

MICAELA C. ANDRES AND ARNULFO M. PURISIMA, PETITIONERS, VS. THE HONORABLE COMMISSION ON AUDIT, RESPONDENTS.

G.R. No. 94476. September 26, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

In its decision dated December 21, 1989 (numbered 1271, being a 5[th] Indorsement to the Director, COA, Regional Office No. 1, La Trinidad, Benguet), the Commission on Audit declined to overrule the adverse action of the Regional Auditor disallowing, “due to alleged overpricing,” payment for 1,838 school desks made and delivered to various public schools by three (3) state vocational institutions pursuant to a contract between them and the Regional Office No. 1 of the Department of Education, Culture and Sports (DECS), La Union Division.[1]

It appears that sometime in 1987 a “desk project” was launched as part of the President’s Community Employment and Development Program (CEDP) in line with “the national government’s thrusts of, among others, creating labor-intensive projects to promote self-reliance among the Filipino people, as well as with the * * * ultimate goal (of the DECS) of servicing the needs of government elementary schools in terms of, among others, school furniture * * *.” Implementation of the project was entrusted to the DECS Regional Offices in accordance with guidelines drawn up for the purpose and approved by the Secretary of Education, Culture and Sports, Dr. Lourdes R. Quisumbing.[2]

The Guidelines identified the specific groups charged with carrying out the project; the form and scope of the contracts to be entered into in connection with the project (i.e., the parties, plans and specifications and pricing of the desks, period of completion of work); selection of recipient schools; modes of procurement; contract management; reporting; financial concerns; terms of payment, etc.

The Guidelines (paragraph 3.6 thereof) also prescribed two alternative modes of procurement of the schools desks,[3] to wit:

3.6.

Modes of Procurement. Contracts for the manufacture and delivery of school desks shall be executed following two procurement modes:

i) negotiated contracts with capable vocational institutions within the region; and

ii) local competitive bidding involving the private sector.

In view, however, of the educational, technical and social cost benefits accruing to the government under the first mode, the Regional/Division Offices are enjoined to give preference to its adoption.

As regards the method of “local competitive bidding involving the private sector,” the Guidelines (par. 3.6.1) further provided that it “can only be applied for the region’s remaining furniture requirements which have not been accommodated by vocational institutions under the direct negotiation scheme.”

It further appears that at the instance of Regional Director Pura T. Liban, a conference (“Conference on Desk Project ‘87”) was held on September 4, 1987 among the officials in Region I and principals or representatives of several state schools of arts and trades (SATs) to discuss the Implementing Guidelines. At that conference, the following agreements were reached, to wit:[4]

1) there would be “no commercial bidding at this time but that SATs are to undertake the job together with some national high schools which are capable of manufacturing desks;”

2) the “approved agency estimates (AAE)” were as follows:

a. Abra

P 409.50

b. Benguet

447.34

c. Ilocos Norte

371.14

d. Ilocos Sur

414.88

e. La Union

414.88

f. Mt. Province

447.34

g. Pangasinan

366.91

h. Baguio City

447.34

i. Dagupan City

366.91

j. Laoag City

371.14

k. San Carlos City

366.91;

and

3) the “SATS/national high schools to manufacture the desks with the corresponding number of desks to be manufactured and the total allocation,” included the following:

“Division

No. of Desks

Total Allocation

Manufacturer

**

b. Benguet

763

341,320.42

Benguet SAT[5]

**

d. Ilocos Sur

1,661

689,115.68

Univ. of N. Phil.

e. La Union

2,000

1,834,550.00

DMMMSU[6]

**

In accordance with said agreements and the Implementing Guidelines, Micaela Andres, Division Superintendent of DECS Region I, La Union Division, in representation of the Division, entered into separate contracts with three (3) state schools on September 8, 1987,[7] namely:

- 1) with the Benguet School of Arts & Trades for the manufacture and delivery of 456 school desks to schools of the Division of La Union at the unit price of P414.88 (total: P189,185.28);
- 2) with the University of Northern Philippines, represented by its President, Dorotea Filart, for the manufacture and delivery of 398 school desks to specific schools in the Division of La Union, also at the unit cost of P414.88 (total: P165,122.24); and
- 3) with the Don Mariano Marcos Memorial State University, College of Engineering and Technology (DMMMSU-CET), represented by its President, Bienvenido Agpaoa, for the manufacture and delivery of 984 school desks to designate schools in the La Union Division, at the unit cost of P414.88 (total: P408,241.22).

