

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-22789 **October 30, 1964**

MANUEL L. PADILLA, petitioner,
vs.
CALIXTO ZALDIVAR, ET AL., respondents.

J. C. Zulueta & C. T. Reyes for petitioner.
Alfonso Felix, Jr. for respondent Food Enrichment Enterprises.
Ernesto F. Reyes for respondent HI Development Corporation.
R. G. Suntay for respondent Adelina Fores.
Office of the Solicitor General and A. M. Amores for respondent Executive Secretary, et al.

BAUTISTA ANGELO, J.:

On April 13, 1964, Republic Act No. 3848, otherwise known as the Rice Importation Law for 1964, was approved providing for the importation during that calendar year of rice from any source, including the United States, equivalent to any shortage that may be certified by the National Economic Council. The quantity of rice that may be imported should in no case exceed 300,000 metric tons, 200,000 metric tons to be imported directly by the Government, and the right to import not more than 100,00 metric tons shall be awarded thru public bidding within 15 days after the approval of the Act to private enterprises who are willing and capable to undertake said importation. In granting the award the determining consideration shall be the best terms as to price, quality, schedule of delivery, and manner of financing. However, the Government "may reject all bids and undertake the importation if the terms and conditions of the winning bidder cannot equal or better those that can be obtained if the importation were to be undertaken by the Government" (Section 1, Republic Act No. 3848).

Pursuant to the provisions of said Act, the Rice and Corn Administration caused to be published an Invitation to Bid for the supply of 100,00 metric tons of foreign polished rice of certain qualities specified therein, the bids to be opened at its office at 10: 00 o'clock a.m. on April 24, 1964. In the Invitation to Bid, we find the following important requirements:

Rice Quality should be —

Freshly milled white rice, not more than one (1) month, crop 1963-64 with moisture content of not more than 14% of any of the following grades:

1. From Thailand

- a. Philippine Thai Special 50% maximum broken.
- b. Thai White rice, 25% broken.

2. From Burma

- a. Ngasein S.M.S. 42% broken
- b. Emata 35% to 38% broken

3. From South Vietnam

- a. Japan No. 2 variety 40% broken Vietnamese white rice.
- b. Java No. 2 variety 50% to 55% broken Vietnamese white rice.

4. From other countries

- a. Of equal or better non-glutinous varieties.

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The bidder shall submit his proposal or proposals accompanied by this Invitation to Bid indicating his conformity with all the conditions written herein by signing at the space provided for at the bottom of the last page of this Invitation.

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3. *Consideration of Bids.* — Bids are in order or non-defective if they comply with the conditions and requirements contained in this Invitation to Bid.

4. *Reservation of Rights to Reject Any or All Bids.* — The Rice and Corn Administration reserves the right to reject any or all bids and to waive any informality in the bids received.

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3. Bond —

(a) *Bidder's Proposal Bond.* — Each bid shall be accompanied by a bidder's bond in the form of cash or certified check only equivalent to 2% of the total C & F value of the bid (in dollars, at the rate of P3.91 for every US \$1.00) to guarantee (1) that the bidder will sign the contract within thirty six (36) hours, excluding Sundays and Holidays, from

receipt of the written notice of award, and (2) that the winning bidder shall post a performance bond upon signing of the contract.

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Bids accompanied by insufficient proposal bond shall be disqualified from participating in the selection of awards

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(b) *Performance Bond.* — Upon award, winning bidder must post within thirty six (36) hours upon official notification, performance bond issued by a Surety Company acceptable to the Rice and Corn Administration in an amount equal to ten percent (10%) of the full C & F value of the rice (if in dollars, at the rate of P3.91 or every US \$1.00) shall be required of every successful bidder upon signing of the contract of sale to guarantee the faithful performance of the contract according to its tenor, terms and conditions,

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1. *Award of Contracts.* — Contracts will be awarded to the bidders whose offers are considered to be most advantageous to the Rice and Corn Administration considering the following points as bases:

