

## FIRST DIVISION

[ G.R. No. 200402, June 13, 2013 ]

**PRIVATIZATION AND MANAGEMENT OFFICE, PETITIONER, VS.  
STRATEGIC ALLIANCE DEVELOPMENT CORPORATION AND/OR  
PHILIPPINE ESTATE CORPORATION, RESPONDENT.**

### D E C I S I O N

**SERENO, C.J.:**

Before this Court is a Rule 45 Petition, seeking a review of the Court of Appeals (CA) Decision<sup>[1]</sup> dated 27 January 2012 in CA-G.R. CV No. 96368, which affirmed the Decision<sup>[2]</sup> dated 1 July 2010 of the Regional Trial Court (RTC) in Civil Case No. 05-882. The RTC directed petitioner Privatization and Management Office (PMO) to award the auctioned Philippine National Construction Corporation (PNCC) shares, receivables, and securities owned by the Philippine government to respondent Strategic Alliance Development Corporation (STRADEC).

The facts are as follows:

As established by Administrative Order No. 397,<sup>[3]</sup> the indebtedness of PNCC to various government financial institutions was transferred to the National Government (NG) through the Committee on Privatization (COP)/Asset Privatization Trust (APT) and the Bureau of Treasury pursuant to Proclamation No. 50<sup>[4]</sup> and Administrative Order No. 64.<sup>[5]</sup>

Consequently, APT slated the privatization of PNCC in order to generate maximum cash recovery for the government. Thus, sometime in July of 2000, it announced the holding of a public bidding on 30 October 2000 involving the "as is, where is basis" package sale of stocks, receivables, and securities owned by the National Government in the PNCC.

Dong-A Consortium, which was formed by respondent STRADEC and Dong-A Pharmaceuticals, signified its intention to bid. As a prospective bidder, it received the accompanying bid documents given by APT. It also acknowledged<sup>[6]</sup> and signed the Asset Specific Bidding Rules (ASBR),<sup>[7]</sup> which reads:

2. Due Diligence

x x x x

2.2 The conduct of due diligence is at the **option of the prospective bidders**. Failure of the bidder to conduct due diligence shall be at his sole risk and no relief for error or omission will be given.

x x x x

### 3. Bid Price

3.1 The Indicative Price for the Shares, Receivables and the Securities shall be **announced on the day of the bidding.**

x x x x

### 4. Evaluation of Bid

4.1 The winning bidder shall be the bidder who submits the **highest total bid offer** for both the shares and receivables, who complies with all terms and conditions contained in this ASBR, x x x.

x x x x

4.3. APT **reserves the right to reject any or all bids, including the highest bid,** or to waive any defect or required formality therein.

4.4. The evaluation of the bids and **award of the sale** shall be subject to applicable laws, rules and regulations as well as all existing governmental approval requirements.

x x x x

### 5. Bidder's Responsibility

x x x x

5.2 x x x. The consequences of failure to examine and carefully interpret the bid documents shall be borne by the bidder and such bidder shall not be entitled to relief for its error or omission. The delivery or release by APT, NG, or PNCC to the bidders of any financial or operating data or any information regarding the shares and receivables **shall not give rise to warranty** with respect to such data or information.

x x x x

### 6. Preparation of Bids

x x x x

6.4. By submitting its Bid Offer and Bid Deposit on the date of the bidding, the Bidder shall be deemed to have **signified its acceptance** of the terms and conditions of the bidding, including the terms and conditions of this ASBR and Sale Purchase Agreement.

## 10. Award of Sale

x x x x

10.1. APT Marketing Department shall determine the highest bidder in accordance with Section 4 hereof and submit a report and the appropriate **recommendation** to the APT Board of Trustees **for consideration**. Thereafter, the APT Board of Trustees shall **endorse** its recommendation to the Committee on Privatization (COP) for approval.

10.2. **After** the necessary approvals and clearances are obtained from the APT Board and the COP, APT shall issue a Notice of Award of Sale to the winning bidder.<sup>[8]</sup> (Emphases supplied)

On 30 October 2000, APT conducted the bid. It first declared that Dong-A Consortium, Pacific Infrastructure Development International,<sup>[9]</sup> and Philippine Exporters Confederation<sup>[10]</sup> qualified as bidders. Thereafter, it announced that the indicative price of the PNCC properties was seven billion pesos (P7,000,000,000).

The bidders were shocked with the valuation. Relying on their own due diligence examinations, they protested that the indicative price was too high, considering the financial statements and bid documents given by APT. Notwithstanding their protests, APT continued with the bidding and opened the bid envelopes. As illustrated below, none of the bid offers met the indicative price:

<b>Bidder</b>	<b>Bid Price</b>
Dong-A Consortium	P1,228,888,800
Pacific Infrastructure Development International	P536,888,888
Philippine Exporters Confederation	P420,000,000 <sup>[11]</sup>

The next day, APT faxed a letter to Dong-A Consortium informing the latter that its offer had been rejected. The letter reads in part:

We regret to inform you that the APT Board of Trustees, in a special meeting held after the bidding, resolved to reject your bid as it was way below the Indicative Price of Seven Billion Pesos (P7,000,000,000.00) set by the Committee on Privatization.<sup>[12]</sup>

