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[G.R. No. 155001, May 05, 2003]

DEMOSTHENES P. AGAN, JR., JOSEPH B. CATAHAN, JOSE MARI B. REUNILLA, MANUEL ANTONIO B. BO×E, MAMERTO S. CLARA, REUEL E. DIMALANTA, MORY V. DOMALAON, CONRADO G. DIMAANO, LOLITA R. HIZON, REMEDIOS P. ADOLFO, BIENVENIDO C. HILARIO, MIASCOR WORKERS UNION - NATIONAL LABOR UNION (MWU-NLU), AND PHILIPPINE AIRLINES EMPLOYEES ASSOCIATION (PALEA), PETITIONERS, VS. PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., MANILA INTERNATIONAL AIRPORT AUTHORITY, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS AND SECRETARY LEANDRO M. MENDOZA, IN HIS CAPACITY AS HEAD OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, RESPONDENTS,

MIASCOR GROUNDHANDLING CORPORATION, DNATA-WINGS AVIATION SYSTEMS CORPORATION, MACROASIA-EUREST SERVICES, INC., MACROASIA-MENZIES AIRPORT SERVICES CORPORATION, MIASCOR CATERING SERVICES CORPORATION, MIASCOR AIRCRAFT MAINTENANCE CORPORATION, AND MIASCOR LOGISTICS CORPORATION, PETITIONERS-IN-INTERVENTION,

G.R. NO. 155547

SALACNIB F. BATERINA, CLAVEL A. MARTINEZ AND CONSTANTINO G. JARAULA, PETITIONERS, VS. PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., MANILA INTERNATIONAL AIRPORT AUTHORITY, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, SECRETARY LEANDRO M. MENDOZA, IN HIS CAPACITY AS HEAD OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, AND SECRETARY SIMEON A. DATUMANONG, IN HIS CAPACITY AS HEAD OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, RESPONDENTS,

JACINTO V. PARAS, RAFAEL P. NANTES, EDUARDO C. ZIALCITA, WILLY BUYSON VILLARAMA, PROSPERO C. NOGRALES, PROSPERO A. PICHAY, JR., HARLIN CAST ABAYON, AND BENASING O. MACARANBON, RESPONDENTS-INTERVENORS,

G.R. NO. 155661.

CEFERINO C. LOPEZ, RAMON M. SALES, ALFREDO B. VALENCIA,

MA. TERESA V. GAERLAN, LEONARDO DE LA ROSA, DINA C. DE LEON, VIRGIE CATAMIN RONALD SCHLOBOM, ANGELITO SANTOS, MA. LUISA M. PALCON AND SAMAHANG MANGGAGAWA SA PALIPARAN NG PILIPINAS (SMPP), PETITIONERS, VS. PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., MANILA INTERNATIONAL AIRPORT AUTHORITY, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, SECRETARY LEANDRO M. MENDOZA, IN HIS CAPACITY AS HEAD OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, RESPONDENTS.

D E C I S I O N

PUNO, J.:

Petitioners and petitioners-in-intervention filed the instant petitions for prohibition under Rule 65 of the Revised Rules of Court seeking to prohibit the Manila International Airport Authority (MIAA) and the Department of Transportation and Communications (DOTC) and its Secretary from implementing the following agreements executed by the Philippine Government through the DOTC and the MIAA and the Philippine International Air Terminals Co., Inc. (PIATCO): (1) the Concession Agreement signed on July 12, 1997, (2) the Amended and Restated Concession Agreement dated November 26, 1999, (3) the First Supplement to the Amended and Restated Concession Agreement dated August 27, 1999, (4) the Second Supplement to the Amended and Restated Concession Agreement dated September 4, 2000, and (5) the Third Supplement to the Amended and Restated Concession Agreement dated June 22, 2001 (collectively, the PIATCO Contracts).

The facts are as follows:

In August 1989, the DOTC engaged the services of Aeroport de Paris (ADP) to conduct a comprehensive study of the Ninoy Aquino International Airport (NAIA) and determine whether the present airport can cope with the traffic development up to the year 2010. The study consisted of two parts: first, traffic forecasts, capacity of existing facilities, NAIA future requirements, proposed master plans and development plans; and second, presentation of the preliminary design of the passenger terminal building. The ADP submitted a Draft Final Report to the DOTC in December 1989.

