



Republic of the Philippines
SUPREME COURT
Manila

SPECIAL THIRD DIVISION

SM LAND, INC.,

Petitioner,

G.R. No. 203655

Present:

- versus -

VELASCO, JR., *J.*, Chairperson,
PERALTA,
VILLARAMA, JR.,
MENDOZA, and
LEONEN, *JJ.*

**BASES CONVERSION AND
DEVELOPMENT AUTHORITY
and ARNEL PACIANO D.
CASANOVA, ESQ., in his official
capacity as President and CEO of
BCDA,**

Promulgated:

Respondents.

March 18, 2015

X-----x

RESOLUTION

VELASCO, JR., *J.*:

For reconsideration is the Decision of this Court dated August 13, 2014, which granted the petition for certiorari filed by SM Land, Inc. (SMLI) and directed respondent Bases Conversion Development Authority (BCDA) and its president to, among other things, subject SMLI's duly accepted unsolicited proposal for the development of the Bonifacio South Property to a competitive challenge.

The gravamen of respondents' motion is that BCDA and SMLI do not have a contract that would bestow upon the latter the right to demand that its unsolicited proposal be subjected to a competitive challenge. Assuming *arguendo* the existence of such an agreement between the parties, respondents contend that the same may be terminated by reasons of public interest.

We are not convinced.

**There exists a valid agreement
between SMLI and BCDA**

Article 1305 of the New Civil Code defines a contract as "a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service." It is a "juridical convention manifested in legal form, by virtue of which one or more persons

bind themselves in favor of another or others, or reciprocally, to the fulfilment of a prestation to give, to do, or not to do.”¹ The succeeding Article 1318 of the Code lays down the essential requisites of a valid contract, to wit:

- (1) Consent of the contracting parties;
- (2) Object certain which is the subject matter of the contract; and
- (3) Cause of the obligation which is established.

In the case at bar, there is, between BCDA and SMLI, a perfected contract—a source of rights and reciprocal obligations on the part of both parties. Consequently, a breach thereof may give rise to a cause of action against the erring party.

The first requisite, *consent*, is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.² In the case at bar, when SMLI submitted the first Unsolicited Proposal to BCDA on December 14, 2009, the submission constituted an **offer** to undertake the development of the subject property. BCDA then entered into **negotiations** with SMLI until the BCDA finally **accepted** the terms of the final unsolicited proposal.³ Their agreement was thereafter reduced into writing through the issuance of the Certification of Successful Negotiations where the meeting of the parties’ minds was reflected in this wise:

NOW, THEREFORE, for and in consideration of the foregoing, **BCDA and SMLI have, after successful negotiations** pursuant to Stage II of Annex C x x x, **reached an agreement** on the purpose, terms and conditions on the JV development of the subject property, which shall become the terms for the Competitive Challenge pursuant to Annex C of the JV Guidelines x x x.⁴ (emphasis ours)

Then, **to manifest their assent** to the terms thereof and their respective obligations, both parties—BCDA and SMLI, represented by Gen. Narciso L. Abaya and Ms. Ana Bess Pingol, respectively—**affixed their signatures** on the Certification of Successful Negotiations and had it **notarized** on August 6, 2010.

¹ 14 Sanchez Roman 148-149, cited in Pineda, *Obligations and Contracts* (2000).

² Article 1319, New Civil Code

³ See Certification of Successful Negotiations, *rollo*, p. 64. [WHEREAS, after evaluation of the unsolicited proposal submitted by SMLI in accordance with the provisions of Annex “C” of the Guidelines, the [JV-SC] created by BCDA for the selection of a private partner for the [project] recommended to the BCDA Board, and the BCDA Board approved, per Board Resolution No. 2010-05-100, the acceptance of the unsolicited proposal, subject to the condition that such acceptance shall not bind BCDA to enter into a JV activity, but shall mean that authorization is given to proceed with detailed negotiations on the terms and conditions of the JV activity;

WHEREAS, pursuant to the authorization granted by the Board and issued pursuant to Annex “C”, Part III, Stage One of the JV Guidelines, BCDA **went into detailed negotiations** with SMLI. The JV-SC simultaneously ascertained the eligibility of SMLI in accordance with Annex “C”, Part III, Stage 2 (2) of the JV Guidelines x x x.] (emphasis ours)

⁴ Id. at 65. Certification of Successful Negotiations, p. 2.

