

THIRD DIVISION

[G.R. NO. 158812, October 05, 2005]

PUBLIC ESTATES AUTHORITY AND MANUEL R. BERINA, JR., IN HIS CAPACITY AS THE ACTING GENERAL MANAGER OF THE PUBLIC ESTATES AUTHORITY, PETITIONERS, VS. BOLINAO SECURITY AND INVESTIGATION SERVICE, INC., RESPONDENT.

DECISION

CARPIO MORALES, J.:

Before this Court is a Petition for Review of the Court of Appeals Decision^[1] dated May 30, 2002 which affirmed that of the Makati Regional Trial Court, Branch 58, dated April 22, 1992 declaring null and void the award by the Philippine Estates Authority (PEA) of a bid in favor of Masada Security Agency and declaring Bolinao Security and Investigation Service Inc. as the winning bidder for the April 10, 1991 bidding for security services.

On February 1, 1990, the PEA, a government corporation, through its then Acting General Manager Luis B. Pangilinan, Jr., entered into a Contract for Security Services^[2] with Bolinao Security and Investigation Services, Inc. (Bolinao Security), to secure and protect PEA's properties, personnel and premises at Villa Porta Vaga Subdivision, Cavite City. The contract was effective February 1, 1990 until January 31, 1991, extendible at the option of PEA.^[3]

In December 1990, PEA published in several newspapers an Invitation to Bid^[4] for the services of three hundred seven (307) regular and well-trained guards for its establishments, facilities, and other properties in Metro Manila including those in Cavite City. The Invitation to Bid read:

INVITATION TO BID

Interested bidders are invited to participate in the public bidding for Security Services for the following areas:

- (1) 6th and 7th Floor, Legaspi Towers 200, Makati, Metro Manila
- (2) Central Business Park (CBP) - I Pasay City
- (3) Freedom Islands I and II - Parañaque, Metro Manila
- (4) Fisherman's Wharf, Parañaque, Metro Manila
- (5) Aguinaldo Blvd. (Coastal Road or R-I) - Parañaque-Las Piñas, Metro Manila
- (6) Lopez, Bernabe, Madrigal-Relocation Sites - Las Piñas
- (7) Financial Center Area - Pasay City
- (8) Villa Porta Vaga (Cañacao Bay) - Cavite City

Interested bidders may request for copies of the Terms of Reference for

this bidding, from the Administrative Department of PEA, beginning on Dec. 17, 1990 up to Dec. 21, 1990 during regular working hours from 9:00 AM-6:00 PM.

All sealed bids must be received by the PEA Prequalification Bids and Awards Committee on or before 10:00 AM of December 27, 1990 at the 7th Floor, Legaspi Towers 200, Paseo de Roxas, Makati, Metro Manila and will be publicly opened and read on the said bidding date at the same address, in the presence of attending bidders or their duly authorized representatives and the general public. A Pre-bid conference will be conducted by the PBAC on Dec. 24, 1990 at 10:00 AM. Attendance to this Pre-bid conference is mandatory.

PEA reserves the right to reject any proposal or waive any defects or formality, impose additional terms and conditions and accept the proposal most advantageous to the Government. (Emphasis supplied)^[5]

The Terms of Reference (TOR) for Security Services^[6] listed the following documents which an interested party should submit to PEA to qualify to bid:

(a) **Certified xerox copy of Current License to Operate;**

(b) Certified xerox copy of Articles of Incorporation;

(c) Description of the organization, including its objectives and the names, nationality and experience of key officials;

(d) Certified list of firearms, communication equipment, service vehicles and other equipment with their corresponding licenses to operate said equipment;

(e) List of existing clients;

(f) Detailed financial statements (balance sheets and profits and loss statements) as of September 1990 and Income Tax Return duly filed and received by the Bureau of Internal Revenue (BIR);

(g) Certification of up-to-date payments of Social Security Services (SSS) Contributions;

(h) Bank certification of standby credit in the amount of TWO MILLION PESOS (P2,000,000.00);

(i) Certification of deposit from Philippine National Bank (PNB) or any reputable bank equivalent to one (1) monthly salary of three hundred seven (307) guards to be used exclusively for their salaries.(Emphasis and underscoring supplied)^[7]

On December 19, 1990, a pre-bid conference was held attended by twenty-one (21) interested security agencies. Following the conference, Bid Bulletin No. 1 dated December 21, 1990 amending, clarifying and/or supplementing the TOR was issued

to all prospective bidders.

On the scheduled bidding on December 27, 1990, only six (6) out of the twenty-one (21) interested bidders showed up, namely: Integrity Security and Intelligence Service (Integrity Security); Bolinao Security; Odin Security Agency, Inc.; Masada Security Agency, Inc. (Masada Security); Catalina Security Agency, Inc. and Montillano Security Agency.

For alleged "general non-compliance by bidders with bid qualification," PEA's Prequalification Bids and Awards Committee (PBAC) rejected all the 6 bids and thus scheduled a rebidding for security services contract.

In the meantime, after the contract with Bolinao Security expired on January 31, 1991, it was extended monthly by PEA up to July 29, 1991.^[8]

The re-bidding was scheduled on April 10, 1991 and all the 21 bidders were again invited to submit their bids. Bid Bulletin No. 2^[9] was thereafter issued modifying the TOR originally issued.

On April 3, 1991, a pre-bid conference was held and on April 10, 1991, the bids were opened.