Some time in 1993, six business leaders consisting of John Gokongwei, Andrew Gotianun, Henry Sy, Sr., Lucio Tan, George Ty and Alfonso Yuchengco met with then President Fidel V. Ramos to explore the possibility of investing in the construction and operation of a new international airport terminal. To signify their commitment to pursue the project, they formed the Asia's Emerging Dragon Corp. (AEDC) which was registered with the Securities and Exchange Commission (SEC) on September 15, 1993.

On October 5, 1994, AEDC submitted an unsolicited proposal to the Government through the DOTC/MIAA for the development of NAIA International Passenger Terminal III (NAIA IPT III) under a build-operate-and-transfer arrangement pursuant to RA 6957 as amended by RA 7718 (BOT Law).[1]

On December 2, 1994, the DOTC issued Dept. Order No. 94-832 constituting the Prequalification Bids and Awards Committee (PBAC) for the implementation of the NAIA IPT III project.

On March 27, 1995, then DOTC Secretary Jose Garcia endorsed the proposal of AEDC to the National Economic and Development Authority (NEDA). A revised proposal, however, was forwarded by the DOTC to NEDA on December 13, 1995. On January 5, 1996, the NEDA Investment Coordinating Council (NEDA ICC) — Technical Board favorably endorsed the project to the ICC - Cabinet Committee which approved the same, subject to certain conditions, on January 19, 1996. On February 13, 1996, the NEDA passed Board Resolution No. 2 which approved the NAIA IPT III project.

On June 7, 14, and 21, 1996, DOTC/MIAA caused the publication in two daily newspapers of an invitation for competitive or comparative proposals on AEDC's unsolicited proposal, in accordance with Sec. 4-A of RA 6957, as amended. The alternative bidders were required to submit three (3) sealed envelopes on or before 5:00 p.m. of September 20, 1996. The first envelope should contain the Prequalification Documents, the second envelope the Technical Proposal, and the third envelope the Financial Proposal of the proponent.

On June 20, 1996, PBAC Bulletin No. 1 was issued, postponing the availment of the Bid Documents and the submission of the comparative bid proposals. Interested firms were permitted to obtain the Request for Proposal Documents beginning June 28, 1996, upon submission of a written application and payment of a non-refundable fee of P50,000.00 (US$2,000).

The Bid Documents issued by the PBAC provided among others that the proponent must have adequate capability to sustain the financing requirement for the detailed engineering, design, construction, operation, and maintenance phases of the project. The proponent would be evaluated based on its ability to provide a minimum amount of equity to the project, and its capacity to secure external financing for the project.

On July 23, 1996, the PBAC issued PBAC Bulletin No. 2 inviting all bidders to a pre-bid conference on July 29, 1996.

On August 16, 1996, the PBAC issued PBAC Bulletin No. 3 amending the Bid Documents. The following amendments were made on the Bid Documents:

> a. Aside from the fixed Annual Guaranteed Payment, the proponent shall include in its financial proposal an additional percentage of gross revenue share of the Government, as follows:
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> | i. | First 5 years | 5.0% |
> | ii. | Next 10 years | 7.5% |
> | iii. | Next 10 years | 10.0% |
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> b. The amount of the fixed Annual Guaranteed Payment shall be subject of the price challenge. Proponent may offer an Annual Guaranteed Payment which need not be of equal amount, but payment of which shall start upon site possession.

c. The project proponent must have adequate capability to sustain the financing requirement for the detailed engineering, design, construction, and/or operation and maintenance phases of the project as the case may be. For purposes of pre-qualification, this capability shall be measured in terms of:

i. Proof of the availability of the project proponent and/or the consortium to provide the minimum amount of equity for the project; and

ii. a letter testimonial from reputable banks attesting that the project proponent and/or the members of the consortium are banking with them, that the project proponent and/or the members are of good financial standing, and have adequate resources.

d. The basis for the prequalification shall be the proponent's compliance with the minimum technical and financial requirements provided in the Bid Documents and the IRR of the BOT Law. The minimum amount of equity shall be 30% of the Project Cost.

e. Amendments to the draft Concession Agreement shall be issued from time to time. Said amendments shall only cover items that would not materially affect the preparation of the proponent's proposal.

