

**EN BANC**

**[ G.R. No. 182559, March 13, 2009 ]**

**COMMISSION ON AUDIT, REPRESENTED BY ITS CHAIRMAN,  
GUILLERMO CARAGUE, PETITIONER, VS. LINK WORTH  
INTERNATIONAL, INC., RESPONDENT.**

**D E C I S I O N****TINGA, J.:**

The Commission on Audit (COA), through the Office of the Solicitor General (OSG), questions the Decision<sup>[1]</sup> dated April 21, 2008, of the Court of Appeals in CA-G.R. SP No. 94345, which affirmed the Decision<sup>[2]</sup> dated January 18, 2006 of the Regional Trial Court (RTC) of Quezon City, Branch 222, as amended by the RTC's orders dated February 13, 2006<sup>[3]</sup> and March 10, 2006,<sup>[4]</sup> nullifying the COA's award of a bidding contract in favor of Audio Visual Driver International, Inc. (*Audio Visual*). The assailed Decision, however, deleted the RTC's award of damages in favor of herein respondent Link Worth International, Inc. (*Link Worth*).

The undisputed facts are quoted from the Decision of the appellate court as follows:

On July 14, 2004, the Commission on Audit's Bids and Awards Committee (COA-BAC) conducted a bidding for various information communication technology equipment, specifically for Lot 6, which includes 3 units of document cameras.

Link Worth and Audio Visual were among the bidders declared by COA-BAC to have "passed" the technical specifications for the equipment. However, COA-BAC did not disclose the respective specifications of the equipment offered by the bidders. Thereafter, the COA-BAC opened the envelopes containing the financial bid for Lot 6, which were as follows:

<b><u>Bidder</u></b>	<b><u>Bid Amount</u></b>
All Visual	P2,801,000.00
Columbia Tech	P2,953,392.00
Audio Visual Driver	P3,299,000.00
Link Worth	P3,357,000.00
Ayala	P3,599,251.00
Unison	P4,000,000.00

Not having made the lowest financial bid among the "passing" bidders, Link Worth thought that it had lost the bidding, until the COA-BAC asked Link Worth and Audio Visual for product demonstration of their document camera. Link Worth, later, learned that the COA-BAC disqualified the first 2 lowest bidders for failure to meet the technical specifications.

On August 13, 2004, Link Worth and Visual Driver conducted the product demonstration. Link Worth told the Technical Working Group (TWG), before whom the project demonstration was conducted, that the equipment offered by Audio Visual failed to satisfy the technical specifications required for the document camera. Link Worth identified the following technical specifications which Audio Visual failed to satisfy:

	<b><u>Bid Specifications</u></b>	<b><u>Audio Visual Specifications</u></b>
Frame Rate	15 frame/second	2-way Filter Control
Power Supply	DC 12V	6V Power Supply
Maximum Weight	1.5 Kg.	1.7 Kg.

Link Worth insisted that the technical specifications should be strictly complied with. Audio Visual did not dispute that their equipment, the Ave Vision 300 camera, failed to meet the product specifications required. After the product demonstration, the TWG asked Audio Visual to submit a clarification as to the frame rate of the document camera. Thus, Audio Visual submitted a certification, dated September 6, 2004, issued by AverMedia Technologies, Inc., that Aver Vision 300, complies with the 15 frames/second specification. AverMedia, Inc. is the manufacturer of the Aver Vision 300, the document camera offered by Audio Visual.

In a Memorandum, dated August 16, 2004, the TWG recommended that the contract for Lot 6 be awarded to Audio Visual for the following reasons:

1. Performance, in terms of capture, projection of images on the screen, digital zoom and pan and 180<sup>0</sup> rotation function
2. Sharper image projection than that of the Lumens DC80A
3. Ease of Use
4. Compact and Sturdy
5. With remote Control
6. The 0.27kg. weight excess is immaterial

On September 2, 2004, Link Worth filed with COA-BAC a motion for the reconsideration of the TWG's Memorandum, alleging that the Audio Visual's document camera failed to comply with the technical specifications. Link Worth prayed for the reversal of the TWG's recommendation to declare Audio Visual as the lowest calculated responsive bid. Link Worth also alleged that the bidding rules and regulations were violated when TWG member Engr. Bernardita Geres, received Audio Visual's certification that its document camera complies with the 15 frame/second specifications.

