



Republic of the Philippines  
**Supreme Court**  
Manila

EN BANC

BAYAN MUNA PARTY-LIST  
REPRESENTATIVE SATUR C.  
OCAMPO, GABRIELA WOMEN'S  
PARTY-LIST REPRESENTATIVE LIZA  
L. MAZA, BAYAN MUNA PARTY-LIST  
REPRESENTATIVE TEODORO A.  
CASIÑO, ANAKPAWIS PARTY-LIST  
REPRESENTATIVE JOEL B.  
MAGLUNSOD, PAGKAKAISA NG  
MGA SAMAHAN NG TSUPER AT  
OPERATOR NATIONWIDE (PISTON),  
represented by its SECRETARY  
GENERAL GEORGE F. SAN MATEO,  
Petitioners,

AUTOMOBILE ASSOCIATION OF  
THE PHILIPPINES, GLICERIO M.  
MANZANO, JR., RAUL M. CONSUNJI,  
and LYN C. BRONTE,  
Petitioners-in-Intervention,

- versus -

LEANDRO R. MENDOZA SECRETARY  
OF DEPARTMENT OF  
TRANSPORTATION and  
COMMUNICATIONS; ARTURO C.  
LOMIBAO, CHIEF OF THE LAND  
TRANSPORTATION OFFICE, and  
STRADCOM CORPORATION,  
Respondents.

FEDERATION OF JEEPNEY  
OPERATORS and DRIVERS  
ASSOCIATION OF THE PHILIPPINES  
(FEJODAP) represented by ZENAIDA  
"MARANAN" DE CASTRO,  
ALLIANCE OF TRANSPORT

G. R. No. 190431

Present:

SERENO, *CJ*,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
MENDOZA,  
REYES,  
PERLAS-BERNABE,  
LEONEN,  
JARDELEZA, and  
CAGUIOA, *JJ*.

**OPERATORS and DRIVERS  
ASSOCIATIONS OF THE  
PHILIPPINES (ALTODAP) represented  
by MELENCIO "BOY" VARGAS,  
LAND TRANSPORTATION  
ORGANIZATION OF THE  
PHILIPPINES (LTOP) represented by  
ORLANDO MARQUEZ, NTU-  
TRANSPORTER represented by ALEJO  
SAYASA, PASANG-MASDA  
NATIONWIDE, INC., represented by  
ROBERTO "OBET" MARTIN,  
ALLIANCE OF CONCERNED  
TRANSPORT ORGANIZATIONS  
(ACTO) represented by EFREN DE  
LUNA,**

Oppositors-Intervenors,

Promulgated:

January 31, 2017

*[Handwritten Signature]*

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## DECISION

**SERENO, CJ:**

This is a Petition for Certiorari and Prohibition under Rule 65 with application for temporary restraining order and/or preliminary injunction filed on 16 December 2009 by four party-list representatives and taxpayers (with petitioners Ocampo and Maza also suing as motor vehicle owners) and the Pagkakaisa ng mga Samahan ng Tsuper at Operator Nationwide (PISTON). The Petition seeks to annul and set aside the Radio Frequency Identification (RFID) Project as implemented by Department of Transportation and Communications (DOTC) Circular No. 2009-06, Land Transportation Office (LTO) Memorandum Circular No. ACL-2009-1199, as well as the pertinent Memorandum of Agreement (RFID MOA) dated 16 June 2009 entered into between DOTC, LTO and Stradcom Corporation (Stradcom).

### STATEMENT OF THE FACTS AND OF THE CASE

#### *Background Facts*

On 15 December 1997, DOTC/LTO awarded to Stradcom a contract for the construction and operation of an information technology structure called the LTO IT Project Build-Own-Operate Agreement (BOO Agreement), making Stradcom the exclusive information technology provider of DOTC/LTO.

*[Handwritten mark]*

The LTO IT Project is a long-term strategic plan to modernize the land transportation systems. It covers the development of a System Integrated Information Technology Solution Infrastructure, which will interconnect LTO's district offices nationwide, enable online transaction processing and integrate its mission critical business processes.<sup>1</sup>

On 26 September 2007, Stradcom presented to the LTO the Radio Frequency Identification (RFID) Project as an enhancement to the current motor vehicle registration system.<sup>2</sup>

Basically, RFID technology is an automatic identification technology whereby digital data encoded in an RFID tag or "smart label" are captured by a reader using radio waves. Put simply, RFID is similar to bar code technology, but uses radio waves to capture data from tags, rather than optically scanning the bar codes on a label.

In RFID technology, information is sent to and read from RFID tags by a reader using radio waves. In passive systems, an RFID Reader transmits an energy field that "wakes up" the tag and provides the power for the tag to respond to the reader.<sup>3</sup> Data collected from tags are then passed through communication interfaces (cable or wireless) to host computer systems in the same manner that data scanned from bar code labels are captured and passed to computer systems for interpretation, storage, and action.

Generally, RFID systems comprise three main components: (1) the RFID Tag, or transponder, which is located on the object to be identified and is the data carrier in the RFID system; (2) the RFID Reader or transceiver, which may be able to both read data from and write data to a transponder; and (3) the data processing subsystem which utilizes the data obtained from the transceiver in some useful manner.<sup>4</sup>

On 6 May 2009, the DOTC issued Circular No. 2009-06<sup>5</sup> entitled Rules and Regulations on the Implementation of the Radio Frequency Identification Tag for All Motor Vehicles Required to be Registered under the Land Transportation and Traffic Code, as Amended (DOTC RFID Rules). The DOTC RFID Rules state that the RFID Project covers the "enhancement of the LTO IT Project's systems, particularly its Motor Vehicle Registration System and Law Enforcement and Traffic Adjudication System," as well as the integration of RFID technology into the Private Emission Testing Center (PETC) system. These rules required all motor vehicles to have an RFID tag "as a prerequisite to registration or re-registration."<sup>6</sup> It also provided that after 1 August 2009, no motor vehicle shall be permitted registration without first having an RFID tag, for which a

<sup>1</sup> Request for Proposal of the BOO Agreement; *rollo*, p. 458.

<sup>2</sup> *Id.* at 381.

<sup>3</sup> Jerry Banks et al., *RFID Applied*, New Jersey: John Wiley and Sons, Inc. (2007), pp. 8-9.

<sup>4</sup> Stradcom's Comment on the Petition, *rollo*, p. 268.