Cause, on the other hand, is the essential reason which moves the parties to enter into the contract. It is the immediate, direct and proximate reason which justifies the creation of an obligation through the will of the contracting parties.⁵ Complementing this is Article 1350 of the New Civil Code which provides that “[i]n onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other.” As such, the cause of the agreement in the case at hand is their interest in the sale or acquisition and development of the property and their undertaking to perform their respective obligations, among others, as reflected in the Certificate of Successful Negotiations and in the Terms of Reference (TOR) issued by BCDA.

Lastly, *object certain* refers to the subject matter of the contract. It is the thing to be delivered or the service to be performed.⁶ Here, when the BCDA Board issued, on August 6, 2010, the Certification of Successful Negotiations,⁷ it not only accepted SMLI’s Unsolicited Proposal and declared SMLI eligible to enter into the proposed JV activity. It also **“agreed to subject [SMLI]’s Original Proposal to Competitive Challenge** pursuant to Annex C [of the NEDA JV Guidelines], which competitive challenge process shall be immediately implemented following the [TOR] Volumes 1 and 2.”⁸ Moreover, said Certification provides that **“the BCDA shall, thus, commence the activities for the solicitation for comparative proposals x x x starting on August 10, 2010, on which date [SMLI] shall post the required Proposal Security x x x.”**⁹

The elements of a valid contract being present, **there thus exists between SMLI and BCDA a *perfected contract*, embodied in the Certification of Successful Negotiations, upon which certain rights and obligations spring forth, including the commencement of activities for the solicitation for comparative proposals.** Thus, as evinced in the Certification of Successful Negotiation:

BCDA and SMLI have agreed to subject SMLI’s Original Proposal to Competitive Challenge pursuant to Annex C – Detailed Guidelines for Competitive Challenge Procedure for Public-Private Joint Ventures of the NEDA JV guidelines, which competitive challenge process shall be immediately implemented following the Terms of Reference (TOR) Volumes 1 and 2.¹⁰ x x x

This agreement is the law between the contracting parties with which they are required to comply in good faith.¹¹ Verily, it is BCDA’s subsequent unilateral cancellation of this perfected contract which this Court deemed to

⁵ *Basic Books [Phils.], Inc. v. Lopez, et al.*, No. L-20753, February 28, 1966.

⁶ Pineda, *Obligations and Contracts* (2000), p. 372.

⁷ *Rollo*, p. 64.

⁸ *Id.* at 71.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See* Article 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. (New Civil Code)

have been tainted with grave abuse of discretion. BCDA could not validly renege on its obligation to subject the unsolicited proposal to a competitive challenge in view of this perfected contract, and especially so after BCDA gave its assurance that it would respect the rights that accrued in SMLI's favor arising from the same.¹²

The NEDA JV Guidelines has the force and effect of law

Aside from the agreement between the parties, the ruling in favor of SMLI is likewise based on the NEDA JV Guidelines. As mandated by the rules, the Joint Venture activity, upon the successful completion of the detailed negotiation phase, shall be subjected to a competitive challenge.¹³ While it is not disputed that respondents failed to comply with the pertinent provisions of the NEDA JV Guidelines, the dissent postulates that it is justifiable since it is a mere guideline and not law.¹⁴

We regretfully disagree.

Under the Administrative Code of 1987,¹⁵ acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in Executive Orders (EOs).¹⁶ In other words, it is through these orders that the President ensures that laws are faithfully executed, by handing out instructions to subordinate executive officials and the public, in the form of implementing rules and regulations, on how the law should be executed by subordinate officials and complied with by the public.¹⁷

For government contracts and procurement in the Philippines, then President Gloria Macapagal-Arroyo, adopting the recommendation of the NEDA, issued EO 109¹⁸ on May 27, 2002. As its title indicates, EO 109 streamlined the rules and procedures on the review and approval of all contracts of departments, bureaus, offices and agencies of the government, including government-owned and controlled corporations and their subsidiaries. This executive issuance was, however, later amended by EO

¹² *Rollo*, p. 109.

