

RE: CONTRACTS WITH ARTES INTERNATIONAL, INC.

EN BANC

A.M. No. 12-6-18-SC, August 7, 2018

RESOLUTION

BERSAMIN, *J.*:

Facts

Shortly after then Chief Justice Artemio V. Panganiban took his oath, he declared his “judicial philosophy of safeguarding the liberty and nurturing the prosperity of the people under the rule of law.” Pursuant to this philosophy, the National Forum on Liberty and Prosperity (held on 24-25 August 2006) and the Global Forum on Liberty and Prosperity (held on 18-20 October 2006) were conceptualized and launched.

This Court, through the Program Management Office with Evelyn Toledo-Dumdum (Dumdum) as then Administrator, entered into several contracts with Artes International, Inc. (Artes) relative to the said fora, as well as other activities relative to the Retirement Ceremony of then Chief Justice Panganiban. There is also no dispute that the Court successfully hosted these events, with Artes being the events specialist hired “[t]o assist the Ad Hoc Committees, specifically by addressing the creative, logistical, physical and technical requirements of the Forum, x x x.”

Thereafter, Artes requested payment for allegedly unpaid balances arising from its contracts with the Court. However, Artes subsequently submitted a Release, Waiver & Quitclaim to the effect that it was waiving any and all its rights and interests in the claim; and expressly stated that it was releasing the Court from any further financial liability.

Ruling

The loan agreement between the Republic of the Philippines and the International Bank for Reconstruction and Development (IBRD), or the World Bank (WB), was signed on October 2, 2003 to fund the Judicial Reform

Support Project (JRSP) whose objective was “to assist the Borrower in developing a more effective and accessible Judiciary that would foster public trust and confidence through the implementation of the Supreme Court’s Action Program for Judicial Reform.”

SC Administrative Circular No. 60-2003 entitled Procurement Policy and Procedures for the Judicial Reform Support Project was issued on November 18, 2003 “to ensure the effective implementation of the Judicial Reform Support Project (JRSP) through the timely procurement of Goods, Works, and Services, guide the concerned Supreme Court Offices in their respective roles in the procurement process, prescribe the allowed lead times for each procurement activity, and monitor and resolve bottlenecks and problem areas in the procurement process.” Thus, SC Administrative Circular No. 60-2003 applied when procuring goods, works, and services in furtherance of the implementation of the JRSP.

Under the A.C., the procurement rules for the JRSP were not exclusively culled from the IBRD Guidelines, but also from the provisions of R.A. No. 9184, which were to be applied suppletorily. The OCA noted that under the procurement rules the borrower, which was the Court itself, should identify the body that would conduct the procurement activities for the borrower. For the purpose, SC Administrative Circular No. 60-2003 adopted Article V of R.A. No. 9184 to establish the JRSP Bids and Awards Committee (JRSP BAC) to be in charge of the conduct of the procurement activities. In light of this, and given that the PMO Program Director was tasked with the overall monitoring of the procurement process, Ms. Dumdum and the PMO should not have engaged in actual procurement activities, as their doing so would mean that she and the PMO were risking not being able to perform the monitoring function properly.

The IBRD Guidelines defined two modes of procurement: the international competitive bidding (ICB); and the other methods of procurement. The latter included limited international bidding (LIB); national competitive bidding (NCB); shopping; direct contracting; etc. Specifically, shopping was defined by the January 1999 IBRD Guidelines in the following manner: “Shopping is a procurement method based on comparing price quotations obtained from several Suppliers, usually at least three, to assure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification

commodities that are small in value. Requests for quotations shall indicate the description and quantity of the goods, as well as desired delivery time and place. Quotations may be submitted by telex or facsimile. The evaluation of quotations shall follow sound public or private sector practices of the purchaser. The terms of the accepted offer shall be incorporated in a purchase order.”

The PMO appeared to have resorted to shopping as the method of procurement in canvassing three suppliers for the goods and supplies intended for the Nation Forum. By resorting to national shopping, however, the PMO ignored the last sentence of the IBRD Guidelines on such alternative method of procurement that required a purchase order (PO) in which the accepted offer should be indicated. The PO was akin to a “contract between the parties as it requires inputs showing the requisites of a contract of consent, object certain, and cause of obligation.” Instead of the PO, the PMO used and relied on letter-quotations to reflect and contain the agreements between the parties.

