

## SECOND DIVISION

[ CA-G.R. SP NO. 126851, March 18, 2015 ]

**ATLANTICA FIRE SAFETY SYSTEMS, INC., PETITIONER, VS. EMILIO S. DE QUIROS, JR., IN HIS CAPACITY AS THE HEAD OF THE PROCURING ENTITY, SOCIAL SECURITY SYSTEM, JUDY FRANCES A. SEE, GAMELIN Z. OCSON, MARISSU G. BUGANTE, NICHOLAS C. BALBUENA, ALBERTO C. ALBURO, SYLVETTE C. SYBICO, DORENDA M. DASMARINAS-PAN, IN THEIR CAPACITY AS MEMBERS OF THE BIDS AND AWARDS COMMITTEE (BAC), SOCIAL SECURITY SYSTEM, AND THE GOVERNMENT PROCUREMENT POLICY BOARD, RESPONDENTS.**

### DECISION

**CRUZ, R.A., J.:**

#### THE CASE

This is a Petition for Certiorari filed under Rule 65 of the Rules of Court which seeks to reverse the Resolution dated August 6, 2012<sup>[1]</sup> of Respondent Emilio de Quiros, Jr., and the July 4, 2012 Resolution<sup>[2]</sup> of the Respondents Members of the Bids and Awards Committee II (BAC) of the Social Security System for allegedly having been rendered with grave abuse of discretion, amounting to lack or in excess of their jurisdiction.<sup>[3]</sup>

A portion of the July 4, 2012 Resolution reads:

x

x

x

1. The Bids and Awards Committee (BAC), under its Resolution No. 2012-077-6 dated 28 June 2012, resolved to:

a. Deny your request for reconsideration dated 09 June 2012 which the BAC Secretariat received thru fax on 19 June 2012 at 5:55 p.m. beyond the three (3) calendar day period within which to file your motion for reconsideration.

b. Noted your failure to submit written answer and request for a hearing on or before the 25 June 2012 deadline, as required in our letter to you dated 19 June 2012.

c. Recommend to the SSS President and CEO the following administrative penalties:

i. Blacklisting for a period of one (1) year from 03 July 2012 to 02 July 2013 from participating in the bidding of all government projects.

ii. Fofeiture of bid security in the form of Surety Bond issued by BOI/MS Insurance Corporation in the amount of Two Hundred Twenty Four Thousand Nine Hundred Sixty Six Pesos and 54/100 (P224,966.54).

2. The SSS President and CEO approved the recommendation on 03 July 2012.

x x x

The August 6, 2012 Resolution provides:

x x x

After careful consideration of the recommendation of BAC II and the documents AFSSI submitted, the Request for Reconsideration is found to have no merit and therefore hereby **denied**. The imposition of the following administrative penalties for violation of Section 69 of the Government Procurement Reform Act (R.A. 9184) and its Revised Implementing Rules and Regulations is hereby **affirmed**:

- 1) Blacklisting from participating in the bidding of all government projects for a period of one (1) year;
- 2) Fofeiture of bid security in the form of Surety Bond issued by BOI/MS Insurance Corporation in the amount of Two Hundred Twenty Four Thousand Nine Hundred Sixty Six Pesos and 54/100 (P224,966.54).

x x x

## THE ANTECEDENTS

Petitioner Atlantica Fire Safety Systems, Inc. (Atlantica) is a corporation existing and duly organized under Philippine laws engaged in the business of supply and installation of fire suppression systems.<sup>[4]</sup>

Respondent Emilio S. De Quiros (De Quiros) is the President and CEO of the procuring entity, Social Security System (SSS). Respondents Judy Frances A. See, Gamelin Z. Ocson, Marissu G. Bugante, Nicholas C. Balbuena, Alberto C. Alburo, Sylvette C. Sybico, and Dorenda M. Dasmarinas-Pan are being sued in their capacity as members of the Bids & Awards Committee (BAC) of the SSS. The Respondent Government Procurement Policy Board (GPPB) is being impleaded as a nominal party.