¹³ *Id.* at 374-375.

¹⁴ Dissenting Opinion, p.5, per J. Leonen.

¹⁵ Executive Order No. 292.

¹⁶ Administrative Code of 1987 (EO 292), Book III (Office of the President), Title I (Powers of the President), Chapter 2 (Ordinance Power), Section 2 (Executive Orders).

¹⁷ See Associate Justice Antonio T. Carpio's Separate Concurring Opinion in *Abakada Guro Partylist v. Purisima*, G.R. No. 166715, August 14, 2008, citing Section 17, Article VII, Constitution; See also *Biraogo v. Philippine Truth Commission of 2010*, G.R. Nos. 192935 and 193036, December 7, 2010 where the Court upheld the creation by the President of the Philippine Truth Commission by way of an Executive Order, ruling that such creation is an exercise by the President of his duty to ensure that laws are faithfully executed (Sec. 17, Article VII, 1987 Constitution), thus, the issuance of the EO does not have to be backed by a statute.

¹⁸ *Streamlining the Rules and Procedures on the Review and Approval of all Contracts of Departments, Bureaus, Offices and Agencies of the Government, including Government-Owned and Controlled Corporations and their Subsidiaries*. Published in the *Philippine Star* on June 7, 2002.

109-A,¹⁹ to conform to RA 9184 which was enacted barely two months after the issuance of EO 109.²⁰ Two years later, or on April 30, 2005, EO 423²¹ was issued, repealing EO 109-A and simplifying the procurement process. Section 4 of EO 423 was later amended by EO 645.²²

Amidst the changes effected on procurement rules, the NEDA's duty to issue a JV Guidelines under the said executive orders remained unaffected.²³ Through Section 5 of EO 109, Section 8 of EO 109-A and now Section 8 of EO 423, the President effectively delegated her inherent executive power to issue rules and regulations on procurement to her subordinate executive officials,²⁴ her *alter egos*, the most recent of which reads in this wise:

Section 8. Joint Venture Agreements. The NEDA, in consultation with the GPPB, **shall issue guidelines regarding joint venture agreements** with private entities with the objective of promoting transparency, competitiveness, and accountability in government transactions, and, where applicable, complying with the requirements of an open and competitive public bidding.

Pursuant to said repeated directives from no less than the Chief Executive, the NEDA issued the JV Guidelines providing the procedures for the coagulation of joint ventures between the government and a private entity. In this regard, attention must be drawn to the well-established rule that **administrative issuances, such as the NEDA JV Guidelines, duly promulgated pursuant to the rule-making power granted by statute,**

¹⁹ *Amending Executive Order No. 109 Dated May 27, 2002 Prescribing the Rules and Procedures on the Review and Approval of all Government contracts to Conform with Republic Act No. 9184, otherwise known as the Government Procurement reform Act.* EO 109-A was issued on September 18, 2003.

²⁰ RA 9184 was enacted on July 22, 2002 and signed into law by then President Arroyo on January 10, 2003. It was then published on January 11, 2003 in two (2) newspapers of general nationwide circulation and took effect fifteen (15) days thereafter, or on January 26, 2003.

²¹ *Repealing Executive Order No. 109-A dated September 18, 2003 Prescribing the Rules and Procedures on the Review and Approval of All Government Contracts to conform with Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act."*

²² *Amending Section 4 of Executive Order No. 423 dated 18 September 2003 which prescribes the rules and procedures on the review and approval of all government contracts to conform with Republic Act No. 9184 otherwise known as the "Government Procurement Reform Act."*

²³ See: EO 109, Section 5 [SECTION 5. Joint Venture Agreements. NEDA shall, in consultation with the Department of Justice issue guidelines regarding joint venture agreements with private entities with the objective of promoting transparency, impartiality, and accountability in government transactions and, where applicable complying with the requirement of an open and competitive public bidding.];