Moreover, as the OCA has correctly observed, the IBRD Guidelines mentioned of contract documents instead of a single document. This observation is consistent with the Generic Procurement Manual (GPM) that synchronized the provisions of R.A. No. 9184 with the procurement rules of the Asian Development Bank, Japan Bank for International Cooperation, and the World Bank itself by requiring that contracts resulting from procurement activities for goods should be supported not only by a contract document but by a number of documents, including the bid documents. Yet, based on the detailed study made by the OCA, no proper bidding procedure pursuant to the guidelines of SC Administrative Circular No. 60-2003 was followed by the JRSP-BAC in choosing Artes as the service provider for the National Forum and the Global Forum. Consequently, the patent nullity of the contracts with Artes became the only legal consequence to be reached from the failure to comply with the proper procurement procedure.

WHEREFORE, acting on the Report dated June 20, 2012 submitted by the Office of the Chief Attorney, the Court **RESOLVES** to:

1. **CONSIDER** the claim of Artes International, Inc. for payment extinguished in accordance to the unilateral *Release, Waiver & Quitclaim* executed and submitted by Artes International, Inc.; and

2. **FURNISH** a copy of this **RESOLUTION** to the **OFFICE OF THE OMBUDSMAN** and the **COMMISSION ON AUDIT** as basis for whatever further action may be warranted or necessary to be taken against **MS. EVELYN DUMDUM**.

The matter subject of this case is now considered **CLOSED** and **TERMINATED**.

SO ORDERED.

Separate Opinions

CARPIO, *J*:

The Resolution cites the Report of the Office of the Chief Attorney on the contracts with Artes in concluding that “violations of law in the disbursement of funds of the Court as well as of funds derived from the loans extended by the World Bank appear to have been committed. The laws on procurement as well as those on auditing and official accountability were also contravened.”

The Chief Attorney is gravely mistaken.

Republic Act No. 9184 or the Government Procurement Reform Act does not apply to executive agreements.

In the Loan Agreement, dated 2 October 2003, between the Republic of the Philippines, represented by then Secretary of Finance Jose Isidro N. Camacho, and the International Bank for Reconstruction and Development, the Bank has agreed to extend a Loan to the Philippine government in an amount equal to \$21,900,000 to assist in the financing of the Judicial Reform Support Project (the Project or JRSP).

There is no question that the Loan Agreement in this case is in the nature of an executive agreement. It was entered into by the Philippine government, as a subject of international law possessed of a treaty-making capacity, and the International Bank for Reconstruction and Development, which, as an international lending institution organized by world governments to provide loans conditioned upon the guarantee of repayment by the borrowing

government, is also regarded a subject of international law and possessed of the capacity to enter into executive agreements with sovereign states.

Considering that the Loan Agreement is an executive agreement, Republic Act No. 9184 (RA 9184), or the “Government Procurement Reform Act” does not apply. Section 4 of RA 9184 provides:

SEC. 4. Scope and Application. — This Act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed.

Section 4 of RA 9184 clearly recognizes the government’s commitment to the terms and conditions of executive agreements, such as the Loan Agreement in this case. Considering that Loan Agreement No. 4833-PH expressly provides that the procurement of the goods to be financed from the loan proceeds shall be in accordance with the IBRD Guidelines and the provisions of Schedule 4, and that the accessory SLA contract merely follows its principal’s terms and conditions, the procedure for competitive public bidding prescribed under RA 9184 therefore finds no application to the procurement of goods for the Iligan City Water Supply System Development and Expansion Project.

Being an executive agreement, the Loan Agreement subject of this case is governed by international law. As the Court has consistently ruled in numerous cases, the Philippine government, particularly the implementing agency, in this case the Supreme Court, is therefore obligated to comply with the terms and conditions of the Loan Agreement under the international law principle of *pacta sunt servanda* which is embodied in Section 4 of RA 9184.