In the early part of 2012, Atlantica participated in the bidding for the supply and installation of Fire Suppression System for the various rooms of the SSS Main Building, East Avenue, Quezon City.<sup>[5]</sup>

There were three procurement activities that transpired for the supply and installation of this Fire Suppression System. The first was on the initial competitive

bidding on the "Supply and Installation of FM-200 Fire Suppression System at COD Server and UPS Room and Network Equipment Room at SSS Main Office Building." Atlantica secured Bidding Documents but did not participate in the bidding. The lone bidder thereof, however, was later post-disqualified.<sup>[6]</sup>

The second procurement activity involved the same project of the SSS.<sup>[7]</sup> On March 1, 2012, Atlantica was considered as the single rated bidder. In a letter<sup>[8]</sup>, It was required by the BAC to submit documents, which included, among others, its tax clearance, within three (3) calendar days from notice.<sup>[9]</sup> Atlantica was also post-disqualified for submitting an expired tax clearance. Atlantica filed a Request for Reconsideration dated March 12, 2012 but was denied by the BAC in its March 14, 2012 Resolution. Atlantica did not file its protest.<sup>[10]</sup> The second bidding was declared a failure. Hence, the SSS resorted to Negotiated Procurement. This was the third procurement activity pertaining to the same Fire Suppression System project of the SSS which was resorted to after the two failed bidding processes.

Atlantica was the sole responding bidder during the negotiated procurement. During the post-qualification proceedings, the technical working group for the project discovered that Atlantica submitted a tampered tax clearance. The technical working group recommended to the BAC that Atlantica be considered as non-responsive and be disqualified.<sup>[11]</sup>

On June 7, 2012, the BAC sent a notice<sup>[12]</sup> post-disqualifying Atlantica for submitting a tampered and invalid tax clearance.<sup>[13]</sup> Atlantica requested for consideration in its letter<sup>[14]</sup> dated June 19, 2012.<sup>[15]</sup>

Respondent Gamelin Z. Ocson notified Atlantica, thru a letter<sup>[16]</sup> dated June 19, 2012, that the BAC had been considering suspending and blacklisting Atlantica for having submitted a falsified document, specifically the tax clearance certificate. In the same letter, Atlantica was directed to submit to the BAC its written answer and documentary evidence within five calendar days from receipt thereof.<sup>[17]</sup> Atlantica denied receiving the facsimile copy of the June 19, 2012 letter which was claimed by the BAC to have been sent on June 20, 2012. Atlantica admitted that it received the original and official copy of the letter during the hearing held before the members of the BAC on July 20, 2012, after the Resolution<sup>[18]</sup> dated July 4, 2012 was rendered.<sup>[19]</sup> In the Resolution, Atlantica was notified that the request for reconsideration on its post-disqualification was denied for having been filed beyond the three-day reglementary period and that the decision shall be final and executory seven days from receipt.

Atlantica received a letter<sup>[20]</sup> dated July 16, 2012 from SSS President/CEO De Quiros inviting the former to a hearing on July 20, 2012 to be held before the members of the BAC. This hearing is in line with Atlantica's Request for Reconsideration on the imposition of administrative penalties. Atlantica's Treasurer, assisted by counsel, appeared on the scheduled hearing before the members of the BAC.<sup>[21]</sup>

The BAC directed Atlantica to submit additional documents in support of its request for reconsideration within five days therefrom.<sup>[22]</sup> A formal directive letter<sup>[23]</sup>

containing the same recommendation dated July 23, 2012 was issued by the BAC. On July 25, 2012, Atlantica submitted additional documents<sup>[24]</sup>, comprised of check vouchers and billing statements with its external auditor.

The BAC submitted a memorandum<sup>[25]</sup> dated July 26, 2012 to De Quiros recommending that the request for reconsideration be denied and the administrative penalties be imposed upon Atlantica.<sup>[26]</sup>

On August 6, 2012, De Quiros sent a letter<sup>[27]</sup> to Atlantica's counsel, informing the latter that the request for reconsideration had been denied and that the administrative penalties were affirmed. Consequently, the Blacklisting Order No. 003-2012<sup>[28]</sup> was issued by De Quiros.

