

TWELFTH DIVISION

[CA – G.R. SP No. 127043, February 25, 2015]

**BOLINAO SECURITY AND INVESTIGATION SERVICE, INC.,
REPRESENTED BY ITS PRESIDENT, URBANO S. CAASI, JR.,
PETITIONER-APPELLANT, VS. SECRETARY & IABAC,
DEPARTMENT OF BUDGET AND MANAGEMENT, REP. BY SEC.
ROLANDO ANDAYA, & LAND BANK OF THE PHILIPPINES, REP. BY
ITS PRESIDENT, GILDA E. PICO, ET AL., RESPONDENTS-
APPELLEES.**

D E C I S I O N

GALAPATE-LAGUILLES, J:

The rationale behind the requirement of a public bidding, as a mode of awarding government contracts, is to ensure that the people get maximum benefits and quality services from the contracts. More significantly, the strict compliance with the requirements of a public bidding echoes the call for transparency in government transactions and accountability of public officers. Public biddings are intended to minimize occasions for corruption and temptations to abuse of discretion on the part of government authorities in awarding contracts. ^[1]

This is an appeal from the Decision dated May 23, 2012 of the Regional Trial Court, National Capital Judicial Region, Branch 21 in Civil Case No. 09-121498 for *Petition for Certiorari and Prayer of Temporary Restraining Order and Damages*^[2] dismissing the complaint and the counterclaim of petitioner-appellant Bolinao Security and Investigation Services.

The facts as culled from the records are as follows:

On November 20, 2008, the Land Bank of the Philippines (LBP) entered into a Memorandum of Agreement (MOA) with the Procurement Service (PS), an attached agency of the Department of Budget and Management (DBM), for the procurement of a one-year contract for the former's security services.^[3] On January 21, 2009, the PS received the Agency Procurement Request No. 00295 dated January 13, 2009 from the LBP.^[4]

The PS Inter-Agency Bids and Awards Committee (PS-IABAC), advertised an "Invitation to Apply for Eligibility and to Bid" in the Philippine Star, as well as in the Philippine Government Electronic Procurement System (PHILGEPS) website to notify the public and all interested parties of the interest of the bank to procure a one-year security service.^[5] Bolinao Security and Investigation Services (Bolinao) submitted its bid for Lots 1 and 2, with an approved budget for the Contract (ABC) amounting to twenty four million four hundred fifty two thousand four hundred seventy two pesos (P24, 252, 472.00) and twenty nine million five hundred thirty nine thousand

two hundred ninety six pesos (P29, 539, 296.00), respectively.^[6]

A Pre-bid Conference was held on January 27, 2009 at the PS Conference Room under Public Bidding no 09-011.

On January 28, 2009, the PS-IABAC issued a Supplemental/Bid Bulletin No.1 or the "Notice of Implementation of Advance Eligibility Submission and Re-scheduling of the deadline of Submission and Opening of Bids"^[7], the relevant portions provide as follows:

As agreed upon during the pre-bid conference held on January 27, 2009 an Advance Eligibility Submission for Class "A" Eligibility documents shall be entertained by the Inter-Agency Bids and Awards Committee on February 3, 2009, 9:00 AM to 12:00 PM. For purposes of the "advance" submission, the following Class "A" Eligibility Documents may be submitted:

1. Department of Trade and Industry (DTI) business name registration for sole proprietorships; OR

Securities and Exchange Commission (SEC) registration certificate for corporations and partnerships;

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In case a bidder who availed of the advance eligibility submission scheme fails to submit any of the requirement and no Certificate is issued in its favor, said bidder may still participate in the bidding but it shall be required to submit all the Eligibility Requirements on the deadline of the submission of bids which is hereby moved to February 17, 2009, 9:30 AM.

