

SARGASSO CONSTRUCTION & DEVELOPMENT CORPORATION/PICK & SHOVEL, INC.,/ATLANTIC ERECTORS, INC. (JOINT VENTURE), PETITIONER, VS. PHILIPPINE PORTS AUTHORITY, RESPONDENT.

G.R. No. 170530. July 05, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 which seeks to annul and set aside the August 22, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 63180 and its November 14, 2005 Resolution[2] denying petitioner's motion for the reconsideration thereof. The questioned CA decision reversed the June 8, 1998 Decision[3] of the Regional Trial Court of Manila, Branch 14, in Civil Case No. 97-83916, which granted petitioner's action for specific performance.

The factual and procedural antecedents have been succinctly recited in the subject Court of Appeals decision in this wise:[4]

Plaintiff Sargasso Construction and Development Corporation, Pick and Shovel, Inc. and Atlantic Erectors, Inc., a joint venture, was awarded the construction of Pier 2 and the rock causeway (R.C. Pier 2) for the port of San Fernando, La Union, after a public bidding conducted by the defendant PPA. Implementation of the project commenced on August 14, 1990. The port construction was in pursuance of the development of the Northwest Luzon Growth Quadrangle. Adjacent to Pier 2 is an area of P4,280 square meters intended for the reclamation project as part of the overall port development plan.

In a letter dated October 1, 1992 of Mr. Melecio J. Go, Executive Director of the consortium, plaintiff offered to undertake the reclamation between the Timber Pier and Pier 2 of the Port of San Fernando, La Union, as an extra work to its existing construction of R.C. Pier 2 and Rock Causeway for a price of P36,294,857.03. Defendant replied thru its Assistant General Manager Teofilo H. Landicho who sent the following letter dated December 18, 1992:

"This is to acknowledge receipt of your letter dated 01 October 1992 offering to undertake the reclamation between the Timber Pier and Pier 2, at the Port of San Fernando, La Union as an extra work to your existing contract.

"Your proposal to undertake the project at a total cost of THIRTY SIX MILLION TWO HUNDRED NINETY FOUR THOUSAND EIGHT HUNDRED FIFTY SEVEN AND 03/100 PESOS (P36,294,857.03) is not acceptable to PPA. If you can reduce your offer to THIRTY MILLION SEVEN HUNDRED NINETY FOUR THOUSAND TWO HUNDRED THIRTY AND 89/100 (P30,794,230.89) we may consider favorably award of the project in your favor, subject to the approval of higher authority.

Please signify your agreement to the reduced amount of P30,794,230.89 by signing in the space provided below. (emphasis in the original)

On August 26, 1993, a Notice of Award signed by PPA General Manager Rogelio Dayan was sent to plaintiff for the phase I Reclamation Contract in the amount of P30,794,230.89 and instructing it to "enter into and execute the contract agreement with this Office" and to furnish the documents representing performance security and credit line. Defendant likewise stated [and] made it a condition that "fendering of Pier No. 2 Port of San Fernando, and the Port of Tabaco is completed before the approval of the contract for the reclamation project." Installation of the rubber dock fenders in the said ports was accomplished in the year 1994. PPA Management further set a condition [that] "the acceptance by the contractor that mobilization/demobilization cost shall not be included in the contract and that escalation shall be reckoned upon approval of the Supplemental Agreement." The award of the negotiated contract as additional or supplemental project in favor of plaintiff was intended "to save on the mobilization/demobilization costs and some items as provided for in the original contract." Hence, then General Manager Carlos L. Agustin presented for consideration by the PPA Board of Directors the contract proposal for the reclamation project.

At its meeting held on September 9, 1994, the Board decided not to approve the contract proposal, as reflected in the following excerpt of the minutes taken during said board meeting:

"After due deliberation, the Board advised Management to bid the project since there is no strong legal basis for Management to award the supplemental contract through negotiation. The Board noted that the Pier 2 Project was basically for the construction of a pier while the supplemental agreement refers to reclamation. Thus there is no basis to compare the terms and conditions of the reclamation project with the original contract (Pier 2 Project) of Sargasso." [5]

It appears that PPA did not formally advise the plaintiff of the Board's action on their contract proposal. As plaintiff learned that the Board was not inclined to favor its Supplemental Agreement, Mr. Go wrote General Manager Agustin requesting that the same be presented again to the Board meeting for approval. However, no reply was received by plaintiff from the defendant.