- a. Price
- b. Quality
- c. Time of delivery
- d. Manner of Financing

Several bidders tendered bids for different kinds and quantities of rice quoting different prices. Among those who submitted bids were Manuel L. Padilla, Adelina Fores, Food Enrichment Enterprises, and HI Development Corporation. Padilla's bid was not, however, accompanied by the required bidder's proposal bond. The public bidding was held as scheduled. Padilla's envelope containing his bid was not opened for being defective, as in fact his bid was not even read nor considered. The day following the bidding, or on April 25, 1964, the Rice and Corn Administration awarded the right to import 45,000 metric tons of rice to the following bidders whose bids were considered to be the lowest and most advantageous:

(a) To Adelina Fores — 30,000 metric tons of Thai white rice, 25% broken at \$114.15 per metric ton, C & F Manila;

(b) To Food Enrichment Enterprises — 10,000 metric tons Cambodia rice, Java No. 2 variety, 50-55% broken at \$116.48 per metric ton, C & F Manila; and

(c) To HI Development Corporation — 5,000 metric tons of Thai white rice, 251% broken at \$115-25 per metric ton, C & F Manila.

Not having been awarded any quantity of rice to be imported, Padilla sent telegraphic appeals to the Committee on Bids to the Executive Secretary, and to the President, requesting that his bid be considered. And his appeal not having been favorably acted upon, Padilla filed the present for *mandamus* and prohibition before this Court on May 8, 1964 praying, among others, that a writ of preliminary injunction be issued restraining respondents from signing the contract of importation of the 45,000 metric tons of rice awarded to respondents and that after hearing, the injunction thus issued be made permanent, or in the alternative, that petitioner be awarded the right to import 50,000 of the 55,000 tons balance of the quota allotted to the private sector for importation.

In the meantime, that is, on April 30, 1964, respondent Rice and Corn Administration executed the corresponding importation contracts with Adelina Fores, Food Enrichment Enterprises, and HI Development Corporation, in line with the awards granted to them in the bidding. And in accordance with the Invitation to Bid, the awardees posted the requisite performance bonds and opened the corresponding letters of credit.

The issues posed before us are: (1) Have respondents Rice and Corn Administration and Executive Secretary acted with grave abuse of discretion in disqualifying and rejecting petitioner's bid while awarding the right to import 50,000 of the 55,000 metric tons allotted by law to the private sector?

1. It is an admitted fact that petitioner failed to accompany his bid with the required bidder's proposal bond. This is not only an important requirement contained in the Invitation to Bid but one which is considered indispensable by the rules and regulations and the usual procedure that is followed in carrying out public biddings concerning awards of government contracts. In fact, the bidder's proposal bond in a public bidding is deemed to be an indispensable requirement for the validation of a bid proposal.¹This is no idle requirement. Indeed, its purpose "is to insure the good faith of the bidders and bind them to enter into a contract with the Government should their proposal be accepted The bond is the only hold which the Government has on a bidder. The necessity of an undertaking to guarantee the good faith of a bidder lies in that should a bidder be motivated in his participation in a competitive bidding by intention other than *bona fide*, a court action is the only recourse by which the Government can recoup the damages sustained by reason thereof" (Decision of the Auditor General dated March 18, 1957, quoted by Cobacha and Lucenario, Law on Public Bidding and Government Contracts, p. 79). And to this effect, the Invitation to Bid contains the following proviso:

If for any reason a bidder fails to enter into a contract with the Rice and Corn Administration after his offer is accepted within the period of thirty six (36) hours or if

the offer or withdraws his offer after the opening of the bid, the amount of his proposal bond shall be forfeited in favor of the Rice and Corn Administration.