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(signed)
EDUARDO P. OPIDA
Chairman, IABAC

On January 29, 2009, PS-IABAC issued a Supplemental/Bid Bulletin No. 2^[8] which states:

Public Bidding No. 09-011
ONE YEAR CONTRACT FOR SECURITY SERVICES OF THE
LAND BANK OF THE PHILIPPINES

DETAILED BREAKDOWN OF THE APPROVED BUDGET FOR
THE CONTRACT (ABC) AND DISTRIBUTION OF
GUARDS PER LBP BRANCH

Attached herewith are the detailed breakdown of the ABC and the distribution of Guards per LBP Branch.

The Supplemental/Bid Bulletin No. 2 shall be considered an integral part

of the Bidding Documents.

(signed)
EDUARDO P. OPIDA
Chairman, IABAC

On February 3, 2009 the First Eligibility Check was conducted. Then on February 9, 2009, PS-IABAC held the Second Eligibility Check wherein the following prospective bidders were given a Certificate of Eligibility: Integrated Safeguard Security Corporation, Odin Security Agency, Inc., Superguard Security Corporation, Nationwide Security and Allied Services, Inc., and ACD Security Services, Inc. for passing the partial eligibility check.

The opening of the bids scheduled last February 17, 2009 did not materialize and a notice of postponement was seasonably issued on even date by DBM Secretary Rolando G. Andaya, Jr. (Sec. Andaya).^[9] To maintain the integrity of the bidding process, all the submitted bids were placed in several boxes, sealed and duly initialed by all the concerned parties. On March 3, 2009, Sec. Andaya issued an Office Order designating Asst. Secretary Evelyn V. Guerrero, as Chairperson, IABAC, Exec. Dir. Ruby U. Alvarez, Alternate Chairperson, IABAC and Director Mary Grace R. Chua, OIC, Executive Director, PS.^[10]

On March 10, 2009, the PS-IABAC issued a Supplemental/Bid Bulletin No. 6 re: Schedule of Opening of Bids on March 18, 2009, 10:00 AM at the DBM Conference Room, DBM Bldg, IV, (Arcache) General Solano cor. Nepomuceno Streets, San Miguel Manila.^[11]

On March 18, 2009, the Opening of the Bids was conducted. Bolinao was found to be ineligible on the ground that it failed to submit its SEC Registration Certificate. On March 27, 2009, the PS-IABAC issued a Notice of Evaluation Results to Lockheed Detective informing also the latter that it found its submitted bid proposals for Lot 1 and Lot 2, to be the lowest calculated and responsive bid.^[12]

On March 27, 2009, PS-IABAC received Bolinao's Motion for Reconsideration dated March 19, 2009. On March 31, 2009, the Motion for Reconsideration of Bolinao was denied by the PS-IABAC thru Atty. Ruby U. Alvarez, Alternate Chairman PS-IABAC in a letter of even date.^[13] Pertinent portion of the letter states and We quote:

Dear Atty. Carpio:

This has reference to the request for reconsideration that you filed pertaining to the Notice of Ineligibility issued by the Procurement Service Inter-Agency Bids and Awards Committee (IABAC) on account of Bolinao Security and Investigation Agency's failure to submit the SEC Registration Certificate as called for in requirements in our Bid Documents for Public Bidding No. 09-011 for the provision of ONE YEAR SECURITY SERVICES FOR THE LAND BANK OF THE PHILIPPINES.

Kindly be informed that under Section 23.2 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act 9184,14 completeness of eligibility submissions shall be determined using

a non-discretionary “pass-fail” criteria wherein bid submissions are simply checked against the requirements stipulated in our Bid Documents or in Supplemental Bid Bulletins issued for the project.

As such, we are constrained to deny your request for reconsideration.

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Should you wish to further pursue this motion, kindly be advised to abide by Section 55 of the IRR-A by filing a protest, in the form of a verified position paper, before the Secretary of Budget and Management and payment of non-refundable protest fee.

xxxx (emphasis Ours)

Bolinao received the said denial last April 2, 2009 and on April 7, 2009 it filed a protest in a form of verified position letter and paid a non-refundable protest fee of P295,392.00.