After the contracts were signed, they were submitted to, and upon recommendation of the Regional Director of Region I, Pura Tumada Liban, in due course approved by Hon. Lourdes Quisumbing, the Secretary of Education,

Culture and Sports at the time.

The contracts thus having been perfected, vouchers were issued for the payment to the three (3) manufacturer schools of sixty percent (60%) of the total cost of the desks undertaken to be made. The vouchers were submitted to Pedro L. Limos, the Acting Auditor, DECS, La Union. Limos first suspended payment on the vouchers[8] and eventually, by 1st indorsement dated September 28, 1988, disallowed them. This he did on the basis of a communication dated May 24, 1988 of the Director of the Technical Services Office, COA, that the desks in question were “over-priced” because, in contrast to the “Agency Purchase Price as of 9-8-87 (of) P414.88/pc.,” the “Metro Manila Price Findings as of 5/88 (was only) P300.00/pc.”[9] Limos also opined that the agreements “were irregular for non-compliance of (sic) the public bidding requirement pursuant to COA Circular 85-55-A, dated September 8, 1985.”[10]

By 2[nd] Indorsement dated October 10, 1988 to the COA Regional Director, Region I, La Trinidad, Benguet, Andres and Purisima appealed for reconsideration of the disallowances.[11] They pointed out inter alia that —

- 1) Executive Order No. 301 issued by the President on July 26, 1987 dispenses with public bidding “whenever the purchase is made from an agency of the government,” or “in case where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned,” and the negotiated purchases in question were in fact approved by the DECS Secretary;
- 2) all circumstances and relevant factors considered — including the urgent need for said desks since in many schools “pupils sit by threes per desk” — the price of the desks stipulated in the contracts was reasonable;
- 3) requests for reduction of the prices of the desks were in fact made, but they were “not heeded due to such * * * reasons as distant source of raw materials, use of student labor, door-to-door delivery to inaccessible places that can be reached only by walking throughout the year, i.e., Manggaan, Santol, La Union — 12 kms., Paagan, Santol — 10 kms., Liguay, Santol — 15 kms., etc.,”
- 4) in still another effort to obtain reduction of the price, requests were made of the nearest vocational schools, the Pangasinan School of Arts and Trades, or the La Union National High School, to themselves manufacture the desks, but the requests were also turned down because the former had more orders than it could handle, and the latter lacked adequate facilities.

The Regional Director, Gloria Z. Lasam, also addressed a letter to the Chairman, Commission on Audit (1st indorsement, July 4, 1989) “strongly recommending the lifting of the disallowances.”[12] She questioned the correctness of the estimated cost fixed by the Technical and Evaluation Services Division, COA; stressed that Dr. Andres and Mr. Purisima, although signatories of the contracts in question, had had no real say in their perfection; and pointed out that it was unfair “that only La Union among the eleven divisions of Region I * * * (was) the only Division disallowed on desks.”

But, as stated in the opening paragraph of this opinion, the Commission on Audit, by decision dated December 21, 1989 (numbered 1271, being a 5[th] Indorsement to the Director, COA, Regional Office No. 1, La Trinidad, Benguet), declined to overrule the adverse action of the Regional Auditor disallowing payment for the 1,838 school desks made and delivered to various public schools by three (3) state vocational institutions. It said:

“Upon a circumspect evaluation of the facts and circumstances herein obtaining, this Commission finds no legal justification to grant the herein request. It bears stress that procurement by negotiation is resorted to only under extraordinary circumstances, in the absence of which, public bidding should be the primary mode for the requisition of supplies of government agencies. This is so for the reason that the government can secure the lowest possible price and at the same time obtain better bargains thru a public bidding. In the instant case, the

unit cost of P414.80 per desk was arrived at despite the absence of bid offers and notwithstanding the fact that the Office of the Division Superintendent was very much aware that DECS Regional Office No. I had earlier purchased desks at P350.00 per unit.”

Hence, this appeal.

Petitioners Andres and Purisima submit that the COA decision of December 21, 1989 is wrong and should be nullified and set aside because:

- 1) it is not in accord with Executive Order No. 301 dated July 26, 1987 allowing procurement of school desks by negotiated contract;
- 2) it is inconsistent with the un rebutted evidence that they (petitioners) had acted in good faith, in simply following the national guidelines implementing the Government’s school desk project “already arranged and completed at the regional level;”
- 3) it is based on Manila prices as of May 1988 fixed by the COA Technical Services Office which are demonstrably “arbitrary, unreasonable and unrealistic;” and
- 4) it is unwarrantably discriminatory in that it disallowed payment of the school desks only in the Division of La Union while (allowing payment) in other Divisions in (the same) Region I * * * although the prices paid in some provinces were higher than that in La Union.”