Dong-A Consortium responded and stressed to APT that the former's offer was not only the highest, but was also competitive and most advantageous to the government.<sup>[13]</sup> Dong-A Consortium then asked for reconsideration and requested the award of the PNCC properties.<sup>[14]</sup>

On 31 December 2000, the term of APT expired. By virtue of Executive Order No. 323,<sup>[15]</sup> petitioner PMO was organized to implement the disposition of the government-acquired assets, including the PNCC shares. PMO thus took over the correspondences involving the bid. It communicated to Dong-A Consortium that the decision of the Board of Trustees of the APT had already been confirmed by the COP; hence, the decision to reject the bid stood.<sup>[16]</sup>

On 3 October 2005, STRADEC filed a Complaint for Declaration of Right to a Notice of Award and/or Damages on behalf of Dong-A Consortium against PMO and PNCC.<sup>[17]</sup> It contested the high indicative price that caused it to lose the bid. STRADEC also pushed for the reduction of the indicative price and demanded that a Notice of Award of the PNCC properties be issued in its favor.

PMO answered by asserting the provisions of the ASBR.<sup>[18]</sup> According to PMO, the rules give the government the right to reject bid offers, including the highest bid. Hence, PMO argued that STRADEC had no legal right to demand the issuance of a Notice of Award even after having submitted the highest bid. PNCC claimed that STRADEC was merely "sour graping" over its loss. Furthermore, STRADEC had allegedly failed to establish any act of PNCC with respect to the manner of the bidding that would create a cause of action against the latter.<sup>[19]</sup>

During pretrial, the parties entered into several stipulations.<sup>[20]</sup> Significantly, they agreed that to be issued the Notice of Award, the winning bidder must satisfy and comply with all of the ASBR's terms and conditions, including the indicative price. They also stipulated that Dong-A Consortium had extensively conducted due diligence prior to the bid. Subsequently, its auditor informed the court that PNCC had been operating at a loss and that it puzzled them why APT never gave the basis of the indicative price, especially in the light of the finances of PNCC.

Siding with the bidder, the RTC ruled that PMO had committed grave abuse of discretion in refusing to explain the basis of the indicative price. The trial court explained that since competitive public bidding is vested with public interest, it then follows that the government has an affirmative duty to disclose its reasons for rejecting a bid. The court concluded that the refusal to explain the indicative price constituted a violation of the public's right to information and the State's policy of full transparency in transactions involving public interest.

Pushing its directives further, the trial court directed the issuance of the Notice of Award in favor of Dong-A Consortium. In so adjudging, it had appreciated the fact that (1) the latter submitted the highest bid; (2) the offer was threefold higher than the next bid, and hence appeared most advantageous to the government; and (3) Dong-A Consortium conducted an extensive due diligence examination based on the bid documents furnished by APT.

Hence, the dispositive portion of the Decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered as follows:

1) Defendant PMO is **directed to issue a Notice of Award of Sale** to

the Dong-A Consortium, herein represented by plaintiff STRADEC, the National Government's shares of stock in the Philippine National Construction Corporation (PNCC), and the receivables of the National Government in the form of advances to PNCC, all future receivables of the National Government from PNCC and the securities related thereto, under the procedure stated in the Asset Specific Bidding Rules (ASBR) for the public auction held on October 30, 2000;

2) Defendants PMO and PNCC are **directed to pay plaintiff**, jointly and severally, the sum of PHP 500,000.00 as and by way of exemplary damages; and the further sum of PHP 500,000.00 as and by way of attorney's fees and costs of suit.

SO ORDERED.<sup>[21]</sup> (Emphases in the original)

Aggrieved, PMO and PNCC appealed before the CA. PNCC argued that the factors mentioned by the RTC were immaterial and that none of them could justify the latter's directive to issue a Notice of Award in favor of Dong-A Consortium. PNCC also denied having any legal obligation to disclose the basis of the indicative price. For its part, PMO contended that the bidding held on 30 October 2000 was transparent, regular, and conducted in accordance with the ASBR; and that the RTC therefore had no reason to alter the outcome of the bid.

In its assailed Decision, the CA emphasized that competitive public bidding must be fair, legitimate and honest. From this standard, it went on to state that PMO must not only reveal the basis of the indicative price, but must also award the sale of the PNCC assets to Dong-A Consortium.

Heavily quoting the RTC, the CA states:<sup>[22]</sup>

x x x. **A reading of the decisional rules on reservation of the right to reject cautions, however, against injustice, unfairness, arbitrariness, fraudulent acts or grave abuse of discretion.** A contrary conclusion would be anathema to the purposes for which public biddings are founded to give the public the best possible advantages through open competition – as it would give the unscrupulous a plain escape to rig the bidding process.

Applying now the foregoing precedents, this Court is persuaded to rule that then APT (now PMO) had the duty to disclose the basis for its rejection of the highest bid submitted by the Dong-A Consortium. For as the *evidence* shows, the plaintiff's bid was *threefold than the next highest bid*, and appeared, at that point, to be the most advantageous to the government. As to how the gargantuan amount of PHP7.0 Billion pesos as the Indicative Price was arrived at, and which was invoked as the sole basis for the rejection of the plaintiff's bid, should have been at least clarified or explained in conformity with the expected *degree of transparency in any public bidding*. The *sending out of demand letters* to then APT demanding disclosure of the basis for the stated Indicative Price is not disputed by the defendants as they opted not to present any