EO 109-A, Section 8 [SECTION 8. Joint Venture Agreements. — The NEDA, in consultation with the GPPB, shall issue guidelines regarding joint venture agreements with private entities with the objective of promoting transparency, competitiveness, and accountability in government transactions and, where applicable, complying with the requirements of an open and competitive public bidding.];

EO 423, Section 8 [Section 8. Joint Venture Agreements. The NEDA, in consultation with the GPPB, shall issue guidelines regarding joint venture agreements with private entities with the objective of promoting transparency, competitiveness, and accountability in government transactions, and, where applicable, complying with the requirements of an open and competitive public bidding.]

²⁴ See Associate Justice Antonio T. Carpio's Separate Concurring Opinion in *Abakada Guro Partylist v. Purisima*, G.R. No. 166715, August 14, 2008, citing Section 17, Article VII, Constitution.

have the force and effect of law.²⁵ As elucidated in the August 13, 2014 Decision:

x x x **Being an issuance in compliance with an executive edict, the NEDA JV Guidelines, therefore, has the same binding effect as if it were issued by the President himself**, who parenthetically is a member of NEDA. As such, no agency or instrumentality covered by the JV Guidelines can validly deviate from the mandatory procedures set forth therein, even if the other party acquiesced therewith or not.²⁶

Articles III (4) and VIII (3) only refer to Private Sector Entities (PSEs), effectively excluding the Original Proponent

The dissent would next draw our attention to Article III (on General Information) and VIII (on Qualifications and Waivers) of the TOR Volume 1, which read:

III. GENERAL INFORMATION

x x x x

4. Amendment of these TOR. The information and/or procedures contained in these TOR may be amended or replaced at any time, at the discretion of the BCDA Board, without giving prior notice or providing for any reason. Should any of the information and/or procedures contained in these TOR be amended or replaced, the JV-SC shall inform and send Supplemental Notices to all **PSEs** x x x.²⁷

x x x x

VIII. QUALIFICATIONS AND WAIVERS

3. BCDA further reserves the right to call off this disposition prior to acceptance of the proposal(s) and call for a new disposition process under amended rules, and without any liability whatsoever to any or all of the **PSEs**, except the obligation to return the Proposal Security.²⁸ (emphasis added)

On this point, it is well to emphasize that **the TOR containing the said provisions details the requirements for eligibility to qualify as a PSE that may submit its technical and financial proposals for the JV, and does not encompass the entire Swiss Challenge procedure.** This is bolstered by the provisions' perfect consonance with the procedure for Stage Three per Annex C of the Guidelines, thus:

²⁵ *Eslao v. COA*, G.R. No. 108310, September 1, 1994, cited in *Atlas Consolidated Mining and Development v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

²⁶ *Rollo*, p. 988.

²⁷ *Id.* at 78.

²⁸ *Id.* at 87 [Article VIII (Qualifications and Waivers), Terms of Reference Volume 1].

3. The Private Sector Entity shall post the proposal security at the date of the first day of the publication of the invitation for comparative proposals in the amount and form stated in the tender documents.

4. The procedure for the determination of eligibility of comparative proponents/private sector participants, issuance of supplemental competitive selection bulletins and pre-selection conferences, submission and receipt of proposals, opening and evaluation of proposals shall follow the procedure stipulated under Annex A hereof. In the evaluation of proposals, the best offer shall be determined to include the original proposal of the Private Sector Entity. If the Government Entity determines that an offer made by a comparative private sector participant other than the Original Proponent is superior or more advantageous to the government than the original proposal, the Private Sector Entity who submitted the original proposal shall be given the right to match such superior or more advantageous offer within thirty (30) calendar days from receipt of notification from the Government Entity of the results of the competitive selection. Should no matching offer be received within the stated period, the JV activity shall be awarded to the comparative private sector participant submitting the most advantageous proposal. If a matching offer is received within the prescribed period, the JV activity shall be awarded to the Original Proponent. If no comparative proposal is received by the Government Entity, the JV activity shall be immediately awarded to the original private sector proponent.