The Court finds merit in the petition and will grant it.

Executive Order No. 301[13] explicitly permits negotiated contracts in particular identified instances. In its preamble, it adverted to the then existing set-up of “a centralized administrative system * * * for reviewing and approving negotiated contracts * * *,” and to the unsatisfactory character thereof in that “such centralized administrative system is not at all ‘facilitative’ particularly in emergency situations, characterized as it is by red tape and too much delay in the processing and final approval of the required transaction or activity;” hence, the “need to decentralize the processing and final approval of negotiated contracts * * *. It then laid down, in its Section 1,[14] “guidelines for negotiated contracts” thenceforth to be followed. While affirming the general policy that contracts shall not be entered into or renewed without public bidding, viz.:

“ * * * Any provision of law, decree, executive order or other issuances to the contrary notwithstanding, no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding, * * *,”

it specified the following situations as exceptions to that general policy, i.e., when negotiated contracts were proper, viz.:

“a.

Whenever the supplies are urgently needed to meet an emergency which may involve the loss of, or danger to, life and/or property;

b.

Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;

c.

Whenever the materials are sold by an exclusive distributor or manufacturer who does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;

d.

Whenever the supplies under procurement have been unsuccessfully placed on bid for at least two consecutive times, either due to lack of bidders or the offers received in each instance were exorbitant or non-conforming to specifications;

e.

In case where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned; and

f.

Whenever the purchase is made from an agency of the government.”

It should at once be apparent from a reading of these provisions that the transactions in question quite clearly fall within the situations contemplated in sub-paragraphs b, e, and f just quoted.

Admittedly, the desks were meant for use at the very proximate opening of the academic year of government schools not only by new students but also, of course, by those who would be returning to classes and who had theretofore been sitting “three (3) to a desk.” In other words, the desks were for use “in connection with an activity which cannot be delayed without causing detriment to the public service,” as contemplated in sub-paragraph b.

Sub-paragraph e of Section 1 above quoted, sets out another instance when a negotiated contract may properly be entered into, i.e., in connection with the requisition of supplies where it appears that acquisition thereof by negotiated purchase is most advantageous to the government. In this situation, the Department Head is explicitly vested with the discretion to ascertain and declare that such requisition through negotiated purchase is indeed most advantageous to the government. In this case, there is no question that that determination was made by the Department Head concerned, Hon. Lourdes Quisumbing, the Secretary of the DECS at the time.

Again, the contracts for the purchase of the desks were entered into by the La Union Division (DECS Region I) with three government schools of arts and trades or vocational institutions for the benefit of particular public schools. The situation therefore falls squarely within sub-paragraph f of said Section 1, above quoted, i.e., “the purchase is made from an agency of the government.”

It bears stressing that in the transactions in question, no private parties were involved; only government agencies: the Office of a Regional Division of the DECS on the one hand, and three government schools of arts and trades or vocational institutions, on the other, as contracting parties, and other identified Government schools as beneficiaries. There is no claim or pretense that any unauthorized commissions or rebates were given to any person, or that any part of the stipulated price went to or was destined for any individual, public officer or private party. Now, if the price were higher than might otherwise have been expected, this would no doubt be to the

advantage of the manufacturing school, a government institution; on the other hand, if the price were less than that expected, this would be to the benefit of the requisitioning agency, a government agency. In either case, the government schools to which desks were to be turned over would be the beneficiaries. Under these circumstances, the Government did not stand to lose; it could not be otherwise prejudiced.

Moreover, the basic terms and conditions of the contracts for the acquisition of the desks were discussed and agreed upon by all the DECS officials directly concerned and charged with the implementation of the project. A meeting was scheduled and held by them at which the number of desks to be acquired, the prices of the desks, the terms of their acquisition, the vocational institutions or schools of arts and trades to be considered for participation in the transactions, the quantities to be allotted to them, the public schools which were to be the beneficiaries, and other related matters, standards and procedures were discussed and, after consideration of all relevant factors, agreed upon. In accordance with said agreements, the contracts for the acquisition of the desks were then drawn up, signed by petitioner Andres in representation of "The Department of Education, Culture and Sports, Regional Office I, Division of La Union, recommended for approval by the Regional Director of Region I," and eventually approved by the Department Head, Sec. Quisumbing.