On June 30, 1997, plaintiff filed a complaint for specific performance and damages before the Regional Trial Court of Manila alleging that defendant PPA's unjustified refusal to comply with its undertaking, unnecessarily leading to the delay in the implementation of the award under the August 26, 1993 Notice of Award, has put on hold plaintiff's men and resources earmarked for the project, aside from effectively tying its hands in undertaking other projects for fear that plaintiff's incapacity to undertake work might be spread thinly and it might not be able to function efficiently if the PPA project and other projects should require simultaneous attention. Plaintiff averred that it sought reconsideration of the August 9, 1996 letter of PPA informing it that it did not qualify to bid for the proposed extension of RC Pier No. 2, Port of San Fernando, La Union for not having IAC Registration and Classification and not complying with equipment requirement. In its letter dated September 19, 1996, plaintiff pointed out that the disqualification was clearly unjust and totally without basis considering that individual contractors of the joint venture have undertaken separately bigger projects, and have been such individual contractors for almost 16 years. It thus prayed that judgment be rendered by the court directing the defendant (a) to comply with its undertaking under the Notice of Award dated August 26, 1993; and (b) to pay plaintiff actual damages (P1,000,000.00), exemplary damages (P1,000,000.00), attorney's fees (P300,000.00) and expenses of litigation and costs (P50,000.00).

Defendant PPA thru the Office of the Government Corporate Counsel (OGCC) filed its Answer with Compulsory Counterclaim contending that the alleged Notice of Award has already been properly revoked when the Supplemental Agreement which should have implemented the award was denied approval by defendant's Board of Directors. As to plaintiff's pre-disqualification from participating in the bidding for the extension of R.C. Pier No. 2 Project at the Port of San Fernando, La Union, the same is based on factual determination by the defendant

that plaintiff lacked IAC Registration and Classification and equipment for the said project as communicated in the August 9, 1996 letter. Defendant disclaimed any liability for whatever damages suffered by the plaintiff when it "jumped the gun" by committing its alleged resources for the reclamation project despite the fact that no Notice to Proceed was issued to plaintiff by the defendant. The cause of action insofar as the Extension of R.C. Pier No. 2 of the Port of San Fernando, La Union, is barred by the statute of limitation since plaintiff filed its request for reconsideration way beyond the seven (7) day-period allowed under IB 6-5 of the Implementing Rules and Regulations of P.D. 1594. Defendant clarified that the proposed Reclamation Project and Extension of R.C. Pier No. 2 San Fernando, La Union, are separate projects of PPA. The Board of Directors denied approval of the Supplemental Agreement on September 9, 1994 for lack of legal basis to award the supplemental contract through negotiation which was properly communicated to the plaintiff as shown by its letter dated September 19, 1994 seeking reconsideration thereof. As advised by the Board, PPA Management began to make preparations for the public bidding for the proposed reclamation project. In the meantime, defendant decided to pursue the extension of R.C. Pier 2, San Fernando, La Union. xxx It [prayed that the complaint be dismissed]. (Emphasis supplied)

After trial, the lower court rendered a decision in favor of the plaintiff, the dispositive portion of which reads:

"WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered ordering the defendant to execute a contract in favor of the plaintiff for the reclamation of the area between the Timber Pier and Pier 2 located at San Fernando, La Union for the price of P30,794,230.89 and to pay the costs.

The counterclaim is dismissed for lack of merit.