Pursuant to the above-quoted provisions from the NEDA JV Guidelines, the interested PSEs, in order to be able to participate in the competitive challenge, must first post their respective proposal securities before submitting their comparative proposals for evaluation and consideration. Consequently, per the reservation clause, should the government entity (GE) decide to make material changes in the TORs issued, it must do so before it accepts the comparative proposals from the interested PSEs. This deadline is intended to protect the participating PSEs from alterations in the benchmarks set forth in the TOR after their proposals have already been seen and reviewed by the GE. Furthermore, should modifications be validly made, such may affect the computation for the amount of the proposal security to be posted by the comparative proponents,²⁹ hence the need for the GE to return the PSEs' proposal securities should it decide to pre-terminate the competitive challenge.

As to SMLI's proposal security, suffice it to state that it is not covered by the clauses—hence will not be returned even if the *competitive challenge* is terminated—because **SMLI cannot be considered as a PSE within the context of the TOR and the JV Guidelines.**

It must be emphasized that while an Original Proponent necessarily comes from the private sector, the term “Private Sector Entity” has a definite meaning in the Swiss Challenge procedure. **Under the TOR, a “Private Sector Entity” means “the party/ies that shall have submitted proposals**

²⁹ See schedule for determination of the amount of the proposal security, Section VI, Item 1.a.6., Annex A, NEDA JV Guidelines.

in compliance with the requirements specified in Article V, Volume 1 of these TOR for the privatization and development of the property.”³⁰ On the other hand, under the same document, an “Original Proponent” means “SMLI, whose unsolicited proposal for the development and privatization of [the] subject Property through JV with BCDA has been accepted by the latter, subject to certain conditions, and is now being subjected to a competitive challenge.”³¹

To be sure, the Original Proponent, as duly noted in the assailed Decision herein, is bestowed several rights under the JV Guidelines, including the right to the conduct and completion of a competitive challenge and the right to match a superior or more advantageous offer, among others. As such, it is clear that SMLI, being the Original Proponent, cannot be considered as a Private Sector Entity to which the reservation clause applies.

Moreover, pertinent to our reading of the above-cited provisions in the TOR is Article 1373 of the Civil Code, which provides that “[i]f some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual.” For this purpose, an interpretation which renders every word operative is preferred over that which makes some words idle and nugatory.

Applying the doctrine in the case at bar, a contrary reading—that the adverted provisions in the TOR entitle BCDA to cancel the entire Swiss Challenge—would violate the NEDA JV Guidelines, which, as earlier explained, has the force and effect of law. As elucidated in the main Decision:

A review of the outlined three-stage framework reveals that there are only two occasions where pre-termination of the Swiss Challenge process is allowed: at **Stage One**, prior to acceptance of the unsolicited proposal; and at **Stage Two**, should the detailed negotiations prove unsuccessful. In the Third Stage, the BCDA can no longer withdraw with impunity from conducting the Competitive Challenge as it became ministerial for the agency to commence and complete the same. Thus, **acceding to the interpretation of the TOR offered by BCDA will, in effect, result not only in the alteration of the agreement between the parties but also of the NEDA JV Guidelines itself, both of which has the force and effect of law.**

The interpretation offered by BCDA is, therefore, unacceptable. Between procedural guidelines promulgated by an agency pursuant to its rule-making power and a condition unilaterally designed and imposed for the implementation of the same, the former must prevail. BCDA does not wield any rule-making power such that it can validly alter or abandon a clear and definite provision in the NEDA JV Guidelines under the guise of a condition under the TOR. As We have time and again harped, the ones duty-bound to ensure observance with laws and rules should not be the

³⁰ *Rollo*, p. 77.

³¹ *Id.* at 76.

ones to depart therefrom. A contrary rule would open the floodgates to abuses and anomalies more detrimental to public interest. For how can others be expected to respect the rule of law if the very persons or entities tasked to administer laws and their implementing rules and regulations are the first to violate them, blatantly or surreptitiously?