The PBAC's technical working group thereafter issued Bid Evaluation^[10] dated June 11, 1991 tabulating the result of the bidding as follows:

BIDDERS	LIQUIDATED DAMAGES (p/ struct.)	REMARKS
1. Integrity Security	25,000	No SSS Clearance
2. Bolinao Security	20,000	No current license to operate
3. Masada	6,500	Complying
4. Odin Security	5,500	Complying
5. Catalina Security	5,000	Complying
6. Montillano Security	5,000	Only application for Permit To Purchase radio eqpt. ^[11]

The evaluation noted that all the bidders offered a bid price of P1,499,695.00 per month. PEA thus based the award on the amount of liquidated damages representing the total penalty to be paid by the security agency if it failed to prevent the construction of a shanty by a squatter in the Manila Bay reclamation properties of PEA.

The report, noting that Integrated Security submitted the highest bid in terms of liquidated damages but had no SSS clearance, and Bolinao Security submitted the next highest bid but had no current license to operate, recommended that Masada Security which proffered the third highest bid be considered the winning bidder.^[12]

Heeding the PBAC's recommendation, PEA awarded the contract to Masada Security effective September 1, 1991 up to April 30, 1993.^[13] Bolinao Security whose contract with PEA expired on January 31, 1991 but was, as earlier stated, extended monthly up to July 29, 1991, refused to turn over the PEA properties in Cavite City, however, to Masada Security, prompting PEA to send a demand letter to Bolinao Security to turn over the property to Masada Security.

Bolinao Security insisted to PEA, however, that it should be declared the winning bidder. But PEA explained that the bid of Bolinao Security was rejected because it failed to submit a current license to operate and to award the contract to it despite that would violate Presidential Decree (P.D.) No. 1919.^[14]

On September 16, 1991, Bolinao Security filed with the Regional Trial Court of Makati a complaint^[15] for annulment of bid award, damages, injunction with special prayer for the issuance of a temporary restraining order against PEA, its Acting General Manager Manuel Berina, Jr., and Masada Security, averring that, among other things, the attempt of Masada Security to take over the Cavite City premises from it based on the result of the bidding was improper, illegal, criminal and violative of the provisions of the Anti-Graft and Corrupt Practices Act.^[16]

In its Answer,^[17] PEA, denying Bolinao Security's allegations, alleged that the contract for security services for its properties situated in Cavite City with Bolinao Security, as extended, had already been terminated effective September 16, 1991; bidding laws were strictly followed and the bid of Bolinao Security was twice rejected for non-compliance with important requirements of the bidding; Bolinao Security failed to offer the highest liquidated damages; and awarding the contract to Bolinao Security would violate P.D. No. 1919 as well as the "National Accounting and Auditing Manual."

Masada Security, in its Answer with Compulsory Counterclaim,^[18] proffered that Bolinao Security had no valid cause of action, hence, not entitled to a writ of preliminary injunction.

By Order of October 14, 1991, the trial court issued a writ of preliminary injunction enjoining the defendants from terminating the contract with Bolinao Security covering PEA's Cavite City property.^[19]

After trial on the merits, the trial court, by Decision of April 22, 1992, found for Bolinao Security and declared the contract awarded to Masada Security null and void. The decretal text of the decision reads:

"WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff with the following dispositions:

1) The writ of preliminary injunction issued in this case, which enjoins

defendants from terminating the existing contract for security services with plaintiff, and from implementing the questioned contract in favor of Masada Security Agency effective September 17, 1991, and from ejecting plaintiff from the Villa Porta Vaga Subdivision, Canacao, Cavite City, is made permanent.

2) The award of the bid in favor of defendant Masada Security Agency is declared null and void and plaintiff Bolinao is declared as the winning bidder during the public bidding held on April 10, 1991.

3) Directing the defendants to jointly and severally pay to the plaintiff the amount of P50,000.00 as nominal damages, P50,000.00 as exemplary damages; attorney's fees; and the costs of suit.

SO ORDERED."^[20] (Underscoring supplied)

On appeal, the Court of Appeals affirmed the decision of the trial court by Decision of May 30, 2002.

In affirming the trial court's decision, the appellate court held that disqualifying Bolinao Security for the simple reason that on the day of the bidding its application for renewal of its license was still being processed was "most unfair, arbitrary and has no legal basis" as the period for processing thereof "is a bureaucratic requirement which sh[ould] not work against the interest of [Bolinao Security], absen[t] any badge of fraud or negligence."^[21]

Even assuming that Bolinao Security's pending application for renewal of license did not serve as proof of a current license to operate, the appellate court held that still PEA was estopped when it opened the second envelope containing the bid.^[22]

The appellate court went on to declare that the rule that the doctrine of estoppel does not lie against the government is not without exception, it holding that while the State could not be put in estoppel by the mistakes or errors of its officials or agents, the government must not be allowed to deal dishonorably or capriciously with its citizens;^[23] and while the government was not precluded from subsequently raising the issue of lack of qualification on the part of Bolinao Security, the same must be supported by law and equity.^[24]

Hence, the present petition for review filed on July 24, 1003 by PEA and its Acting General Manager Manuel R. Berina, Jr.,^[25] raising the following issues:

I

WHETHER OR NOT RESPONDENT BOLINAO SECURITY AND INVESTIGATION SERVICE, INC. IS A QUALIFIED BIDDER, DESPITE ITS NON-COMPLIANCE WITH THE BIDDING REQUIREMENTS.

II

WHETHER OR NOT THE LOWER COURTS' RULINGS CONSTITUTE AN