SO ORDERED.[6]

In addressing affirmatively the basic issue of whether there was a perfected contract between the parties for the reclamation project, the trial court ruled that the "higher authority x x adverted to does not necessarily mean the Board of Directors (Board). Under IRR, P.D. 1594 (1)B10.6, approval of award and contracts is vested on the head of the infrastructure department or its duly authorized representative. Under Sec. 9 (iii) of P.D. 857 which has amended P.D. 505 that created the PPA, one of the particular powers and duties of the General Manager and Assistant General Manager is to sign contracts." [7] It went on to say that "in the case of the PPA, the power to enter into contracts is not only vested on the Board of Directors, but also to the manager" citing Section 9 (III) of P.D. No. 857.[8]

The trial court added that the tenor of the Notice of Award implied that respondent's general manager had been empowered by its Board of Directors to bind respondent by contract. It noted that whereas the letter-reply contained the phrase "approval of the higher authority," the conspicuous absence of the same in the Notice of Award supported the finding that the general manager had been vested with authority to enter into the contract for and in behalf of respondent. To the trial court, the disapproval by the PPA Board of the supplementary contract for the reclamation on a ground other than the general manager's lack of authority was an explicit recognition that the latter was so authorized to enter into the purported contract.

Respondent moved for a reconsideration of the RTC decision but it was denied for lack of merit. Respondent then filed its Notice of Appeal. Subsequently, petitioner moved to dismiss the appeal on the ground that respondent failed to perfect its appeal seasonably. On June 27, 2000, the Court of Appeals issued a Resolution[9] dismissing respondent's appeal for having been filed out time. Respondent's motion for reconsideration of said resolution was also denied.[10]

Undaunted, respondent elevated its problem to this Court via a petition for review on certiorari under Rule 45 assailing the denial of its appeal. On July 30, 2004, the Court rendered an en banc decision[11] granting respondent's petition on a liberal interpretation of the rules of procedure, and ordering the CA to conduct further

proceedings.

On August 22, 2005, the CA rendered the assailed decision reversing the trial court's decision and dismissing petitioner's complaint for specific performance and damages. Thus, the dispositive portion thereof reads:

WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed Decision dated June 8, 1998 of the trial court in Civil Case No. 97-83916 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered DISMISSING the complaint for specific performance and damages filed by Plaintiff Sargasso Construction and Development Corporation/Pick & Shovel, Inc./Atlantic Erectors, Inc., (Joint Venture) against the Philippine Ports Authority for lack of merit.

In setting aside the trial court's decision, the CA ruled that the law itself should serve as the basis of the general manager's authority to bind respondent corporation and, thus, the trial court erred in merely relying on the wordings of the Notice of Award and the Minutes of the Board meeting in determining the limits of his authority; that the power of the general manager "to sign contracts" is different from the Board's power "to make or enter (into) contracts"; and that, in the execution of contracts, the general manager only exercised a delegated power, in reference to which, evidence was wanting that the PPA Board delegated to its general manager the authority to enter into a supplementary contract for the reclamation project.

The CA also found the disapproval of the contract on a ground other than the general manager's lack of authority rather inconsequential because Executive Order 380[12] expressly authorized the governing boards of government-owned or controlled corporations "to enter into negotiated infrastructure contracts involving... not more than fifty million (P50 million)." The CA further noted that the Notice of Award was only one of those documents that comprised the entire contract and, therefore, did not in itself evidence the perfection of a contract.

Hence, this petition.

The issue to be resolved in this case is whether or not a contract has been perfected between the parties which, in turn, depends on whether or not the general manager of PPA is vested with authority to enter into a contract for and on behalf of PPA.

The petition fails.

Petitioner contends that the existence of "Notice of Award of Contract and Contractor's Conforme thereto," resulting from its negotiation with respondent, proves that a contract has already been perfected, and that the other documents enumerated under the amended Rules and Regulations[13] implementing P.D. 1594[14] are mere physical representations of the parties' meeting of the minds; that the "Approval of Award by Approving Authority" is only a "supporting document," and not an evidence of perfection of contract, and which merely "facilitates the approval of the contract;"[15] that PPA is bound by the acts of its general manager in issuing the Notice of Award under the doctrine of apparent authority; and that the doctrine of estoppel, being an equitable doctrine, cannot be invoked to perpetuate an injustice against petitioner.