Estoppel can be invoked against herein respondents

Respondents cannot plausibly shift the blame on what it perceived to be a bad bargain on the previous administration by arguing that the latter was negligent in its actions or that it entered into questionable transactions, for as can be gleaned, the negotiations and agreement between BCDA and SMLI was authorized by the BCDA's Board through Resolution No. 2010-05-100. Acting as a collegial body, the BCDA's Board could still validly authorize its president to enter into transactions over the protestation of some of its members through a democratic vote.

Respondents cannot also find solace in the general rule that the State is not barred by estoppel by the mistakes or errors of its officials or agents. As jurisprudence elucidates, the doctrine is subject to exceptions, viz:

Estoppels against the public are little favored. They should not be invoked except [in rare] and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. **Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations** . . . , the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.³² (emphasis added)

Clearly, estoppel against the government can be invoked in this case. This is in view of the fact that despite BCDA's repeated assurances that it would respect SMLI's rights as an original proponent, and after putting the latter to considerable trouble and expense, BCDA went back on its word to comply with its obligations under their agreement and instead ultimately cancelled the same. BCDA's capriciousness becomes all the more evident in its conflicting statements as regards whether or not SMLI's proposal would be advantageous to the government. As enunciated in the assailed Decision:

Noticeably, in its November 8, 2010 Memorandum, the BCDA posited that competitive challenge is more advantageous to the government than straight bidding, to wit:

The price of the Bonifacio South properties has already been set by the winning price in the bidding for the joint

³² *Republic v. Court of Appeals*, G.R. No. 116111, January 21, 1999.

venture development of the JUSMAG property (P31,111/sq.m.). Thus, BCDA has established the benchmark for the price of the remaining Bonifacio South properties, of which the JUSMAG property is the most prime. Logically the minimum bid price under straight bidding for the BNS/PMC/ASCOM/SSU property, which is a far less inferior property, would be P31,111/sq.m. However, with SM's submission of a revised unsolicited proposal at P31,732/sq.m. and later further revised to P32,500/sq.m., BCDA saw the opportunity to negotiate for better terms and eventually arrived at a higher price of P36,900/sq.m. In this case, **BCDA deemed that going into Competitive Challenge was more advantageous to the government than Competitive Selection (straight bidding) because of the opportunity to increase the price.**

Furthermore, subjecting the price to subsequent price challenge will possibly drive up the price even higher than P38,900/sq.m. These opportunities cannot be taken advantage of under a straight bidding where failure of bidding would likely ensue if in case BCDA immediately sets the price of the property too high. The competition in the real estate industry and as experienced by BCDA is such that the other developers will usually challenge the original proposal to "up the ante" as they cannot allow the original proponent to get the property easily.

Despite this testament, the BCDA, over a year later, made a complete turnaround stating that straight bidding will be best for the Government. As can be gleaned from the BCDA's Memorandum to the President dated February 13, 2012, respondents themselves recommended to the President that the selection proceedings be terminated. To reiterate:

In view of the foregoing, may we respectfully recommend the President's approval for BCDA to terminate the proceedings for the privatization and development of the BNS/PMC/ASCOM/SSU Properties in Bonifacio South through Competitive Challenge and proceed with the bidding of the property.

The BCDA offered no explanation to reconcile its opposing positions. It also neglected to inform SMLI of the provisions in its proposal that it deemed disadvantageous to the government. x x x

Respondents harp on the alleged dubiousness of the proceeding that led to the perfection of the agreement, but to rule now that irregularities marred the actions of BCDA's board and officers, as respondents would have us believe, would be tantamount to prematurely exposing its former officers to potential administrative liability without due process of law. If respondent would insist on such argument, it could have at least shown that the proper disciplinary cases have been initiated as evidence that BCDA reasonably believed that its previous officers indeed deviated from lawful procedure.

The perceived government losses remain speculative

The alleged adverse economic impact on the government, in finding for SMLI, does not constitute, under the premises, a valid cause for the reversal of the assailed Decision. To clarify, Our ruling did not award the project in petitioner's favor but merely ordered that SMLI's proposal be subjected to a competitive challenge. Consequently, any alleged disadvantage the government would suffer is speculative at most as there is no final award for the project as of yet.