On May 8, 2009, Sec. Andaya issued a resolution^[15] denying Bolinao's protest ratiocinating in part:

At the outset, it bears stressing that while Bolinao Security participated in Lots 1 and 2 of the subject public bidding, it paid only a protest fee of P295,392.96, which is exactly 1% of the Approved Budget for the Contract (ABC) of Lot 2. Section 55 of Republic Act (R.A.) No. 9184 clearly provides that Decisions of the Bids and Awards Committee (BAC) may be protested by filing a verified position paper and paying a non-refundable protest fee, which under Section 55.1, Rule XVII of its Implementing Rules and Regulations (IRR) is 1% of the ABC.

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It is settled that a SEC Registration Certificate is among the legal documents required to be submitted for the eligibility of a prospective bidder. Even Bolinao Security admits this, but suggests that its Amended AI constitutes substantial compliance with an eligibility requirement. However, every prospective bidder should be minded that under the IRR, the BAC is constrained to determine their eligibility through a non-discretionary “pass/fail” criteria.

Simply put, the BAC must examine the documents submitted by every prospective bidder and from its face determine compliance with those required under the rules. And when the rules require a SEC Registration Certificate, the same ought to have been submitted, otherwise, any non-complying bidder shall be considered “ineligible”.

On May 21, 2009 a Notice of Award was issued in favor of Lockheed for Lots 1 and 2 for having submitted the lowest calculated and responsive bid under Public Bidding No. 09-01116. On May 26, 2009, Lockheed, thru its Chairman, President and CEO Col. Esteban Uy, signified its conformity to the Notice of Award.^[17]

With the advent of the forging of the Security Service Contract between Lockheed and the bank, Bolinao's extended security service contract with the bank from January 1, 2009 to June 30, 2009 was considered expired pursuant to the 3rd *Whereas Clause* found in the Extension of Security Service Agreement dated February 24, 2009^[18]. The said clause states and We quote:

WHEREAS, the last six (6) months extension of Security Service Agreement of NCR, South of Pasig will expire on December 31, 2008, but in the exigency of the service and in the meantime that the BANK is completing its bidding procedure and processes for security services, the BANK approved the **extension of its Security Service Agreement with the AGENCY for a period of six (6) months beginning January 01, 2009 to June 30, 2009 subject to automatic expiration within the said period upon engagement of the winning bidders after the completion of the bidding process for security services.** (supplied)

Feeling aggrieved, Bolinao filed a Petition for *Certiorari* before the court *a quo* assailing the resolution of Sec. Andaya last May 28, 2009. The court *a quo*, on May 23, 2012, rendered the assailed Decision dismissing the said Petition ratiocinating in this wise and We quote:

When two (2) parties bind themselves in accordance with law to execute a contract for their purpose and stipulate well on the terms and conditions that both of them would clearly recognize, acknowledge and respect their respective obligations or undertakings to be duly performed and tackled faithfully any act of deviation or breach thereof by anyone of them when what is expected is not satisfied or fulfilled to the detriment or prejudice of either one will mutually emits some kind of bad faith, negligence or default. If and when such bad occurrence shall obtain and a case is instituted such as this, the Court is obliged to determine who of the parties became at fault, negligent or remiss.

Art. 1370 of the Civil Code states that "if the terms of the contract are plain and leaves no room for doubt as to the intention of the contracting parties, the literal meaning must control." The stipulations therefrom should be given effect by the Court.

Considering that the contract ends and the same was not renewable, petitioner is not entitled to the reliefs prayed for.

WHEREFORE, premises considered, the Court hereby orders the dismissal of the complaint and counterclaim.

SO ORDERED.

Undeterred, Bolinao is here before Us maintaining that its disqualification was patently erroneous and that the protest fee should not be arbitrary and confiscatory. It thus prays that it be reinstated as a qualified bidder and that the 1% protest fee be nullified.

We find the appeal unmeritorious.