At the outset, it must be stated that there are two (2) separate and distinct, though related, projects involving the parties herein, viz: (i) the construction of Pier 2 and the rock causeway for the port of San Fernando, La Union, and (ii) the reclamation of the area between the Timber Pier and Pier 2 of the same port. Petitioner's action for specific performance and damages merely relates to the latter.

Every contract has the following essential elements: (i) consent, (ii) object certain and (iii) cause. Consent has been defined as the concurrence of the wills of the contracting parties with respect to the object and cause which shall constitute the contract.[16] In general, contracts undergo three distinct stages, to wit: negotiation, perfection or birth, and consummation. Negotiation[17] begins from the time the prospective contracting parties manifest

their interest in the contract and ends at the moment of their agreement. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract, i.e., consent, object and price. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof. The birth or the perfection of the contract, which is the crux of the present controversy, refers to that moment in the life of a contract when there is finally a concurrence of the wills of the contracting parties with respect to the object and the cause of the contract.[18]

A government or public contract has been defined as a contract entered into by state officers acting on behalf of the state, and in which the entire people of the state are directly interested. It relates wholly to matter of public concern, and affects private rights only so far as the statute confers such rights when its provisions are carried out by the officer to whom it is confided to perform.[19]

A government contract is essentially similar to a private contract contemplated under the Civil Code. The legal requisites of consent of the contracting parties, an object certain which is the subject matter, and cause or consideration of the obligation must likewise concur. Otherwise, there is no government contract to speak of.[20]

As correctly found by the CA, the issue on the reclamation of the area between Timber Pier and Pier 2 of the Port of San Fernando involves a government infrastructure project, and it is beyond dispute that the applicable laws, rules and regulations on government contracts or projects apply.

On the matter of entering into negotiated contracts by government-owned and controlled corporations, the provisions of existing laws are crystal clear in requiring the governing board's approval thereof. The Court holds that the CA correctly applied the pertinent laws, to wit:

Executive Order No. 380... provides for revised levels of authority on approval of government contracts. Section 1 thereof authorizes... GOCCs:

1. To enter into infrastructure contracts awarded through public bidding regardless of the amount involved;
2. To enter into negotiated infrastructure contracts involving not more than one hundred million pesos (P100 million) in the case of the Department of Transportation and Communications and the Department of Public Works and Highways, and not more than fifty million pesos (P50 million) in the case of the other Departments and governments corporations; Provided, That contracts exceeding the said amounts shall only be entered into upon prior authority from the Office of the President; and Provided, Further, That said contracts shall only be awarded in strict compliance with Section 5 of Executive Order No. 164, S. of 1987.

xxx

The rule on negotiated contracts, as amended on August 12, 2000 (IB 10.6.2) now reads -

1. Negotiated contract may be entered into only where any of the following conditions exists and the implementing office/agency/corporation is not capable of undertaking the contract by administration:

- In times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property or to restore vital public services, infrastructure and utilities such as...
- Failure to award the contract after competitive public bidding for valid cause or causes
- Where the subject project is adjacent or contiguous to an on-going project and it could be economically prosecuted by the same contractor provided that subject contract has similar or related scope of works and it is within the contracting capacity of the contractor, in which case, direct negotiation may be undertaken with the said contractor...

x x x

In cases a and b above, bidding may be undertaken through sealed canvass of at least three (3) qualified contractors... Authority to negotiate contract for projects under these exceptional cases shall be subject to prior approval by heads of agencies within their limits of approving authority." [21] (emphasis in the original)

Furthermore, the Revised Administrative Code [22] lays down the same requirement, thus:

Sec. 51. Who May Execute Contracts. Contracts in behalf of the Republic of the Philippines shall be executed by the President unless authority therefore is expressly vested by law or by him in any other public officer.

Contracts in behalf of the political subdivisions and corporate agencies or instrumentalities shall be approved by their respective governing boards or councils and executed by their respective executive heads.

Petitioner neither disputes nor admits the application of the foregoing statutory provisions but insists, nonetheless, that the Notice of Award itself already embodies a perfected contract having passed the negotiation stage [23] despite the clear absence thereon of a condition requiring the prior approval of respondent's higher authority.