<sup>5</sup> *Id.* at 64-66.

<sup>6</sup> DOTC Department Circular No. 2009-06, *id.* at 65.

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fee of ₱350 shall be collected. In case of damage to or destruction of the RFID tag, a new one shall be attached upon payment of the same fee. RFID readers shall be deployed to LTO District and Extension Offices, PETCs, and motor vehicle inspection centers.

On 16 June 2009, the RFID Memorandum of Agreement (RFID MOA)<sup>7</sup> was entered into between DOTC/LTO and Stradcom. The RFID MOA provided that fees due to Stradcom shall be collected and deposited by the LTO in a government depository bank account designated by and in the name of Stradcom.<sup>8</sup> Of the total amount of ₱350 to be collected for each RFID tag, the base amount exclusive of VAT was ₱312.50.

This ₱312.50<sup>9</sup> was broken down as follows: ₱20.43 shall be given to DOTC/LTO,<sup>10</sup> ₱259.14 shall be due to Stradcom,<sup>11</sup> and ₱32.73 for each RFID Tag payment shall go to the IT Training Fund to assist the DOTC/LTO in improving its service to the public; and this fund “shall be deposited in a bank account under the sole control” of Stradcom.<sup>12</sup>

On 7 August 2009, the LTO issued Memorandum Circular No. ACL-2009-1199,<sup>13</sup> entitled “Implementing Rules and Regulations for the Radio Frequency Identification Tag for all Motor Vehicles Required to be registered Under the Land Transportation and Traffic Code, as Amended” (LTO RFID IRR). The LTO RFID IRR provided that the commencement date of RFID tagging shall be 1 October 2009. It also provided that the RFID Tag, which has a shelf life of up to 10 years, is composed of two portions: (1) Write Once, which would contain the Unique ID (UID) number only and could not be changed during the life of the RFID tag; and (2) Write Many, which may save certain information that would be made available to authorized personnel with the use of the RFID Reader.<sup>14</sup>

The information which may be saved in the RFID Tag includes the following: (1) motor vehicle file number, (2) engine number, (3) chassis number, (4) plate number, (5) motor vehicle type, (6) color, (7) make, (8) series, (9) year model, (10) body type, (11) motor vehicle classification, (12) franchise, (13) route, (14) owner's name, (15) last registration date, (16) alarms (settled and unsettled), and (17) other data deemed necessary.<sup>15</sup>

In a letter dated 7 August 2009,<sup>16</sup> entitled “Undertaking for the RFID Project” and addressed to the LTO, Stradcom additionally undertook to

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<sup>7</sup> Id. at 82-92.

<sup>8</sup> RFID MOA, Art. III, Sec. 3.1.f.

<sup>9</sup> Notably, the total of ₱20.43, ₱259.14 and ₱32.73 is ₱312.30, and not ₱312.50. It is not provided in the RFID MOA where the remaining ₱0.30 will be remitted.

<sup>10</sup> RFID MOA, Art. IV, Sec. 4.2.

<sup>11</sup> RFID MOA, Art. IV, Sec. 4.3.

<sup>12</sup> RFID MOA, Art. V, Sec. 5.1.

<sup>13</sup> *Rollo*, pp. 67-81.

<sup>14</sup> LTO RFID IRR, Section 5.1.

<sup>15</sup> *Rollo*, pp. 74-75.

<sup>16</sup> Id. at 97-98.

(1) provide a performance bond of 1% of the RFID fee<sup>17</sup> for every day of delay in the RFID tagging of a motor vehicle resulting from the unavailability of stock or inventory of the RFID Tag; (2) submit to the LTO a regular month-end inventory report of RFID Tags and Readers; (3) continuously maintain and/or source at least two suppliers of RFID tags and readers; and (4) mutually agree with DOTC/LTO to a just revenue share that may be due to the government in the event the database of the RFID system and/or the LTO IT project is used by third parties in consideration of a fee.

Because of various stakeholders' concerns and requests, on 30 September 2009, the LTO issued Memorandum Circular No. ACL-2009-1220 deferring the mandatory implementation of the RFID Project to 4 January 2010.

### ***The Present Petition***

On 16 December 2009, the present Petition was filed with this Court on the following grounds:

#### **I.**

**THE DOTC/LTO IN IMPLEMENTING THE RFID PROJECT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND VIOLATED REPUBLIC ACT 9184 AND REPUBLIC ACT NO. 6957.**

#### **II.**

**THE ASSAILED EXECUTIVE ISSUANCES ARE UNCONSTITUTIONAL AS THE SAME WERE ISSUED IN USURPATION OF THE LEGISLATIVE POWER OF CONGRESS DUE TO THE ABSENCE OF A LAW PROVIDING FOR THE INSTALLATION OF RADIO FREQUENCY IDENTIFICATION TAG ON ALL MOTOR VEHICLES AS A PRE-REQUISITE FOR THE REGISTRATION OR RE-REGISTRATION THEREOF.**

#### **III.**

**THE ASSAILED EXECUTIVE ISSUANCES ARE UNCONSTITUTIONAL AS THE SAME FAIL TO PRESENT COMPELLING INTEREST OR INTERESTS AND ARE ABSENT OF SUFFICIENT SAFEGUARDS AND WELL-DEFINED STANDARDS TO PREVENT IMPERMISSIBLE INTRUSIONS ON THE RIGHT TO PRIVACY.**

Essentially, petitioners claim that, *first*, in implementing the RFID Project, the DOTC/LTO committed grave abuse of discretion amounting to lack or excess of jurisdiction and violated Republic Act No. (R.A.) 9184, or the Government Procurement Reform Act; and R.A. 6954, as amended by R.A. 7718, or the Build Operate Transfer (BOT) Law. The RFID Project was subject to competitive public bidding, which it failed to undergo. Neither did

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<sup>17</sup> The 1% is computed against the RFID Fee of ₱350.

it undergo any of the processes required by the Government Procurement Reform Act for alternative methods of procurement.