On September 14, 2004, COA-BAC awarded the contract for Lot 6 to Audio Visual.

On September 20, 2004, Link Worth wrote to COA-BAC, questioning the award of the contract to Audio Visual and prayed that the COA-BAC award the same to Link Worth having submitted the lowest calculated responsive bid. On September 23, 2004, Link Worth received a faxed

letter dated September 21, 2004, from COA-BAC dismissing its complaint.

On September 27, 2004, Link Worth filed a formal protest with the COA Chairman Guillermo Carague. However, the same was likewise dismissed in COA's Order dated December 9, 2004, issued by Assistant Commissioner Raquel R. Ramirez-Habitan, under authority of the Chairman.

On February 2, 2005, pursuant to Section 58 of R.A. No. 9184, otherwise known as the Government Procurement Reform Act, Link Worth filed a Petition for Certiorari under the 1997 Rules of Civil Procedure, ascribing grave abuse of discretion to the COA *"when it denied Petitioner's protest, which denial effectively sanctioned the disregard of technical specifications by COA-BAC in the subject procurement, and sanctioned the clear violations of the Procurement Law and its IRR-A."*

On January 18, 2006, the RTC rendered the assailed Decision, as amended by the RTC's Orders, dated February 13, 2006 and March 10, 2006, disposing as follows:

WHEREFORE, premises considered, the petition for certiorari is hereby GRANTED and accordingly, the assailed Resolution, dated December 9, 2004 is REVERSED and SET ASIDE for having been issued in grave abuse of discretion amounting to excess of its jurisdiction and accordingly, the award of the subject bidding in favor of private respondent Audio Visual Driver International, Inc. (AVD) is NULLIFIED and respondent COA is directed to pay petitioner the following amounts:

- (1) P100,000.00 as exemplary damages;
- (2) P100,000.00 as attorney's fees;
- (3) Cost.

Rejecting COA's assertion that the contract's technical specifications varied insignificantly with those submitted by Audio Visual, the RTC ruled that COA committed grave abuse of discretion in awarding the bid contract to Audio Visual and in denying Link Worth's protest. The RTC found that *"COA's manifest conduct in awarding the contract to a bidder which failed to comply with the requisite bid specifications from the very beginning smacks of favoritism and partiality toward [Audio Visual] to whom it awarded the contract. In sum, estoppel, whether by silence or laches, is unavailing in this case. Otherwise, it would stamp validity to an act that is against public policy."*

The RTC rejected COA's assertion that *"even as the technical proposal of [Audio Visual] varied from the bid specifications, these variances were found to be insignificant and did not warrant the bidder's disqualification."* The RTC ruled that *"if COA knew that any such deviation would be immaterial, then it should not have specified the technical standards/requirements which must be met at the first step of the bid qualification."* The RTC notes that when COA found that *"the technical*

*specifications submitted by [Audio Visual] were not the same as that of the bid specifications provided by COA, it should have rejected [Audio Visual's] bid upon opening of its technical bid envelope and not pronounce it as having 'passed' the bidding criteria."* The RTC further ruled that *"the certification xxx and information from the internet was received and obtained after the product demonstration had already been conducted,"* in violation of Section 26 of R.A. No. 9184.<sup>[5]</sup>

The Court of Appeals affirmed the RTC's finding that *Audio Visual* failed to comply with several technical specifications required of the document cameras, and that COA violated certain provisions of R.A. No. 9184 and its Implementing Rules. However, the appellate court deleted the award of damages to *Link Worth*, holding that COA cannot be held liable for damages as this would violate the commission's immunity from suit. COA and *Audio Visual* were directed to make mutual restitution.