Petitioner's argument is untenable. Contracts to which the government is a party are generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals. [24] A government contract, however, is perfected [25] only upon approval by a competent authority, where such approval is required. [26]

The contracting officer functions as agent of the Philippine government for the purpose of making the contract. There arises then, in that regard, a principal-agent relationship between the Government, on one hand, and the contracting official, on the other. The latter though, in contemplation of law, possesses only actual agency authority. This is to say that his contracting power exists, where it exists at all, only because and by virtue of a law, or by authority of law, creating and conferring it. And it is well settled that he may make only such contracts as he is so authorized to make. Flowing from these basic guiding principles is another stating that the government is bound only to the extent of the power it has actually given its officers-agents. It goes without saying then that, conformably to a fundamental principle in agency, the acts of such agents in entering into agreements or contracts beyond the scope of their actual authority do not bind or obligate the Government. The moment this happens, the principal-agent relationship between the Government and the contracting officer ceases to exist. [27] (emphasis supplied)

It was stressed that

...the contracting official who gives his consent as to the subject matter and the consideration ought to be empowered legally to bind the Government and that his actuations in a particular contractual undertaking on behalf of the government come within the ambit of his authority. On top of that, the approval of the contract by a higher authority is usually required by law or administrative regulation as a requisite for its perfection. [28]

Under Article 1881 of the Civil Code, the agent must act within the scope of his authority to bind his principal. So long as the agent has authority, express or implied, the principal is bound by the acts of the agent on his behalf, whether or not the third person dealing with the agent believes that the agent has actual authority. [29] Thus, all signatories in a contract should be clothed with authority to bind the parties they represent.

P.D. 857 likewise states that one of the corporate powers of respondent's Board of Directors is to "reclaim... any part of the lands vested in the Authority." It also "exercise[s] all the powers of a corporation under the Corporation Law." On the other hand, the law merely vests the general manager the "general power... to sign contracts" and "to perform such other duties as the Board may assign..." Therefore, unless respondent's Board validly authorizes its general manager, the latter cannot bind respondent PPA to a contract.

The Court completely agrees with the CA that the petitioner failed to present competent evidence to prove that the

respondent's general manager possessed such actual authority delegated either by the Board of Directors, or by statutory provision. The authority of government officials to represent the government in any contract must proceed from an express provision of law or valid delegation of authority.[30] Without such actual authority being possessed by PPA's general manager, there could be no real consent, much less a perfected contract, to speak of.

It is of no moment if the phrase "approval of higher authority" appears nowhere in the Notice of Award. It neither justifies petitioner's presumption that the required approval "had already been granted" nor supports its conclusion that no other condition (than the completion of fendering of Pier 2 as stated in the Notice of Award) ought to be complied with to create a perfected contract.[31] Applicable laws form part of, and are read into, the contract without need for any express reference thereto;[32] more so, to a purported government contract, which is imbued with public interest.

Adopting the trial court's ratiocination, petitioner further argues that had it been true that respondent's general manager was without authority to bind respondent by contract, then the former should have disapproved the supplemental contract on that ground.[33] Petitioner also interprets the Board's silence on the matter as an explicit recognition of the latter's authority to enter into a negotiated contract involving the reclamation project. This posture, however, does not conform with the basic provisions of the law to which we always go back. Section 4 of P.D. 1594[34] provides:[35]

Section 4. Bidding. Construction projects shall generally be undertaken by contract after competitive public bidding. Projects may be undertaken by administration or force account or by negotiated contract only in exceptional cases where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provision of laws and acts on the matter, subject to the approval of the Ministry of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, if the project cost is less than P1 Million, and of the President of the Philippines, upon the recommendation of the Minister, if the project cost is P1 Million or more.

Precisely, the Board of Directors of the respondent did not see fit to approve the contract by negotiation after finding that "the Pier 2 Project was basically for the construction of a pier while the supplemental agreement refers to reclamation. Thus, there is no basis to compare the terms and conditions of the reclamation project with the original contract (Pier 2 Project) of Sargasso." So even granting *arguendo* that the Board's action or inaction is an "explicit" recognition of the authority of the general manager, the purported contract cannot possibly be the basis of an action for specific performance because the negotiated contract itself basically contravenes stringent legal requirements aimed at protecting the interest of the public. The bottom line here is that the facts do not conform to what the law requires.