The RFID Project is distinct from the existing BOO Agreement between DOTC/LTO and Stradcom. Hence, DOTC/LTO cannot justify the implementation of the RFID Project on the basis thereof. The RFID Project is not part of the BOO Agreement; otherwise, the Project would have already been included in the negotiation concluded in 1998 between LTO and Stradcom. The RFID Project also entailed new or additional costs that needed the approval of the National Economic and Development Authority (NEDA), as required under NEDA Circular No. 01-2007 and as reiterated in NEDA Circular No. 01-2008.<sup>18</sup>

*Second*, the assailed executive issuances are unconstitutional for having been issued in usurpation of the legislative power of Congress. The circulars cite R.A. 4136 or the Land Transportation and Traffic Code (LTTTC) as the source of their authority. Section 4 of the LTTTC gives the Commissioner the power “to issue rules and regulations not in conflict with the provisions of this Act, prescribing the procedure for x x x the registration and re-registration of motor vehicles x x x.” However, the circulars added a registration and re-registration requirement which is not present in the LTTTC. Thus, the imposition of a mandatory installation of the RFID tag as a pre-requisite for registration is beyond the authority vested by the LTTTC to the DOTC and the LTO.

*Third*, the assailed executive issuances are unconstitutional, as they neither present compelling interest nor contain sufficient safeguards and well-defined standards to prevent impermissible intrusions on the right to privacy. There is a potential for the misuse of the data contained in the RFID tag, especially because DOTC/LTO or Stradcom may open the use of the database to third persons in consideration of a fee.

Petitioners pray that an order be issued nullifying the RFID Project; declaring the DOTC RFID Rules, LTO RFID IRR and the RFID MOA as null and void; and prohibiting and enjoining public respondents from the implementation of the RFID Project.

Petitioners also sought the issuance of a TRO and/or a Preliminary Injunction to restrain respondents from implementing the RFID Project.

On 8 January 2010, Stradcom filed a Motion for Leave to File Opposition to Petitioners’ Application for Temporary Restraining Order. In its Opposition, it alleged that it was the BOT Law, and not the Government Procurement Reform Act, that would apply to the RFID Project. Bidding was not required, because it was merely an enhancement or an increase in

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<sup>18</sup>Entitled “Guidelines for the Evaluation of New or Increased Fees Proposed by Departments, Bureaus, Commissions, Agencies, Offices, and Instrumentalities of the National Government Including Government Owned and/or Controlled Corporations Requiring Prior NEDA Board Clearance Under Memorandum Circular No. 137, Series of 2007,” *rollo*, pp. 185-189.

scope of the existing LTO project, the BOO Agreement. Only a “change order” was needed to implement it, together with an “impact study” investigating the price, timetable, statement of work, specifications and relevant obligations under the original contract. This is provided for under the Information Technology and Electronic Commerce Council (ITECC) Guidelines on the Preparation, Review and Approval, and Implementation of Information and Communications Technology (ICT) Projects Proposed for Financing under R.A. 6957, as amended by R.A. 7718 (ITECC Guidelines). The Change Request Form for the RFID Project was submitted to the Joint Change Control Board (JCCB) and Joint Finance Committee of the LTO, which recommended its approval.<sup>19</sup>

Stradcom alleges that NEDA Circular No. 01-2008 applies only to fees and charges imposed by government agencies to recover the cost of services they have rendered. The said NEDA circular does not apply, since the RFID services will be provided, not by government, but by Stradcom.

Stradcom argues that there is limited information to be stored in the RFID Project, even less than the proposed ID system in *Kilusang Mayo Uno v. The Director General*,<sup>20</sup> which National ID System had been upheld by this Court. The RFID system will contain only information that is already publicly available; and the only difference from the National ID System would be that, with the use of an RFID Reader, the authorized user does not have to physically go to the LTO to request the said information. The RFID reader can only retrieve data from a tagged vehicle within a 10-meter radius. The limited scope and application of the RFID Project is consistent with the LTO’s continuing authority under the LTTC to examine and inspect motor vehicles in determining compliance with registration laws. The Project also serves a sufficiently compelling state interest by contributing to the overall efficiency of the existing motor vehicle registration system. Finally, the RFID Project falls well within the legislatively delegated rule-making power of the DOTC, since the DOTC/LTO has authority to issue validating tags and stickers under Section 17 of the LTTC.

On 11 January 2010, several transport groups, led by the Alliance of Concerned Transport Organizations (ACTO) represented by Efren de Luna,<sup>21</sup> filed an Opposition-in-Intervention alleging that the RFID Project would realize efficient and paperless transactions and assist traffic law enforcers in apprehending *colorum* operators and *colorum* vehicles on the road. It would

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<sup>19</sup> Per LTO Joint Change Control Board (JCCB) and Joint Finance Committee (JFC) Resolution No. LTO-IT 2008-001 dated 10 November 2008; *rollo*, pp. 182-184.

<sup>20</sup> G.R. Nos. 166798 and 167930, 19 April 2006, 487 SCRA 623. In this case, the Court rejected the assertion that a uniform ID system would violate the right to privacy after it had evaluated the following factors: (1) preexisting public availability of the information; (2) limited scope of the information obtained; (3) presence of safeguards to protect the confidentiality of the information; and (4) accomplishing the public policy objective of efficient performance of governmental functions and services.

<sup>21</sup>The transport groups include the Federation of Jeepney Operators and Drivers Association of the Philippines (FEJODAP) represented by Zenaida de Castro; Alliance of Transport Operators and Drivers Association of the Philippines (ALTODAP) represented by Melencio Vargas; Land Transportation Organization of the Philippines (LTOP) represented by Orlando Marquez; NTU-Transporter represented by Alejo Sayasa; and Pasang-Masda Nationwide, Inc. represented by Roberto Martin.

help in the automation of transactions between the LTO and the Land Transportation Franchising Regulatory Board (LTFRB). Motor vehicle owners would be compelled to physically bring their vehicles for smoke emission testing, eliminating “no show” and “under the table” deals. The RFID tag cost is the only possible injury to petitioners; and this injury is not sufficiently grave and irreparable to warrant the Court’s issuance of a writ of preliminary injunction, as it is in fact subject to pecuniary estimation.

In its 12 January 2010 Resolution (*Status Quo Ante* Order),<sup>22</sup> the Court, among others, enjoined the parties to “observe the *status quo* prevailing prior to the implementation” of the RFID Project, “so as not to render the present petition moot and academic and in order to prevent serious damage as a result of the implementation of the said circulars.”<sup>23</sup>

On 27 January 2010, Oppositors-Intervenors ACTO, et al. filed a Motion for Reconsideration<sup>24</sup> of the *Status Quo Ante* Order. On 29 January 2010, respondent Stradcom also filed its Motion for Reconsideration<sup>25</sup> thereof.

On 2 February 2010, the Court issued a Resolution<sup>26</sup> denying the said motions for lack of merit.