Atlantica claims that the August 6, 2012 Resolution having been rendered by the head of the procuring entity, and "the same being a denial of a request for reconsideration, a second reconsideration is no longer feasible, thence, the only plain, speedy, and adequate remedy under the law is to file a petition for certiorari."<sup>[29]</sup> Hence, this Petition for Certiorari under Rule 65 of the Rules of Court.

## **THE ISSUES**

Petitioner Atlantica submits the following issues<sup>[30]</sup> for Our consideration, to wit:

### **I.**

WITH ALL DUE RESPECT, THE RESPONDENTS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN THEY RENDERED THE RESOLUTION DATED JULY 4, 2012 WITHOUT COMPLYING WITH THE PROVISIONS OF SECTION 5.2 OF THE UNIFORM GUIDELINES FOR BLACKLISTING OF MANUFACTURERS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS AND CONSULTANTS;

### **II.**

THAT RESPONDENTS ACTED WHIMSICALLY AND CAPRICIOUSLY WHEN IT [sic] DECIDED THE PETITIONER'S CASE ON THE MERITS WITHOUT AFFORDING HEREIN PETITIONER THE OPPORTUNITY TO CONFRONT AND CROSS EXAMINE [sic] WITNESSES PRESENTED AGAINST IT AS CLEARLY MANDATED BY SECTION 5.2 OF THE UNIFORM GUIDELINES FOR BLACKLISTING OF MANUFACTURERS, SUPPLIERS, DISTRIBUTORS, CONTRACTORS, AND CONSULTANTS;

### **III.**

THE RESPONDENTS GRAVELY ABUSED ITS [sic] DISCRETION WHEN IT [sic] DENIED PETITIONER'S REQUEST FOR RECONSIDERATION, AND HASTILY RENDERED A RESOLUTION DESPITE THE ABSENCE OF SUBSTANTIAL EVIDENCE.

## **OUR RULING**

The petition is unimpressive.

The crux of this controversy is whether Respondents De Quiros and the BAC acted with grave abuse of discretion when they rendered the assailed July 4, 2012 and August 6, 2012 Resolutions which impose the administrative penalties of blacklisting and the forfeiture of surety bond.

De Quiros and the members of the BAC did not commit any abuse of discretion when they imposed the administrative penalties against Atlantica. These were in accordance with Article XXIII, Sec. 69<sup>[31]</sup> of the Government Procurement Reform Act (GPRA), to wit:

SEC. 69. Imposition of Administrative Penalties. - (a) In addition to the provisions of Articles XXI and XXII of this Act, the Head of the Procuring Entity, subject to the authority delegated to the BAC, if any, **shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offense**, and suspension of two (2) years for the second offense from participating in the public bidding process, for the following violations:

**1. Submission of eligibility requirements containing false information or falsified documents.**

X                      X                      X

**(b) In addition to the penalty of suspension, the Bid security or the performance security posted by the concerned bidder or prospective bidder shall also be forfeited.**

(c) The Head of the Procuring Entity may delegate to the BAC the authority to impose the aforementioned administrative penalties.  
(emphasis supplied)

While Atlantica admits submitting a tampered tax clearance certificate<sup>[32]</sup> during the post-qualification stage, it questions the propriety of the proceedings conducted and the penalties imposed against it.

Atlantica argues that its right to due process was violated when the July 4, 2012 Resolution was rendered by the BAC as it violates Section 5.2<sup>[33]</sup> of the Uniform Guidelines for the blacklisting of manufacturers, suppliers, distributors, contractors, and consultants (Blacklisting Guidelines).<sup>[34]</sup> It alleges that there was no hearing conducted before the BAC where it should have been presented the documentary evidence and witnesses against it. Atlantica denies receiving the letter dated June 19, 2012 which required it to submit its written answer and request for hearing. It allegedly received such letter only on July 20, 2012, long after the July 4, 2012 Resolution had been rendered.<sup>[35]</sup>

The seven cardinal primary rights on administrative due process have been outlined in the landmark case of *Ang Tibay v. Court of Industrial Relations*<sup>[36]</sup>, to wit: