particular act or to enjoin such act within its prerogatives, except when in the exercise

of its authority, it gravely abuses or exceeds its jurisdiction.[47]

A reading of the decisional rules on reservation of right to reject cautions, however, against injustice, unfairness, arbitrariness, fraudulent acts or grave abuse of discretion.[48] A contrary conclusion would be anathema to the purposes for which public biddings are founded - to give the public the best possible advantages through open competition - as it would give the unscrupulous a plain escape to rig the bidding process.

Thus segueing to the issue of whether PEA's choice of Masada Security over that of Bolinao Security was tainted with injustice, unfairness, arbitrariness or fraud or whether it constituted grave abuse of discretion, this Court finds that Bolinao Security failed to prove the same.

The presumption of regularity of the bidding must thus remain.

As reflected above, competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition. It is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.[49] Authorities should not thus be permitted to waive any substantial variance between the conditions under which bids are invited and the proposals submitted. If one bidder is relieved from conforming with the conditions which impose some duty upon it or lay the ground for holding it to a strict performance of its contract, that bidder is not contracting in fair competition with those bidders who propose to be bound by all the conditions.[50]

In fine, the PEA did not commit grave abuse of discretion in selecting the bid of Masada Security as the most advantageous to the government.

WHEREFORE, the decision of the Court of Appeals dated May 30, 2002 is REVERSED and SET ASIDE and the complaint of respondent, Bolinao Security and Investigation Service, Inc. is DISMISSED.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 50.

[2] Id. at 70; Annex "C".

[3] Id. at 51.

[4] Id. at 81; Annex "E".

[5] Id. at 81; Annex "E".

[6] Id. at 82; Annex "F".

[7] Id. at 84-85.

[8] Records at 109 to 114.

[9] Rollo at 88.

[10] Id. at 92.

[11] Id. at 94.

[12] Id. at 94

[13] Id. at 94-95.

[14] AMENDING FURTHER REPUBLIC ACT NUMBERED FIFTY FOUR HUNDRED EIGHTY SEVEN OTHERWISE KNOWN AS "THE PRIVATE SECURITY AGENCY LAW." The law provides that the maximum number of security guards that an agency/company guard force may employ, to include its branches, shall be one thousand. PEA thus argues that awarding the bid for 307 security guards to Bolinao Security which already had 980 security guards will compel it to violate the law.

[15] Records at 1.

[16] Rollo at 104.

[17] Records at 79-100.

[18] Id. at 53.

[19] Rollo at 57.

[20] Id. at 149.

[21] Id. at 60.

[22] Id. at 63.

[23] Id. at 66.

[24] Id. at 67.

[25] Now Deputy General Manager of PEA.

[26] Rollo at 26.

[27] Id. At 32.

[28] Id. at 34.

[29] Id. at 39.

[30] Id. at 43.

[31] Id. at 73.

[32] 1 Tolentino Civil Code of the Philippines, 1990 ed., at 29.

[33] *Gatchalian v. Delim*, 203 SCRA 126, 132 (1991).

[34] 199 SCRA 134, 146-147 (1991).

[35] Id. at 148.

[36] 120 SCRA 112, 118 (1983).

[37] Rollo 88; Annex "H".

[38] Section C enumerates the qualifications of prospective bidders.

[39] 419 SCRA 141, 153 (2004). The pertinent portion of the decision reads:

"Two-Envelope,
Two-Stage System

As stated earlier in our factual presentation, the public bidding system designed by Comelec under its RFP (Request for Proposal for the Automation of the 2004 Election) mandated the use of a two-envelope, two-stage system. A bidder's first envelope (Eligibility Envelope) was meant to establish its eligibility to bid and its qualifications and capacity to perform the contract if its bid was accepted, while the second envelope would be the Bid Envelope itself.

The Eligibility Envelope was to contain legal documents such as articles of incorporation, business registrations, licenses and permits, mayor's permit, VAT certification, and so forth; technical documents containing documentary evidence to establish the track record of the bidder and its technical and production capabilities to perform the contract, and financial documents, including audited financial statements for the last three years, to establish the bidder's financial capacity.

In the case of a consortium or joint venture desirous of participating in the bidding, it goes without saying that the Eligibility Envelope would necessarily have to include a copy of the joint venture agreement, the consortium agreement or memorandum of agreement - or a business plan or some other instrument of similar import - establishing the due existence, composition and scope of such aggrupation. Otherwise, how would Comelec know who it was dealing with, and whether these parties are qualified and capable of delivering the products and services being offered for bidding?