### ***Stradcom’s Comment on the Petition***

On 25 January 2010, respondent Stradcom filed its Comment on the Petition. It claims that, **first**, petitioner PISTON has no juridical personality to sue because, as early as 29 September 2003, the Securities and Exchange Commission (SEC) had revoked PISTON's Certificate of Registration for failure to comply with reportorial requirements.

**Second**, the RFID system is a mere enhancement of the Motor Vehicle Registration System (MVRS), Revenue Collection System (RCS) and Law Enforcement and Traffic Adjudication System (LETAS), which are core applications of the original LTO IT Project. Thus, there is no need for a separate bidding and NEDA approval. The RFID Project only needed a “change order” request, pursuant to the NEDA Board-approved ITECC Guidelines.

Further, the BOO Agreement and its variation are governed by the BOT Law and its implementing rules and regulations, as provided under Section 7(c) of Executive Order No. (E.O.) 109-A<sup>27</sup> dated 18 September 2003, contrary to petitioners’ assertion that it is R.A. 9184 that should apply.

<sup>22</sup> *Rollo*, pp. 192-299.

<sup>23</sup> *Id.* at 197.

<sup>24</sup> *Id.* at 220-241.

<sup>25</sup> *Id.* at 241-A-241-H.

<sup>26</sup> *Id.* at 242-243.

<sup>27</sup> E.O. 109-A, Sec. 7(c), provides:

SECTION 7. Governing Law for Government Contracts. — x x x

c. BOT Contracts. Contracts undertaken through Build Operate and Transfer (BOT)

**Third**, the questioned circulars are an exercise of a valid delegation of rule-making power by the legislature. E.O. 125-A<sup>28</sup> dated 13 April 1987, which was issued by then President Corazon Aquino in the exercise of her legislative power, enumerated the powers and functions of the DOTC, including the following:

Sec. 1. Sections 5 xxx are hereby amended to read as follows:

x x x x

(m) Establish and prescribe rules and regulations for the inspection and registration of air and land transportation facilities, such as motor vehicles, trimobiles, railways and aircrafts;

x x x x

(o) Establish and prescribe the corresponding rules and regulations for the enforcement of laws governing land transportation, air transportation and postal services, including the penalties for violations thereof, and for the deputation of appropriate law enforcement agencies in pursuance thereof;

LTO Chief Arturo Lomibao, who signed the assailed LTO Memorandum Circular, was empowered to issue the questioned LTO Memorandum Circular, as he then occupied the position of Assistant Secretary. Under Section 11, Chapter 2, Book IV of E.O. 292 (Administrative Code of 1987), the Assistant Secretary shall perform such duties as may be provided by law or assigned by the Secretary. In turn, the promulgation of implementing rules and regulations of the RFID Project was assigned by the DOTC Secretary to LTO Chief Lomibao under the RFID MOA. The LTFRB director or his deputies had previously been tasked, “(f)or purposes of renewal of registration of motor vehicles, [to] ... issue validating tags and stickers indicating the year of registry” under Section 17 (previously Section 13) of LTTC. RFID tags have basically the same function as that of renewal stickers, so the DOTC/LTO had authority to issue the questioned circulars implementing the RFID program. Section 17 of the LTTC sets forth the policy to be executed by the delegate, namely, the Director of the LTO and his deputies, and provides a sufficient standard by giving adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority.

cont.

schemes and other variations shall be governed by Republic Act No. 6957, as amended by Republic Act No. 7718, and its Implementing Rules and Regulations.

EO No. 109-A amended EO No. 109 dated 27 May 2002 and prescribed the rules and procedures for the review and approval of all government contracts to conform with R.A. 9184. EO No. 109-A was later repealed by EO No. 423 dated 30 April 2005 entitled “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.” Nevertheless, the provisions pertinent to this case remain basically unchanged.

<sup>28</sup>This E.O. amended E.O. 125 and is entitled “Amending Executive Order No. 125, entitled ‘Reorganizing the Ministry of Transportation and Communications, Defining Its Powers and Functions and for other Purposes.’”

**Fourth**, the questioned circulars and MOA do not violate petitioners' right to privacy. RFID tags have limited range and memory, and they access only publicly available registration information. The limited scope and application of the RFID project are consistent with the LTO's continuing authority under the LTTC to examine and inspect motor vehicles in determining compliance with registration rules.

### ***The OSG's Comment***

On 11 February 2010, the Office of the Solicitor General (OSG) filed its Comment on the Petition, alleging as follows:

**First**, the DOTC/LTO, in implementing the RFID Project, committed grave abuse of discretion amounting to lack or excess of jurisdiction and violated the Government Procurement Reform Act and the BOT Law.

As an enhancement of the BOO Agreement previously entered into by DOTC/LTO and Stradcom, the RFID Project is not one of the allowed contract variations under the BOT Law's IRR, which dispenses with NEDA approval and public bidding. The RFID MOA increases not only the scope and technology of the MVRS under the BOO Agreement, but also the fee that Stradcom may collect thereunder. However, the fees due to Stradcom have been previously fixed in the BOO Agreement.<sup>29</sup>

While Section 12.11 of the 2006 Implementing Rules and Regulations (IRR) of the BOT Law allow contract variations, Section 2.7 thereof also explicitly requires prior approval from the approving board.<sup>30</sup> The ITECC Guidelines, which LTO/DOTC followed in respect of the Change Order, are merely supplementary to the existing BOT Law's IRR. The ITECC Guidelines themselves acknowledge this in Section 1.2.1 thereof.<sup>31</sup> These

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<sup>29</sup> BOO Agreement, Sec. 11.1, provides:

Sec. 11.1 The DOTC/LTO shall pay the CONTRACTOR in Philippine currency in a local bank within 30 calendar days from receipt of billing, based on the number of motor vehicle registration and the number of driver's licensing transaction handled, the inspection report and other documents which may be required by DOTC/LTO and the Commission on Audit. There shall be no more than two billings a month. Upon final payment under this Agreement, the CONTRACTOR shall issue a certificate releasing DOTC/LTO from any further obligation under this Contract.