No wonder petitioner conveniently omitted any attempt at presenting its case within the statutory exceptions, and insisted that respondent's disapproval of the supplemental agreement was "a mere afterthought" "perhaps realizing the infirmity of its excuse" (referring to petitioner's belated pre-disqualification in the construction project). But the Court, at the very outset, has previously clarified that the two projects involved herein are distinct from each other. Hence, petitioner's disqualification in the construction project due to its lack of certain requirements has no significant bearing in this case.

Lastly, petitioner's invocation of the doctrine of apparent authority[36] is misplaced. This doctrine, in the realm of government contracts, has been restated to mean that the government is NOT bound by unauthorized acts of its agents, even though within the apparent scope of their authority.[37] Under the law on agency, however, "apparent authority" is defined as the power to affect the legal relations of another person by transactions with third persons arising from the other's manifestations to such third person[38] such that the liability of the principal

for the acts and contracts of his agent extends to those which are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred.[39]

Apparent authority, or what is sometimes referred to as the "holding out" theory, or doctrine of ostensible agency, imposes liability, not as the result of the reality of a contractual relationship, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists.[40] The existence of apparent authority may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties.[41]

Easily discernible from the foregoing is that apparent authority is determined only by the acts of the principal and not by the acts of the agent. The principal is, therefore, not responsible where the agent's own conduct and statements have created the apparent authority.[42]

In this case, not a single act of respondent, acting through its Board of Directors, was cited as having clothed its general manager with apparent authority to execute the contract with it.

With the foregoing disquisition, the Court finds it unnecessary to discuss the other arguments posed by petitioner.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ. , concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr., (now a member of this Court) with Associate Justice Bienvenido L. Reyes and Associate Justice Lucenito N. Tagle concurring.

[2] Rollo, p. 30.

[3] Penned by Judge Inocencio D. Maliaman.

[4] Rollo, pp. 11-29.

[5] Emphasis in the original.

[6] Decision of the Trial Court, rollo, pp. 158-167.

[7] Id. at 163.

[8] Providing for the Reorganization of Port Administrative and Operation Functions in the Philippines, Revising Presidential Decree No. 505 dated July 11, 1974, Creating The Philippine Port Authority, by Substitution, and for other Purposes otherwise known as the Revised Charter of the Philippine Ports Authority. Section 9 thereof provides:

Section 9. General Powers and Duties of the General Manager and Assistant General Managers

a) General Powers and Duties of the General Manager. --

The General Manager shall be responsible to the Board, and shall have the following general powers, functions, and duties: xxx

(iii) To sign contracts, to approve expenditures and payments within the budget provisions, and generally to do any all acts or things for the proper operations of the Authority or any of the Ports under the jurisdiction, control or ownership of the Authority.

[9] Rollo, pp. 268-271.

[10] Id. at 277.

[11] Philippine Ports Authority v. Sargasso Construction and Development Corp., Pick & Shovel, Inc./ Atlantic Erectors, Inc. (Joint Venture), G.R. No. 146478, July 30, 2004, 435 SCRA 512.

[12] Revising the Levels of Authority on Approval of Government Contracts (1989).

[13] IB [2.10] 2.8 Documents Comprising The Contract

The following documents shall form part of the contract:

- Contract Agreement
- Conditions of Contract
- Drawings/Plans
- Specifications
- Invitations to Bid
- Instructions to Bidders
- Addenda
- Bid Form including the following Annexes:
 - a. Authority of the Signing Official
- Bid Prices in the Bill of Quantities
- Detailed Estimates
- Construction Schedule
- Construction Methods
- Project Organizational Chart
- Manpower Schedule
- Equipment Utilization Schedule
- Cash Flow and Payments Schedule
- [Certification] AFFIDAVIT of Site Inspection
- Performance Bond
- Prequalification [and Post qualification Statements]
- Certificate of Cash Deposit for Operating Expenses (IF NECESSARY)
- Notice of Award of Contract and Contractor's "Conforme" thereto

- Other Contract Documents that may be required by the Office/Agency/Corporation concerned

[14] Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts (1978).