On August 29, 1996, the Second Pre-Bid Conference was held where certain clarifications were made. Upon the request of prospective bidder People's Air Cargo & Warehousing Co., Inc (Paircargo), the PBAC warranted that based on Sec. 11.6, Rule 11 of the Implementing Rules and Regulations of the BOT Law, only the proposed Annual Guaranteed Payment submitted by the challengers would be revealed to AEDC, and that the challengers' technical and financial proposals would remain confidential. The PBAC also clarified that the list of revenue sources contained in Annex 4.2a of the Bid Documents was merely indicative and that other revenue sources may be included by the proponent, subject to approval by DOTC/MIAA. Furthermore, the PBAC clarified that only those fees and charges denominated as Public Utility Fees would be subject to regulation, and those charges which would be actually deemed Public Utility Fees could still be revised, depending on the outcome of PBAC's query on the matter with the Department of Justice.

In September 1996, the PBAC issued Bid Bulletin No. 5, entitled "Answers to the Queries of PAIRCARGO as Per Letter Dated September 3 and 10, 1996." Paircargo's queries and the PBAC's responses were as follows:

1. It is difficult for Paircargo and Associates to meet the required minimum equity requirement as prescribed in Section 8.3.4 of the Bid Documents considering that the capitalization of each member company is so structured to meet the requirements and needs of their current respective business undertaking/activities. In order to comply with this equity requirement, Paircargo is requesting PBAC to just allow each member of (sic) corporation of the Joint Venture to just execute an agreement that embodies a commitment to infuse the required capital in case the project is awarded to the

Joint Venture instead of increasing each corporation's current authorized capital stock just for prequalification purposes.

In prequalification, the agency is interested in one's financial capability at the time of prequalification, not future or potential capability.

A commitment to put up equity once awarded the project is not enough to establish that "present" financial capability. However, total financial capability of all member companies of the Consortium, to be established by submitting the respective companies' audited financial statements, shall be acceptable.

2. At present, Paircargo is negotiating with banks and other institutions for the extension of a Performance Security to the joint venture in the event that the Concessions Agreement (sic) is awarded to them. However, Paircargo is being required to submit a copy of the draft concession as one of the documentary requirements. Therefore, Paircargo is requesting that they'd (sic) be furnished copy of the approved negotiated agreement between the PBAC and the AEDC at the soonest possible time.

A copy of the draft Concession Agreement is included in the Bid Documents. Any material changes would be made known to prospective challengers through bid bulletins. However, a final version will be issued before the award of contract.

The PBAC also stated that it would require AEDC to sign Supplement C of the Bid Documents (Acceptance of Criteria and Waiver of Rights to Enjoin Project) and to submit the same with the required Bid Security.

On September 20, 1996, the consortium composed of People's Air Cargo and Warehousing Co., Inc. (Paircargo), Phil. Air and Grounds Services, Inc. (PAGS) and Security Bank Corp. (Security Bank) (collectively, Paircargo Consortium) submitted their competitive proposal to the PBAC. On September 23, 1996, the PBAC opened the first envelope containing the prequalification documents of the Paircargo Consortium. On the following day, September 24, 1996, the PBAC prequalified the Paircargo Consortium.

On September 26, 1996, AEDC informed the PBAC in writing of its reservations as regards the Paircargo Consortium, which include:

a. The lack of corporate approvals and financial capability of PAIRCARGO;
b. The lack of corporate approvals and financial capability of PAGS;
c. The prohibition imposed by RA 337, as amended (the General Banking Act) on the amount that Security Bank could legally invest in the project;
d. The inclusion of Siemens as a contractor of the PAIRCARGO Joint Venture, for prequalification purposes; and
e. The appointment of Lufthansa as the facility operator, in view of the Philippine requirement in the operation of a public utility.

The PBAC gave its reply on October 2, 1996, informing AEDC that it had considered the issues raised by the latter, and that based on the documents submitted by