<sup>30</sup> Sec. 2.7 provides:

Section 2.7 – APPROVAL OF PRIORITY PROJECTS

The approval of projects proposed under this Act shall be in accordance with the following:

a. National Projects – The projects must be part of the Agency's development programs, and shall be approved as follows:

i. projects costing up to PhP300 million, shall be submitted to ICC for approval;

ii. projects costing more than PhP300 million, shall be submitted to the NEDA Board for approval upon the recommendation of ICC; and

iii. regardless of amount, negotiated projects shall be submitted to the NEDA Board for approval upon recommendation by the ICC. x x x

<sup>31</sup> Sec. 1.2.1 of the ITECC Guidelines provides:

1.2.1 Supplement existing implementing rules and regulations on the BOT Law and Investment Coordination Committee (ICC) Guidelines to further assist national government agencies (NGAs) and local government units (LGUs) in pursuing private sector participated (PSP) ICT Projects under the BOT Law.

guidelines also recognize the applicability of the BOT Law and the latter's IRR in case of conflict or inconsistency.<sup>32</sup> Thus, the requirement of prior approval for any contract variation prevails.

**Second**, despite the grave abuse of discretion by the DOTC/LTO in implementing the RFID Project, the assailed executive issuances are not by themselves unconstitutional, as these were issued pursuant to delegated quasi-legislative powers under the (1) Administrative Code of 1987, particularly found in Book IV, Title XV, Chapter 1, Sections 2 and 3(12); and (2) the LTTC, particularly Chapter I, Article III, Section 4. The DOTC is empowered to establish transportation and communications programs, and those powers have been so delegated for the good and welfare of the people. The questioned circulars complied with the requirements of publication and hearing.

**Third**, the assailed executive issuances are not unconstitutional and do not constitute a violation of petitioners' right to privacy.

Eight days after filing its Comment, the OSG, in its Manifestation dated 19 February 2010, attached the 20 January 2010 letter of the NEDA<sup>33</sup> addressed to DOTC Secretary Leandro Mendoza. The letter concerned the DOTC's 28 October 2009 request for acknowledgment and confirmation that the RFID Project did not require NEDA approval. This DOTC request was answered by NEDA in the affirmative.

NEDA observed that the RFID Project is merely a technology enhancement of the original LTO IT Project, particularly the MVRS. In part, the NEDA letter also stated:

Under Section 10.10 of the *Guidelines on the Preparation, Review and Approval, and Implementation of Information and Communications Technology (ICT) Projects Proposed for Financing Under Republic Act (RA) No. 6957, as amended by RA 7718, otherwise known as the "Build-Operate-Transfer (BOT) Law,"* change in the project cost which would entail an increase or decrease of more than 20% shall require approval by the ICC. Further, the implementing agencies shall ensure that all proposed changes in the project, other than those requiring ICC approval, are reported to the ICC for its information.

Based on the documents submitted by your office, the total change order cost for the RFID Project is PhP182.27 Million, or approximately fourteen percent (14%) of the original cost (PhP1.39 Billion) of the LTO IT Project approved by the ICC. Thus, it is within the twenty percent (20%) threshold under said Section 10.10 of the ICC Guidelines.

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<sup>32</sup> The ITECC Guidelines provide:

14. *Conflict Between the Provisions of the Guidelines and the BOT Law IRR*

In case of inconsistency or conflict in interpretation between the provisions of these additional guidelines and the BOT Law and its IRR, the provisions of the BOT Law and its IRR shall prevail.

<sup>33</sup> Signed by acting Secretary for Socio-Economic Planning and NEDA Director-General Augusto Santos, rollo, pp. 552-558.

Accordingly, the RFID Project change order does not require ICC approval but the same should be reported to the ICC for its information.

The NEDA Secretariat shall be referring the RFID Project change order to the ICC for its information.

As to the fees sought to be imposed by virtue of the RFID Project Change Order, said fees are not within the coverage of MC No. 137, s. 2007, and NEDA Circular 01-2008 for the following reasons:

- a) The tagging fee under the RFID Project is governed by the LTO IT Project BOO Agreement. x x x
- b) MC No. 137, s. 2007 as implemented by the NEDA Circular No. 01-2008 are applicable only to fees aimed at recovering full administrative cost of services rendered by departments, bureaus, commissions, agencies, offices and instrumentalities of the national government, including GOCCs, and not to those imposed by private proponents in projects implemented under the BOT Law (i.e. LTO IT BOO Project) intended to recover total investments.<sup>34</sup>

Nonetheless, and we find this point quite important in this case, the NEDA Secretariat also expressed the following “concerns/comments/suggestions” regarding the RFID Project:

*Duplication in Scope and Objective*

- a) DOTC/LTO should ensure that the RFID Project does not have any duplication in scope and objective with any similar projects like the Universal Motor Vehicle Identification Card (UMVIC) project, which also aims to enhance LTO’s MVRs, considering that the public would ultimately be bearing the cost of any such projects. x x x

*Acceptability and Public Interest*

- b) While it is noted that the RFID Project entails an additional fee (i.e. one-time tagging fee) of PhP350.00 for motor vehicle owners, the reasonableness or lack thereof should be established and made public, including and more importantly the results of the public consultation conducted, which is constitutionally mandated and which may be taken as indicators of social acceptability of the Project and as measures of safeguarding public interest.

*Security and Privacy*

- c) x x x [I]t is crucial for the integrity of the RFID system that data protection be also the center of interest and concern along with the information security of motor vehicle owners. The DOTC/LTO, therefore, has to impose security measures to guard public interest and privacy.
- d) x x x [T]he IRR for the RFID Tag does not contain provisions addressing threat situations from the perspective of the “passive party” or the vehicle owner. The owner of the registered owner has no control over the security of data stored on the tags, whereby, privacy can be threatened by the “active

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<sup>34</sup> Id. at 552-553.

- party” or the authorized personnel who has complete control of the data/information. x x x
- e) Further, said IRR does not impose sanctions to “third parties” who may attack the RFID system in order to gain unauthorized access to data, x x x. Likewise, other security attacks such as jamming transmitters to prevent communication between readers and tags as well as other ways to impair the correct functioning of the RFID system should be taken into account.
  - f) x x x Section 5.1 of the said IRR provides that an RFID tag is composed of two parts: (a) Write Once; and (b) Read and Write Many. While modification of data is intrinsically impossible on the *Write Once* portion of the tag, it is opined that unauthorized modification of the data encoded in the *Read and Write Many* portion of the tag is possible, thus, appropriate measures should be taken in order to ensure security and mitigate such risk.