Lest it be misunderstood, **the perceived low floor price for the project, based on SMLI's proposal, remains just that—a floor price.** There is, thus, an opportunity to increase the price, the government share as it were, through competitive challenge, as respondents themselves previously observed. Such offers can even surpass the property's current market value and, in which case, constitute sufficient consideration for the project. Without first subjecting SMLI's proposal to a competitive challenge, no bid can yet be obtained from PSEs and, corollarily, no determination can be made at present as to whether or not the **final** bid price for the project is, indeed, below the property's fair market value.

Public bidding may generally be more preferred than a competitive challenge for reasons explained in the dissent. However, there must be a careful balance between what is best for the government and what is fair to the persons it deals with. Otherwise, any and all unsolicited proposal can be cancellable, despite its acceptance, by the mere allegation that straight bidding is what public interest so requires. Worse, the government can very well ignore, at will, its contractual obligations by invoking that familiar mantra—public interest.

To be sure, the government has not strayed from accepting *suo moto* proposals from private entities and subjecting said proposals to a Swiss Challenge. In fact, the recent "Price Challenge" as regards Metro Pacific Investment Corporation's (MPIC's) proposal for the expansion of the North Luzon Expressway as well as its integration with the Subic-Clark-Tarlac Expressway was undertaken by none other than BCDA itself.³³ Thereafter, the BCDA board, in its February 4, 2015 meeting, adopted the result of the concluded Price Challenge, wherein no firm has tried to match MPIC's proposal, and, consequently, approved the notice of award in the company's favor.³⁴ Curiously enough, if straight bidding is, indeed, more beneficial, more transparent, and would yield a better offer for the government, then there is no reason for respondents not to have cancelled the process instead of awarding the project to MPIC. Otherwise stated, if public interest requires the conduct of a straight bidding instead of a Swiss Challenge, then MPIC

³³ The Philippine Star, February 2, 2015, B-9.

³⁴ The Manila Bulletin, February 7, 2015, B-3.

can never rest easy, thinking the contract it entered into with the government can be terminated at any time.

It is, thus, recognized that there are instances wherein the agreement stemming from faithful negotiations of the parties should be upheld, especially so when, as in this case, the alleged adverse effects on the government remain speculative at best. Respondents should, therefore, honor its commitment with petitioner, not as a message conveying the coddling of PSEs, and not only pursuant to its contractual and legal obligations under the TOR and the NEDA JV Guidelines, but also as a balancing mechanism between the tangible benefits the government stands to reap in terms of contract consideration, and its intangible benefits including improved public confidence in the government in terms of ease of doing business with. Moreover, and guilty of reiteration, it is worth emphasizing that **SMLI's offer, which was duly accepted by the BCDA, only serves as the floor price and does not foreclose better offers that can even surpass the property's current market value.** This being said, the government is not without protection for it is not precluded from availing of safeguards and remedies it is entitled to after soliciting comparative proposals, as provided under the TOR and the NEDA JV Guidelines.

WHEREFORE, in view of the foregoing, the Court's August 13, 2014 Decision is hereby **AFFIRMED**. Respondents' Motion for Reconsideration is accordingly **DENIED** with **FINALITY**.


No further pleadings, motions, letters or other communications shall be entertained in this case. Let entry of judgment be issued.

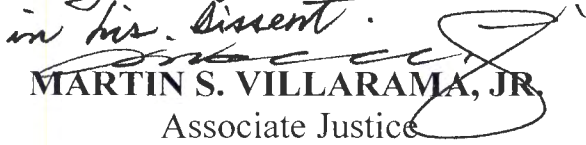
SO ORDERED.




PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice

*I join J. Leonen
in his dissent.*

MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

I dissent. In separate opinion

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

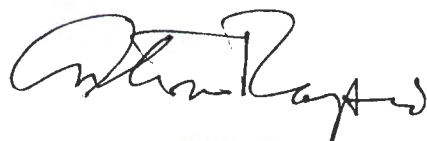
ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Acting Chief Justice