Petitioner never questioned the reasonableness of the requirement regarding the bidder's proposal bond before the opening of the bids. On the contrary, he expressed his assent thereto when he submitted his bid in the form provided for that purpose. Nor can it be gainsaid that the Rice and Corn Administration has the power to impose that requirement in the same manner that it has the right to impose the other terms and conditions expressly contained in the Invitation to Bid. A person who submits his bid not only signifies his assent to said terms and conditions but is impliedly bound by them if and when his bid is considered. In fact, the Invitation to Bid provides that "Bids accompanied by insufficient proposal bond shall be disqualified from participating in the selection of awards." If mere insufficiency of a bond required of the bidder is a disqualification, *a fortiori*, the total want of it is a disqualification. It follows that petitioner failed to qualify as a bidder and hence respondents Rice and Corn Administration and Executive Secretary did not abuse their discretion when they declined to consider his bid.

It is true that petitioner submitted to the Rice and Corn Administration a firm commitment on the part of the Mercantile Insurance Co., Inc. binding itself to issue upon grant of an award to petitioner a performance bond in the amount of P2,300,000.00 "representing 10% of the petitioner's C & F value," a circumstance which petitioner now avers shows his willingness and ability to comply with the terms and conditions of his bid. But a performance bond is different from a bidder's proposal bond. As already pointed out, the latter has as its purpose to insure the good faith of the bidder and bind him to enter into a contract with the Government should his proposal be accepted, while the former is the one posted by the winning bidder to afford additional security that he would faithfully perform the contract awarded pursuant to his bid and would make good any loss that may be sustained by the Government in the event of his failure to so perform. Moreover, even granting that a performance bond could be a substitute for the bidder's proposal bond, here the performance bond was submitted late, or several days after the holding of the bidding on April 24, 1964. The fact that in the Invitation to Bid there is a proviso that the Rice and Corn Administration could waive any informality that may be committed in connection with the bid is of no moment, for the same is a matter that wholly depends upon the discretion of the Rice and Corn Administration. The exercise of such discretion, certainly, cannot be controlled in a petition of this nature.

2. Petitioner leans on his alternative prayer to the effect that, even assuming that his bid was disapproved with regard to the 45,000 metric tons importation, he should however be awarded the quota of 50,000 of the 55,000 tons balance allotted by law to the private sector considering his readiness and ability to undertake such importation.

This claim cannot also merit any consideration mainly because he was found to be a disqualified bidder. If the Rice and Corn Administration should consider the award to a private importer of the balance of 55,000 metric tons it certainly can only do so in favor of those who submitted qualified bids, and as already said, petitioner is a disqualified bidder. And even if said agency is

in a position to consider the bids of those who were found to be disqualified, the result cannot certainly be favorable to petitioner for his bid was found *not to be the lowest* among those disqualified. Thus, it appears that petitioner's bid of "Java type No. 2, 40- 45% broken at \$113.13 C & F" was not the lowest because there was another party who was declared to be disqualified but who offered to import for the same variety of rice "at \$112.95 C & F Manila," which bid was rejected for the party's failure to submit the required sample of the variety bidden. This party is HI Development Corporation.

Finally, the Rice and Corn Administration is not unconditionally bound under the law to allot the importation of the full amount of 100,000 metric tons to the private sector. The law fixes only the maximum of 100,000 metric tons, but may authorize the importation of less. It even gives the Government the right to reject any bid submitted and undertake the importation itself "if the terms and conditions of the winning bidder cannot equal or better those that can be obtained if the importation were to be undertaken by the Government." Here, petitioner's bid is limited to the importation of rice of Java type No. 2, whereas the Government favorably considered the importation of rice of other varieties from Thailand, United States and Burma. There is, therefore, enough basis for the Government to reject the bid of petitioner even in connection with the balance of 55,000 metric tons still not allocated to the private sector.

WHEREFORE, petition is hereby dismissed, with costs.

*Bengzon, C.J., Concepcion, Paredes, Dizon, Regala, Makalintal and Bengzon, J.P., JJ., concur.
Reyes, J.B.L., and Barrera, JJ., concur in the result.
Zaldivar J., took no part.*