*Technology Efficiency*

- g) x x x DOTC/LTO should undertake a comprehensive technology assessment on the use of RFID technology, propose possible counter-strategies, and make implementation policy considerations to mitigate such risks.
- h) The operational efficiency of the RFID technology should also be clearly established. x x x

*Data Consistency*

- i) It is indicated that the RFID System will be connected to the MVRS through an RFID utility integrator. The LTO should ensure that the MVRS database and the RFID System have a capability of real-time updating so that the data will be consistent at any point [in] time.

*Upgrade*

- j) The proponent should ensure that the maintenance of the system such as ICT infrastructures/facilities, equipment, and software are all covered of (*sic*) upgrading provisions due to the fast obsolescence of ICT equipment and emerging new technologies.

*Interconnecting concerned agencies*

- k) The Project aims to help on law enforcement (e.g., anti-carnapping, overspeeding vehicles, and anti-colorum) but the project proposal does not contain details/procedures on how the RFID will attain such objective. It is suggested that the Project be connected to the existing systems of concerned agencies (e.g. Philippine National Police, Metro Manila Development Authority, Land Transportation and Franchising Regulatory Board) so that the Project will be fully utilized and realize this objective.

*Comparison of rates/cost*

- l) x x x [A] comparative rates/costs of the tag of other institutions/agencies of the same nature as the RFID tags should be presented as reference in the justification of such cost.<sup>35</sup>

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<sup>35</sup> Id. at 553-556.

On 23 February 2010, this Court noted the OSG's Comment and, in view of the partly adverse position of the OSG, required the DOTC to file a separate Comment.

On 2 March 2010, this Court noted the OSG's Manifestation.

### ***AAP, et al.'s Intervention***

On 10 March 2010, the Automobile Association of the Philippines (AAP) represented by its president, Augusto Lagman, Glicerio Manzano, Jr., Raul Consunji, and Lyn Bronte filed an Entry of Appearance with Urgent Motion for Leave to Intervene and Admit Attached Petition for Intervention. Manzano alleged therein that, as a motor vehicle owner, he stood to be directly injured by the implementation of the RFID project; Consunji and Bronte claimed that they had already suffered injury as a consequence of the implementation of the RFID Project, since they were compelled to pay ₱350 for the renewal of the registration of their respective motor vehicles. AAP is allegedly the largest association of private motor vehicle owners in the country and has the standing to file the present Petition.

AAP stated that the issuance and implementation by the LTO of the LTO RFID IRR was an *ultra vires* exercise of the latter's rule-making power, which was limited to the issuance of rules and regulations on the procedure for the registration and re-registration of motor vehicles. The circular unduly infringed on motor vehicle owners' right to property and privacy without due process of law. The circular also violated Presidential Memorandum Circular No. 137 dated 30 July 2007<sup>36</sup> and the BOT Law.

AAP noted that the receipt issued by the LTO upon registration of a motor vehicle reflected no separate RFID fee.<sup>37</sup> Instead, the RFID fee was apparently included in the "computerization fee." Since the project imposes a fee, it is in effect a deprivation of a property right. The Project also impinges on the right to privacy, as there appear to be no safeguards to prevent the abuse and misuse of the system.

The phrase "other data deemed necessary" in the circular, following the list of data contained in the RFID Tag, is a "catch-all" item. Allegedly, this phrase virtually removes any limits on what information could be stored in the RFID tag, increasing the possibility of violation of the right to privacy. The circular also fails to "delimit the persons who, the instances when, and the purposes for which these information can be accessed." The objectives

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<sup>36</sup> Presidential Memorandum Circular No. 137 is entitled "Enjoining All Heads of Departments, Bureaus, Commission, Agencies, Offices and Instrumentalities of the National Government, Including Government Owned and/or Controlled Corporations, to Seek Prior Clearance from the National Economic and Development Authority Board before Authorizing the Imposition of New Fees or Increases in Existing Fees." The Circular directed the heads of all departments, bureaus, commissions, agencies, offices and instrumentalities of the national government, including GOCCs, to seek NEDA Board clearance before authorizing the imposition of new fees or increases in existing fees. NEDA Circular No. 01-2008 was issued pursuant to Presidential Memorandum Circular No. 137.

<sup>37</sup> See *rollo*, pp. 647-648.

of the memorandum circular, particularly in Section 1.2,<sup>38</sup> are couched in an open-ended enumeration of the purposes for which the information accessed through the RFID system may be used.

The AAP also alleges that the circular is defective, because it merely provides that RFID readers shall be capable of reading specific RFID tags through radio frequency up to a “specified distance.”<sup>39</sup> The distance is subject to adjustment to “comply with business rules.”<sup>40</sup> By failing to specify the capacity of the readers to track down the tags, the RFID system also poses a threat to a person's liberty of abode and travel, as the government may track down the person's movement.

AAP's Entry of Appearance with Urgent Motion for Leave to Intervene and Admit Attached Petition for Intervention was noted by this Court, which then required the parties to comment thereon.

### ***The DOTC/LTO's Comment on the Petition***

In their joint Comment dated 6 April 2010, the DOTC/LTO addressed the NEDA comments on the RFID Project:<sup>41</sup>

The Comment presented a tabular comparison differentiating the Universal Motor Vehicle Identification Card (UMVIC) Project<sup>42</sup> and the RFID Project in terms of legal basis, functionality, technology, and implementation. This comparison was to address the concern of NEDA that the implementation of both projects may result in a duplication of their scope, objectives, and services.

The Comment addressed the acceptability and public interest concerns by stating that public consultations on the RFID Project attended by major transport groups were held on 11 February 2009 in Cebu City; 17 February 2009 in Metro Manila; and 29 September 2009 at the Bulwagang Romeo F. Edu, LTO, East Avenue, Diliman, Quezon City. Some transport leaders even sent LTO endorsement letters for the RFID.

On the concerns regarding security and privacy, the DOTC/LTO explained that, with respect to data protection and security measures, when unauthorized persons obtain access to and use of the RFID Reader, they can read only the unique RFID number (much like the plate number of a

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<sup>38</sup> Sec. 1.2 provides:

1.2 OBJECTIVES

The RFID Project involves the development, integration, deployment, and maintenance of RFID technology to enhance the motor vehicle registration process of LTO, emission testing and other LTO concerns such as vehicle identification, anti-carnapping, anti-*colorum* and law enforcement and traffic adjudication. (*Rollo*, p. 68)

<sup>39</sup> LTO RFID IRR, Secs. 5.2.1 and 5.2.2.

