



Republic of the Philippines
OFFICE OF THE CITY MAYOR
City of Zamboanga



CELSO L. LOBREGAT
City Mayor

RE Concreting of Road at Curuan, Lunday, this City (Cluster - A. Concreting of Curuan-Lunday Road, Curuan; B. Concreting of Curuan-Lunday Road, Curuan) with an Approved Budget for the Contract of Fourteen Million Eight Hundred Fifty Three Thousand Two Hundred Twelve Pesos and Twenty Four Centavos (P 14,853,212.24)

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DECISION

FACTS OF THE CASE-

An Invitation to Apply for Eligibility and to Bid was advertised last August 20, 2008 for the **Fourteen Million Eight Hundred Fifty Three Thousand Two Hundred Twelve Pesos and Twenty Four Centavos (P 14,853,212.24)** clustered project, to wit: Cluster (A) Seven Million Nine Hundred Ninety Five Thousand Five Hundred Thirteen Pesos and Fifty Nine Centavos (P 7,995,513.59) Concreting of Curuan-Lunday Road, and Cluster (B) Six Million Eight Hundred Fifty Seven Thousand Six Hundred Ninety Eight Pesos and Sixty Five Centavos (P 6,857,698.65).

There were six (6) contractors who submitted their respective Letters of Intent and four (4) were subsequently found to be eligible. And the four (4) eligible contractors purchased the Bid Documents.

On September 30, 2008, the Bids and Awards Committee per Resolution No. PB-08-06491 declared Sto. Nino Construction to be the Bidder with the Single Calculated and Responsive Bid for the **Fourteen Million Eight Hundred Fifty Three Thousand Two Hundred Twelve Pesos and Twenty Four Centavos (P 14,853,212.24)** clustered project. Consequently, on October 9, 2008, the Notice of Award was issued to Sto. Nino Construction, hence, on October 10, 2008, the required Contract/Agreement was entered into by and between the City of Zamboanga, represented by City Mayor Celso L. Lobregat and Sto. Nino Construction, represented by its Owner/Manager Rosa S. Chan. Upon execution of the said contract, the required Notice to Proceed dated October 10, 2008 was issued to Engr. Rosa S. Chan, which was received on October 10, 2008. The calendar days required for the Seven Million Nine Hundred Ninety Five Thousand Five Hundred Thirteen Pesos and Fifty Nine Centavos (P 7,995,513.59) Cluster A project is One Hundred Thirty Two (132) calendar days, while the Six Million Eight Hundred Fifty Seven Thousand Six Hundred Ninety Eight Pesos and Sixty Five Centavos (P 6,857,698.65) Cluster B project is One Hundred Eight (108) calendar days.

Engr. Raymund Bucoy, project engineer assigned to the above-named cluster project, per his letter dated July 6, 2009 to City Engineer Luis Vicente L. Despalo reported that the Cluster A project has 60% accomplishment as of July 2, 2009 with a suspension order due to bad weather and that the construction is on-going at slow pace, while Cluster B project has 90% accomplishment as of July 2, 2009 with a suspension order due to bad weather and that the construction is on-going at slow pace. In another letter dated August 10, 2009, Eng. Raymund Bucoy and Foreman Michael P. Santos reported to City Engineer Luis Vicente L. Despalo that Cluster A project has 70% accomplishment as of August 6, 2009 with negative slippages by 61

days or -26.18%, while Cluster B project has 95% accomplishment as of August 6, 2009 with negative slippages of 85 days or -40.66%.

City Engineer Luis Vicente L. Despalo in his December 10, 2009 letter addressed to Mr. Genero A. Lague of Sto. Nino Construction made the following averments:

"This has reference to the project Re: CONCRETING OF CURUAN LUNDAY ROAD, CURUAN, this city with a contract amount of seven million nine hundred ninety-five thousand five hundred thirteen and 50/100 (Php 7,995,513.59) with 132 calendars days contract time which was undertaken by your construction firm.

Please be informed that you only have ten (10) days to complete said project to give way for the implementation of the project re: CONSTRUCIOTN OF BOX CULVERT AT CURUAN-LUNDAY-CAMP PILAR RAOD, CURUAN, this city, which will be undertaken by Dawing Construction.

In connection thereto, you are hereby directed to fast track the implementation of your project and complete the same in due time to avoid negative slippage caused by slow pace of work which in any event would disqualify you from further joining any bidding procedure with the city."

On February 4, 2010, Engr. Bucoy, the assigned project engineer to the above-named infrastructure project reported to City Engineer Luis Vicente L. Despalo of the following:

"This has reference with the project re: CONCRETING OF ROAD (CLUSTER) A) CONCRETING OF CURUAN-LUNDAY ROAD, CURUAN AND B) CONCRETING OF CURUAN-LUNDAY ROAD, CURUAN [(B) 100% physically completed as of October 6, 2009], both this city, under Contractorship Agreement with Sto. Nino Construction which was issued Notice to Proceed dated October 10, 2008 with a bid amount of A) seven million nine hundred ninety-five thousand five hundred thirteen and 59/100 (Php 7,995,513.59) B) six million eight hundred fifty-seven thousand six hundred ninety-eight and 65/100 (Php 6,857,698.65), with A) 132 and B) 108 calendar days, respectively.