[15] IB [2.11] 2.9 Supporting Documents

To facilitate the approval of the contract, the following supporting documents shall be submitted:

1. xxx

6. Approval of Award by Approving Authority

xxx

[16] Jurado. Desiderio P., Comments and Jurisprudence on Obligations and Contracts, 1993, Tenth Revised Edition, p. 396; citing 3 Castan, 7[th] Ed., pp. 326-327, 8 Manresa, 5[th] Ed., Bk. P. 365, and Sanchez Roman 191.

[17] A negotiation is formally initiated by an offer which should be certain with respect to both the object and the cause or consideration of the envisioned contract. In order to produce a contract, there must be acceptance, which may be express or implied, but it must not qualify the terms of the offer. The acceptance of an offer must be unqualified and absolute to perfect the contract. In other words, it must be identical in all respects with that of the offer so as to produce consent or meeting of the minds.

[18] Supra note 16 at 390.

[19] Cobacha, Agapito P. and Lucenario, Domingo O, Law on Public Bidding and Government Contracts, 1960, p. 283, citing People v. Palmer, 35 N.Y.S. 222, 14 Misc. 41.

[20] Fernandez, Jr., Bartolome C., A Treatise on Government Contracts under Philippine Law, 2003 Revised Edition, p. 10.

[21] Decision of the Court of Appeals, pp. 14,16-17; rollo, pp. 86, 88-89.

[22] Chapter II Book I Section 51.

[23] Memorandum for the Petitioner, p. 20; rollo, p. 401.

[24] Manual on Contracts Review, March 1997, p. 14.

[25] The Court in Central Bank of the Philippines vs. Court of Appeals, G.R. No. L-33022, April 22, 1975, 63 SCRA 446-447, involving a government contract, said "An agreement presupposes a meeting of minds and when that point is reached in the negotiations between two parties intending to enter into a contract, the purported contract is deemed perfected and none of them may thereafter disengage himself therefrom without being liable to the other in an action for specific performance. xxx Even a government-owned corporation may not under the guise of protecting the public interest unceremoniously disregard contractual commitments to the prejudice of the other party.," cited in Government Contracts, U.P. Law Center, 1982, p. 42. In said case, however, it is the Monetary Board of respondent Central Bank which "unanimously voted and approved the award to the plaintiff [petitioner therein]."

[26] Supra note 19.

[27] Supra note 20 at 8.

[28] Id. at 10; cited in the Decision of the Court of Appeals.

- [29] De Leon, Hector S., Comments and Cases on Partnership, Agency, and Trusts, 2005 Sixth Edition, p. 460.
- [30] Manual on Contracts Review, March 1997, p. 25.
- [31] Memorandum for Petitioner, p. 24; rollo, p. 405.
- [32] Intra-Strata Assurance Corp. and Philippine Home Assurance Corp. v. Republic, G.R. No. 156571, July 9, 2008, 557 SCRA 363.
- [33] Memorandum for the Petitioner, p. 29; rollo, pp. 410-412.
- [34] Now expressly repealed by R.A. 9184 (An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes) otherwise known as Government Procurement Reform Act of 2003.
- [35] Cited in the Decision of the Court of Appeals.
- [36] Memorandum for Petitioner, p. 32, citing the case of First Phil. International Bank v. Court of Appeals, 252 SCRA 259,295; rollo, p. 413.
- [37] Supra note 19 at 294-295.
- [38] 3 Am. Jur. 2d § 79.
- [39] 2 Am. Jur. 82.
- [40] Professional Services, Inc. v. Agana, G.R. No. 126297, January 31, 2007, 513 SCRA 500-501.
- [41] People's Aircargo and Warehousing Co., Inc. v. CA, 357 Phil. 850 (1998).
- [42] 3 Am. Jur. 2d § 79.

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