<sup>40</sup> LTO RFID IRR, Sec. 5.2.2.

<sup>41</sup> *Rollo*, pp. 661-668.

<sup>42</sup> The UMOVIC Project involves the establishment of a Smart Card Production Facility that would replace LTO's paper-based motor vehicle certificates of registration (CRs) into electronic Secure Smart Card formats. The Project aims to enhance LTO's motor vehicle registration through the use of the UMOVIC as proof of ownership and authority to operate a motor vehicle in the country. (*Rollo*, p. 553)



vehicle), which would not have much use for them without access to the LTO IT system database. Access to the LTO IT system database is filtered through many layers of security.

The DOTC/LTO explained that the LTO IT system is, in turn, protected by a firewall. Access control is defined at the application system layer. Access to the database is confined only to authorized users and applications. In case of any security compromise, access by any user or application can easily be revoked centrally. Where there is a read failure in situations such as when jamming devices are used, the processing switches back to vehicle identification by using other physical identifiers like the plate number. Anti-jamming devices must be deployed across the country to significantly impact the operational efficiency envisioned. No other data shall be stored in the read-and-write portion of the RFID tag. Additional vehicle data shall be accessed via a request to the back-end database, which is protected by extensive access controls.

On the concern regarding technology efficiency, the DOTC/LTO said that Stradcom can continually work with DOTC/LTO to assess the project in the light of technology developments and formulate policies to mitigate risks in the use of RFID.

On the observed need to ensure operational efficiency, RFID readers have their own battery power and can read tags even during brownouts or electrical interruptions. Meanwhile, the Systems Management Data Center is supported by redundant Universal Power Source facilities, as well as redundant generator units, to ensure continual operation despite electrical interruptions.

On the concern regarding data consistency, DOTC/LTO alleges that storing the vehicle data only in the back-end database ensures consistency in data. Apart from the necessity of the physical presence of the vehicle at the LTO site during registration, there are other data maintenance transactions that are being undertaken to avoid any data integrity issue. Infrastructure upgrade of the IT system is required at least every five years under the BOO Agreement.

On the recommendation to interconnect several government agencies with the RFID System, DOTC/LTO alleges that government agencies such as LTFRB, Metropolitan Manila Development Authority (MMDA) and the Philippine National Police (PNP) may be allowed access to this facility "subject to the necessary review and approval."<sup>43</sup>

On the need to compare rates/costs, DOTC/LTO states that the one-time fee of ₱350, inclusive of Value-Added Tax (VAT), covers the cost of not only the tag (warranted to last for 10 years), but also the cost of infrastructure, yearly operating costs, other direct costs, and even the

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<sup>43</sup> Id. at 668.



government's revenue share. In comparison, the ePass for toll fees in the South Luzon Expressway costs ₱2,700 with a ₱400 prepaid toll and a battery shelf life of three to five years, while the EC tag for the North Luzon Expressway costs ₱1,500.

### *Stradcom's Comment on the Intervention and Reply*

On 26 April 2010, Stradcom filed its Comment<sup>44</sup> on the Petition-in-Intervention of AAP, alleging that the latter has failed to satisfy a requirement for intervention in this case, because it has no direct and immediate interest in the outcome. The members of AAP are the ones who stand to be directly affected by the decision in this case, and there is no showing that the AAP is the one that would shoulder the cost of the RFID payments of its members.

In its Reply (attached to its Motion for Leave to File Reply to OSG's Comment dated 1 February 2010), Stradcom alleges that Section 12.11 of the BOT IRR<sup>45</sup> is an enumeration of alternative conditions or circumstances, any of which would allow contract variation. The use of the disjunctive “or” signifies the dissociation and independence of one thing from the others enumerated. Thus, as long as there is no fundamental change in the original contract, or there is no additional government undertaking, a contract may be allowed even if there is an increase in the fees to be charged to facility users (i.e., motor vehicle owners).

Stradcom argues that the RFID MOA does not vary specific provisions in the BOO Agreement of the LTO IT Project. Also, the RFID Project is consistent with the objectives of the LTO IT Project and can exist well within the latter's scope.

Stradcom alleges that NEDA approval is not required for the contract revision under Section 12.11, and that the word “Approving Body” is not defined in the BOT Law. Rather, the phrase refers to the entity authorized to approve projects proposed under the said statute – which is the original

<sup>44</sup> Id. at 680-692.

<sup>45</sup> BOT IRR (2006), Sec. 12.11, provides:

SECTION 12.11 - CONTRACT VARIATION

Subject to the prior approval by the Approving Body, upon recommendation by the Agency/LGU, a contract variation may be allowed by the Agency/LGU, Provided, that:

- a. Except as may be allowed under a parametric formula in the contract itself, there is no increase in the agreed fees, tolls and charges or a decrease in the Agency/LGU's revenue or profit share derived from the project; or
- b. There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract; or
- c. No additional Government Undertaking, or increase in the financial exposure of the Government under the project; or
- d. Such is necessary due to an unforeseeable event beyond the control of the parties.

Under no circumstances shall a Project Proponent proceed to commence a proposed contract variation unless approved by the Approving Body. Failure to secure approval of the Approving Body shall render the contract variation void.

contractual arrangement – and does not refer to contract variations. Otherwise, an absurd situation would arise, in which every contractual variation would be subject to public bidding, since Section 5 of the BOT Law requires that projects approved be subject to public bidding. As it stands, the IRR of the BOT Law does not specify which entity will approve contract variations. Instead, it provides that the Approving Body may prescribe detailed guidelines and procedures for the approval of projects, as well as the requirements to be submitted in support thereof. One of these guidelines adopted is the ITECC Guidelines. Paragraph 10.11 of the ITECC Guidelines provides that change orders shall be subject to the final approval of the head of the agency – in this case, the LTO.

On 6 September 2010, Stradcom filed a Motion for Clarification Re: *Status Quo Ante* Order.<sup>46</sup> On 23 September 2010, it filed a Supplement to its Motion for Clarification.

On 11 January 2011, this Court issued a Resolution,<sup>47</sup> stating that the *Status Quo Ante* Order does not contemplate the refund of the RFID fees already paid for by motor vehicle owners during the pendency of the present case.

### THE COURT'S RULING

We find the Petition to be partly meritorious.