In the instant case, no such instrument was submitted to Comelec during the bidding process. This fact can be conclusively ascertained by scrutinizing the two-inch thick "Eligibility Requirements" file submitted by Comelec last October 9, 2003, in partial compliance with this Court's instructions given during the Oral Argument. This file purports to replicate the eligibility documents originally submitted to Comelec by MPEI allegedly on behalf of MPC, in connection with the bidding conducted in March 2003. Included in the file are the incorporation papers and financial statements of the members of the supposed consortium and certain certificates, licenses and permits issued to them.

However, there is no sign whatsoever of any joint venture agreement, consortium agreement, memorandum of agreement, or business plan executed among the members of the purported consortium.

The only logical conclusion is that no such agreement was ever submitted to the Comelec for its consideration, as part of the bidding process.

It thus follows that, prior the award of the Contract, there was no documentary or other basis for Comelec to conclude that a consortium had actually been formed amongst MPEI, SK C&C and WeSolv, along with Election.com and ePLDT. Neither was there anything to indicate the exact relationships between and among these firms; their diverse roles, undertakings and prestations, if any, relative to the prosecution of the project, the extent of their respective investments (if any) in the supposed consortium or in the project; and the precise nature and extent of their respective liabilities with respect to the contract being offered for bidding. And apart from the self-serving letter of March 7, 2003, there was not even any indication that MPEI was the lead company duly authorized to act on behalf of the others.

So, it necessarily follows that, during the bidding process, Comelec had no basis at all for determining that the alleged consortium really existed and was eligible and qualified; and that the arrangements among the members were satisfactory and sufficient to ensure delivery on the Contract and to protect the government's interest.

Notwithstanding such deficiencies, Comelec still deemed the "consortium" eligible to participate in the bidding,

proceeded to open its Second Envelope, and eventually awarded the bid to it, even though - per the Comelec's own RFP - the BAC should have declared the MPC ineligible to bid and returned the Second (Bid) Envelope unopened.

xxx

Hence, had the proponent MPEI been evaluated based solely on its own experience, financial and operational track record or lack thereof, it would surely not have qualified and would have been immediately considered ineligible to bid, as respondents readily admit.

At any rate, it is clear that Comelec gravely abused its discretion in arbitrarily failing to observe its own rules, policies and guidelines with respect to the bidding process, thereby negating a fair, honest and competitive bidding." (Supra at 165-168; Emphasis supplied)

[40] Paragraph 25.1 of the COMELEC's RFP.

[41] Republic v. Capulong, Supra, Note 34.

[42] 205 SCRA 705, 717-719 (1992); Vide also C & C Commercial Corporation v. Menor, supra.

[43] 369 SCRA 629, 640-641 (2001).

[44] 209 SCRA 79, 88 (1992).

[45] 412 SCRA 10, 32 (2003).

[46] Ibid. citing B. Fernandez, Treatise on Government Contracts Under Philippine Law (1991), at 26, citing Gutierrez v. Insular Life Assurance Co., Ltd., 102 Phil. 524, 525-526 (1957), C & C Commercial Corporation v. Menor, supra, AC Esguerra & Sons v. Aytona, 4 SCRA 1245, 1250 (1962).

[47] Republic v. Silerio, 272 SCRA 280, 289-290 (1997).

[48] Vide National Power Corporation v. Court of Appeals, 273 SCRA 419, 446 (1997). Even the "National Accounting and Auditing Manual" recognizes the restricted nature of such stipulation as it provides:

SEC. 393. Reservation of rights to reject any or all bids. - The contract will be awarded to the contractor whose proposal appears to be the most advantageous to the Government, but the right shall be reserved to reject any or all bids, to waive any informality in the bids received, and to accept or reject any items of any bid unless such bid is qualified by specific limitations; also to disregard the bid of any failing bidder, known as such to the agency head or director, or any bid which is obviously unbalanced or below what the work can be done for. The right shall also be reserved to reject the bid of a bidder who has previously failed to perform properly or complete on time contracts of a similar nature, or a bid of a bidder who is not in a position to perform the contract. Reasonable grounds to believe that any bidder is interested in more than one bid for the proposed work under this bidding will be a sufficient cause for the rejection of all the bids in which he is interested. The right to reject bids, therefore, is not one to be arbitrarily or capriciously exercised. If the bids are excessive, or if the bidders are not responsible men, as those having records of habitual default or failure in other contracts, or if they do not count with sufficient capital to undertake the first stages of at least 50 per centum of the work, or where there is reason to suspect that there is an evident collusion among the bidders, then the right to reject may be freely exercised.

[49] National Food Authority v. Court of Appeals, 253 SCRA 470, 481 (1996).

[50] Republic v. Capulong, Supra, Note 34 at 147.

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