Anent thereto, per your verbal instruction, an Ocular Inspection was conducted by the undersigned dated January 5, 2009. Hence, for project A) CONCRETING OF CURUAN-LUNDAY ROAD, CURUAN, the following were noted:

- 1. No construction activities due to unavailability of construction materials on site.*
- 2. No construction logbook on site, since no-going construction activity is conducted.*

As such, the undersigned advised the contractor's officer on site on resume the construction activities and to fast track the implementation of said project and complete the same in due time to avoid negative slippage caused by slow pace of work.

On the basis of the Updated Verified Report dated February 5, 2010 submitted by the City Engineer, a Notice to Terminate dated February 11, 2010 was issued by the Honorable City Mayor directing Engr. Rosa S. Chan, owner of Sto. Nino Construction, to submit a Verified Position Paper stating why the contract should not be terminated and a Blacklisting Order and

forfeiture of the performance bond should not be effected. Copy of the Notice was received by Engr. Chan last February 24, 2010, but to date, the latter failed to comply and submit the required Verified Position Paper.

ISSUE-

Whether or not the termination of the contract based on Roman Numeral III A (2) (A) and (C)(i)(iii) of the Guidelines on Termination of Contracts is sufficient to warrant the issuance of a Blacklisting Order disqualifying Sto. Nino Construction from participating in the bidding of all government projects, and the forfeiture of its performance bond.

FINDINGS-

After a careful appreciation and faithful deliberation of the documents on record, the following facts have been sufficiently established by the evidence:

1. That on October 10, 2008, a Contract/Agreement was entered into by and between the City of Zamboanga, represented by City Mayor Celso L. Lobregat and Sto. Nino Construction, represented by its Owner/Manager Rosa S. Chan for the **Fourteen Million Eight Hundred Fifty Three Thousand Two Hundred Twelve Pesos and Twenty Four Centavos (P 14,853,212.24)** clustered project, to wit: Cluster (A) Seven Million Nine Hundred Ninety Five Thousand Five Hundred Thirteen Pesos and Fifty Nine Centavos (P 7,995,513.59) Concreting of Curuan-Lunday Road, and Cluster (B) Six Million Eight Hundred Fifty Seven Thousand Six Hundred Ninety Eight Pesos and Sixty Five Centavos (P 6,857,698.65).
2. That the above contract was entered into pursuant to BAC Resolution No. 08-0649 dated September 30, 2008 wherein it was resolved to declare Sto. Nino Construction as the bidder with the Single Calculated and Responsive Bid for the Construction of the Cluster Projects which is the concreting of Curuan-Lunday Road, this City.
3. That the Notice to Proceed was received on October 10, 2008. That Cluster A has contract duration of One Hundred Thirty Two (132) calendar days, while Cluster B project has contract duration of One Hundred Eight (108) calendar days.
4. The February 5, 2010 Updated Verified Report submitted by City Engineer Luis Vicente L. Despalo shows that series of Suspension and Resumption Orders were issued by his Office to Sto. Nino Construction.
5. The List of On-Going Projects as of December 31, 2009 prepared by the City Engineer's Office shows that Cluster A project undertaken by Sto. Nino Construction has a physical accomplishment of 95% and the percentage of work accomplishment is 85%, with the REMARK: "on-going with negative slippages" as attested by the December 15, 2009 CPES Rating Sheet showing that Sto. Nino Contractor incurred **a negative slippages of -115.61%**; and that Cluster B project undertaken by Sto. Nino Construction has a physical accomplishment of 100%, but the percentage of work accomplishment is 85%, with the REMARK: "for final collection", and the December 15, 2009 CPES Rating Sheet show the project to be 100% completed.
6. That City Engineer Luis Vicente L. Despalo issued a written directive to Sto. Nino Construction requesting said construction firm to fast track the implementation of the Cluster A project.
7. That the project engineer assigned to the above-named infrastructure project reported that Sto. Nino Construction abandoned the Cluster A project because no construction activity was being undertaken by said construction firm.