In the instant petition<sup>[6]</sup> dated June 3, 2008, filed under Rule 45 of the Rules of Court but erroneously entitled Petition for Certiorari, COA asserts that the post-qualification proceedings it conducted showed that *Audio Visual's* document camera was compliant with the required technical specifications. Moreover, *Link Worth* is allegedly estopped from questioning the "pass" rating granted by COA to *Audio Visual* since the former failed to raise an objection to the acceptability of the technical specifications of *Audio Visual's* bid during the preliminary examination stage.

*Link Worth* filed a Comment<sup>[7]</sup> dated July 30, 2008, asserting that COA had ignored the required technical specifications when it awarded the contract to *Audio Visual*. Specifically, *Link Worth* points out that *Audio Visual's* document camera merely provided a two (2)-level flicker filter which lessens but does not eliminate the flicker effect contrary to the required frame rate of 15 frames/second. The 12V power supply requirement was also not met because *Audio Visual's* document camera used a 6V power supply. The camera's weight of 1.77 kg. also exceeded the required maximum weight of 1.5 kg.

COA allegedly allowed subjectivity to come into play when it allowed end-users to participate in the decision-making process contrary to R.A. No. 9184,<sup>[8]</sup> which seeks to eliminate subjectivity in award of government contracts. *Link Worth* further insists that it availed of the remedies under R.A. No. 9184 in its effort to question the award to *Audio Visual* and can thus not be held in estoppel.

Finally, *Link Worth* claims that it suffered damages by reason of COA's breach of R.A. No. 9184 and should accordingly be allowed to recover its losses from COA.

The OSG deemed it best not to file a reply.<sup>[9]</sup>

Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability. These principles permeate the provisions of R.A. No. 9184 from the procurement process to the implementation of awarded contracts. It is particularly relevant in this case to distinguish between the steps in the procurement process, such as the declaration of eligibility of prospective bidders, the preliminary examination of bids,

the bid evaluation, and the post-qualification stage, which the Bids and Awards Committee (BAC) of all government procuring entities should follow.

Except only in cases in which alternative methods of procurement are allowed, all government procurement shall be done by competitive bidding.<sup>[10]</sup> This is initiated by the BAC, which advertises the Invitation to Bid for contracts under competitive bidding in order to ensure the widest possible dissemination thereof.<sup>[11]</sup> The BAC then sets out to determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid<sup>[12]</sup> and their submission of the legal, technical and financial documents required under Sec. 23.6, Rule VIII of the Implementing Rules and Regulations of R.A. No. 9184 (IRR-A).

It is well to note at this point that among the technical documents required of prospective bidders to aid the BAC in determining their eligibility to bid is a statement of the prospective bidder of all its ongoing and completed government and private contracts within the relevant period, including contracts awarded but not yet started. In relation to contracts which are ongoing, completed, or awarded but not yet started, the prospective bidder shall include in the statement the name of the contract, date of the contract, kinds of goods sold, amount of contract and value of outstanding contracts, date of delivery, end user's acceptance, if completed, and specification whether the prospective bidder is a manufacturer, supplier or distributor.<sup>[13]</sup> The technical specifications of the particular contract specified in the Invitation to Bid is not among the documents required to determine the prospective bidder's eligibility to bid.

The BAC then informs the eligible prospective bidders that they have been found eligible to participate in the bidding<sup>[14]</sup> and prepares a short list of bidders who shall be allowed to submit their respective bids.<sup>[15]</sup>

Sec. 25, Art. VIII of R.A. No. 9184 provides that, "A bid shall have two (2) components, namely, technical and financial components which should be in separate sealed envelopes and which shall be submitted simultaneously." Sec. 25.3, Rule VIII of IRR-A provides that, "The first envelope (Technical Proposal) shall contain the following technical information/documents, at the least:

*A. For the procurement of goods:*

1. The Bid Security as to form, amount and validity period;
2. Authority of the signatory;
3. Production/delivery schedule;
4. Manpower requirements;
5. After-sales service/parts, if applicable;
6. **Technical specifications;**
7. Commitment from a licensed bank to extend to the bidder a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the approved budget for the contract to be bid: *Provided, however,* That if the bidder previously submitted this document as an eligibility requirement, the said previously submitted document shall suffice;