In signing said contracts, petitioner Andres (and co-petitioner Purisima)[15] did no more than perform what in effect were mere mechanical, ministerial acts, involving no discretion whatever as regards the terms and agreements set forth in the contracts which, as aforesaid, had already been agreed upon by all the responsible officials of Regional Office I of the DECS; in fact, the contracts were thereafter approved by the Secretary of Education, Culture & Sports. Indeed, in an analogous situation, the COA appears to have absolved government functionaries who had entered into an agreement for the purchase of a quantity of carpentry tool kits for the use of certain schools. The petitioners draw attention to COA Decision No. 1454 (in the matter of the appeal of Mr. Hernando S. Dizon, former Director, DECS Region X, Cagayan de Oro City and the Division Superintendents there from the disallowance of payment on the purchase of carpentry tool kits),[16] in which the COA ruled that said officials "should not be held liable for the purchase of carpentry tool kits as they had no participation whatsoever in the subsequent award of the contract to Esteem Enterprises, * * * the School Division Superintendents merely received the carpentry tool kits based on the allotment made by DBM and the prescribed prices. Thus, practically no amount of discretion was left to be exercised by them that could have affected the price and the award of the contract." [17] It may well be stressed that while the prices of the desks fixed by the 1987 conference of the Government and school officials concerned, *supra*, [18] are different from those arrived at by another Government agency, the COA Technical Services Office, this does not necessarily demonstrate that the conference prices are wrong and those of the Technical Services Office, correct. In any case, there is no indication at all that the fixing of the prices of the desks at said 1987 conference was characterized by grave abuse of discretion, bad faith or other ulterior motive. These premises considered, as well as the absence of any showing or claim that petitioners were motivated by other than good faith, or the honest intention to carry out the declared instructions and intentions of their superiors, or that they had personally profited or sought to profit by the transactions, there is no justification to hold them responsible for the disallowed expenditures.

There is no serious confutation of petitioners' other allegation that they appear to have been subjected to discriminatory treatment because the COA disallowed payment of the school desks only in the Division of La Union but allowed payment in other Divisions in the same Region I notwithstanding that the prices paid in some provinces were higher than those in La Union. This is yet another argument against sustaining the COA decision under review.

Of course, certain COA requirements were not met. Copies of the contracts for the acquisition of the desks were not submitted to the COA at least five (5) days prior to execution; there was lack of security required for the

“60% seed money” given to the schools who undertook to manufacture the desks. The delay in submitting the contracts to the COA Auditor is explained by the fact that the memorandums of agreement were first sent to the Secretary of Education, Culture & Sports for her approval. As to the lack of security, the fact is that the manufacturers are government schools of arts and trades who could not be expected to act otherwise than in good faith and with the honest intention to meet their contractual commitments, apart from the obvious consideration that they obviously had not the means to furnish any such security. These technical imperfections may well be overlooked in the light of the justifiability of the contracts shown by the facts and considerations already above set forth.

WHEREFORE, the petition is GRANTED, and the Decision of the respondent No. 1271 dated December 21, 1989 is NULLIFIED AND SET ASIDE. No costs.

SO ORDERED.

Fernan, C.J., Melencio-Herrera, Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Gutierrez, Jr., J., on leave.

Gancayco, J., retired as of August 20, 1991.

[1] Annex A, petition. The decision (5[th] Indorsement) was signed by Commissioners Bartolome C. Fernandez, Jr. and Alberto P. Cruz, Chairman Eufemio C. Domingo being “on official travel abroad.”

[2] Annex B, petition

[3] Annex B, p. 3

[4] Annex C, petition

[5] Benguet School of Arts & Trades (with an additional allocation of P189,185.28 corresponding to 456 desks)

[6] Don Mariano Marcos Memorial State University (College of Engineering and Technology [CET]), La Union

[7] Of which Annex D of the petition, entitled “Memorandum of Agreement, Desk Project ‘87,” is a representative sample

[8] Annex F, petition. N.B. Auditor Limos opined that liable for the disallowed expenditures were Dr. Micaela C. Andres (Schools Div. Supt.) and Mr. Arnulfo M. Purisima (Spl. Disb. Officer) (Rollo, p. 46)

[9] Annex E, petition

[10] Annex G, petition (par. 1)

[11] Annex G, petition

[12] Annex H, petition

[13] 83 O.G. No. 31, Supplement, August 3, 1987, pp. 154-156

[14] Under the head, “DECENTRALIZATION OF NEGOTIATED CONTRACTS”

[15] SEE footnote 7, ante

[16] Rollo, pp.112-113 (Motion for Leave of Court to Admit Additional Argument)

[17] Italics supplied

[18] SEE Annex 4, ante

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