RULING-

The October 10, 2008 Contract/Agreement entered into by and between the City of Zamboanga, represented by City Mayor Celso L. Lobregat and Sto. Nino Construction, represented by its Owner/Manager Rosa S. Chan for the **Fourteen Million Eight Hundred Fifty Three Thousand Two Hundred Twelve Pesos and Twenty Four Centavos (P 14,853,212.24)** clustered project is sought to be terminated based on Roman Numeral III A (2) (A) and (C)(i)(iii) of the Guidelines on Termination of Contracts, to wit:

2. In contracts for Infrastructure Projects:

The procuring entity shall terminate a contract for default when any of the following conditions attend its implementation:

a.) Due to the Contractor's fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more in accordance with Presidential Decree 1870;

c.)The Contractor:

i. abandons the contract of works, refuses or fails to comply with a valid instruction of the Procuring Entity or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity;

iii. does not execute the Works in accordance with the contract or persistently or flagrantly neglects to carry out its obligations under the contract;
x x x x (emphasis ours)

The fact that Sto. Nino Construction incurred negative slippages of more than fifteen percent (15%) is bolstered by the December 15, 2009 CPES Rating Sheet showing that Sto. Nino Construction incurred **a negative slippages of -115.61%**. The issue of abandonment of contract work is confirmed by the sworn statement of Engr. Raymund Bucoy who attested to the total abandonment by Sto. Nino Construction of the Cluster A project. On the other hand, Sto. Nino Construction's failure to comply with the valid instruction of the procuring entity was culled from the records showing the December 10, 2009 letter of Engr. Luis Vicente L. Despalo directing Sto. Nino Construction, thru Mr. Genero A. Lague to complete the Cluster A project within ten (10) days to give way to the implementation of another project which is the Construction of Box Culvert at Curuan-Lunday-Camp Pilar Road, Curuan, this City. Along this line, it is stressed that Sto. Nino Construction's abandonment of the Cluster A project caused damages on the part of the City Government of Zamboanga, and in the end, the public was prejudiced by its action. Clearly, there was fragrant violation of its (Sto. Nino Construction) obligation under the October 10, 2008 Contract Agreement, viz:

"That the CONTRACTOR shall start work as stated in the Notice to Commence Work and expressly warrants to complete the said project within the number of calendar days indicated in the individual program of work for each project inclusive of Saturdays, Sundays and Holidays, under the direct supervision of the designated Project Engineer of the Office of the City Engineer. x x x x" (Number 4, Conditions of Contract)

Article 1380 of the New Civil Code provides that: *"Contracts validly agreed upon may be rescinded in the cases established by law"*. And Article 1191 of the same Code reads: *"The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. x x x x"*

Corollary thereto, letter (a), (b) and (g) of Number 4.2 of Resolution No. 09-2004 otherwise known as the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants pertinently provides:

"Pursuant to Section 69(6) of R.A. 9184 and without prejudice to the imposition of additional administrative sanction as the internal rules of the agency may provide and/or further criminal prosecution as provided by applicable laws, the procuring entity shall impose on contractors after the termination of the contract the penalty of suspension for one (1) year for the first offense, suspension for two (2) years for the second offense from participating in the public bidding process, for violations committed during the contract implementation stage, which include but not limited to the following:

- b) Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. x x x x x*

In addition to the penalty of suspension, the performance security posted by the contractor shall also be forfeited.

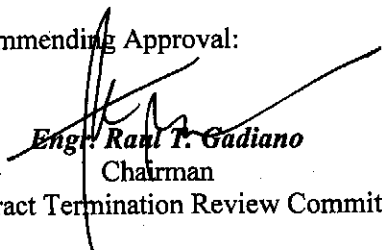
Also, number 6 "PROCEDURE FOR BLACKLISTING DURING THE CONTRACT IMPLEMENTATION STAGE" of the same Resolution reads:

"Upon termination of contract due to default of the contractor, the Head of the Procuring Entity shall immediately issue a Blacklisting Order disqualifying the erring contractor from participating in the bidding of all government projects. The performance security of said contractor shall also be forfeited."

WHEREFORE, premises considered, immediately upon receipt of this instant Decision, the October 10, 2008 Contract/Agreement entered into by and between the City of Zamboanga, represented by City Mayor Celso L. Lobregat and Sto. Nino Construction, represented by its Owner/Manager Rosa S. Chan for the **Fourteen Million Eight Hundred Fifty Three Thousand Two Hundred Twelve Pesos and Twenty Four Centavos (P 14,853,212.24)** clustered project, to wit: Cluster (A) Seven Million Nine Hundred Ninety Five Thousand Five Hundred Thirteen Pesos and Fifty Nine Centavos (P 7,995,513.59) Concreting of Curuan-Lunday Road, and Cluster (B) Six Million Eight Hundred Fifty Seven Thousand Six Hundred Ninety Eight Pesos and Sixty Five Centavos (P 6,857,698.65), is hereby terminated with forfeiture of its performance security bond. Further, pursuant to Number 6 of the Uniform Guidelines for Blacklisting, Sto. Nino Construction with PCAB license number 4867 is hereby declared suspended for a period of one (1) year from participating in the bidding of all government projects.

June 21, 2010, Zamboanga City, Philippines.

Recommending Approval:


Engr. Raul T. Gadiano
Chairman

Contract Termination Review Committee

Approved/Disapproved:


City Mayor