### PROCEDURAL ISSUE

In its Comment, Stradcom raises the lack of personality of PISTON to file the Petition, considering that its Certificate of Registration with the SEC has already been revoked as early as 2003.<sup>48</sup> On this score, Stradcom raises a valid point. Upon the revocation of its registration, PISTON no longer existed for all legal intents and purposes. Section 4, Rule 8 of the Rules of Court states that the facts showing the capacity of a party to sue must be averred. No such fact was provided in the case at bar.

Hence, for failing to show that it is a juridical entity, endowed by law with the capacity to bring suits in its own name, PISTON is devoid of any legal capacity to institute this action.

With respect to petitioner-in-intervention AAP, Stradcom claims that it does not have the requisite legal personality to intervene, as it does not allege any injury to the organization. Rather, the injury, if any, would be to its members who would be required to pay the RFID fee. Stradcom claims that absent any allegation that it is AAP that will shoulder the costs of the RFID for the latter's members, AAP cannot institute the present suit.

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<sup>46</sup> *Rollo*, pp. 764-769.

<sup>47</sup> *Id.* at 791-A-791-C.

<sup>48</sup> SEC Certificate of Corporate Filing/Information dated 11 January 2010; *id.* at 285.

The 1997 Rules of Civil Procedure requires that every action must be prosecuted or defended in the name of the real party-in-interest, i.e., the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.<sup>49</sup> However, despite its lack of interest, an association has the legal personality to file a suit and represent its members if the outcome of the case will affect their vital interests. Similarly, an organization has the standing to assert the concern of its constituents.<sup>50</sup>

In view thereof, we rule that AAP has the standing to file the instant suit.

In any case, even if petitioners and petitioners-in-intervention were not sufficiently clothed with legal standing, in view of the transcendental importance to the nation of the issues raised in this Petition and in the succeeding pleadings, the Court may relax the standing requirements and allow a suit to prosper even when there is no direct injury to the party claiming the right of judicial review.<sup>51</sup>

## SUBSTANTIVE ISSUES

### **A. The RFID MOA is a separate and distinct contract from the BOO Agreement.**

***Contrary to the allegations of Stradcom, the RFID MOA is a not a “mere enhancement,” but a substantial amendment of the BOO Agreement. The terms of the RFID MOA are beyond the scope of the BOO Agreement.***

In both ordinary and legal parlance, to “enhance” means to make greater in value or attractiveness. In an unqualified sense, the word also means to increase and comprehends any increase in value.<sup>52</sup> However, to enhance something, such as a contract or a project, entails an increase or improvement of already existing components. It does not contemplate the addition of new components which result in an amendment or a modification of the basic terms of the contract.

Under the BOO Agreement, the parties specifically defined the scope of work to be provided to DOTC/LTO by Stradcom as the contractor. This scope is defined under Article 2 of the BOO Agreement,<sup>53</sup> which in turn refers to Annex “A” thereof.<sup>54</sup> Section 2.6<sup>55</sup> of Annex “A” provides:

<sup>49</sup> *Navarro v. Escobido*, 621 Phil. 1 (2009).

<sup>50</sup> *Purok Bagong Silang Association, Inc. v. Yuipco*, 523 Phil. 51 (2006), citing *Executive Secretary v. Court of Appeals*, 473 Phil. 27 (2004).

<sup>51</sup> *Lim v. Executive Secretary*, 430 Phil. 555 (2002).

<sup>52</sup> *Black’s Law Dictionary*, Sixth Ed., p. 529.

<sup>53</sup> BOO Agreement, Art. 2, Sec. 2.1, provides:

ARTICLE 2

SCOPE OF WORK

Sec. 2.1. DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF

## 2.6 SCOPE

Specifically, the LTO IT Project encompasses the following:

- construction / customization of the following major applications:
  - motor vehicle registration
  - drivers licensing
  - law enforcement and adjudication
  - revenue collection
  - transport planning
  - franchising of public utility vehicles
  - government and private sector information sharing
- establishment of the LTO Data Warehouse which includes the following databases:
  - Motor Vehicle Registry DB
  - Drivers' Licenses DB
  - Public Utility Franchise DB
  - Law Enforcement and Traffic Adjudication DB
  - GIS Transport Planning DB
  - Financial DB
  - Administrative DB
- Interconnection in the Information Highway to support the networking requirements of the system to cover the following offices:
  - Central Office in Quezon City;
  - 15 Regional Offices;
  - 214 District and Field Offices;
  - Mobile Law Enforcement Units of LTO, MMDA, and PNP-TMC
  - All Facilities of other LTO service contractors; and
  - DOTC Proper, other governmental agencies and the private sector.
- supply, delivery, testing and installation of appropriate computing products and other resources relative to the implementation of the project on an open client/server environment such as:
  - hardware
  - software
  - networking products
  - special devices and other peripherals
- Provision of the following IT services:
  - Project Management
  - Site Environment Planning and Preparation
  - Total Systems Installation and Integration
  - Telecommunications Services
  - Business Process Reengineering
  - Education and Training
  - Facilities Management and Maintenance Support

cont.

INFORMATION TECHNOLOGY SYSTEM. CONTRACTOR shall cause and be responsible for the design, installation, adaptation, customization, completion, testing and commissioning, operation, and maintenance of the entire information system that is constructed and installed in accordance with this Agreement and is capable of operating in accordance with the Operating Parameters. The details and the scope of the Project to be undertaken including all preliminary specifications are set out in further detail in ANNEX "A" (Project Scope and Specifications). x x x (*Rollo*, p. 421)

<sup>54</sup> Annex "A" of the BOO Agreement is the Approved DOTC/LTO Request for Proposal, *rollo*, pp. 446-517.

<sup>55</sup> *Id.* at 459-460.

- Systems Operations
- Information Systems Security
- ➔ Key Performance Indices (KPI):

	Present	Target
1. Vehicle Registration	4-8 hrs	1 hr
2. License Issuance		
- <i>New/Changes</i>	6 mos	5 days
- <i>Renewal</i>	3 mos	1 day
3. Traffic Violation Adjudication	8 hrs	1 hr
4. Information Query	3-15 days	15 mins
5. Tracking of Carnapped Vehicles	10%	80%

On the other hand, the RFID System, as provided under Article I, Section 1.1 of the RFID MOA, involves the following components:

- a. Integration of the RFID System into MV Registration (for new vehicle) and Renewal (for old vehicle) processes;
- b. Integration of the RFID System into the PETC as well as Motor Vehicle Inspection Station (“MVIS”) processes;
- c. Deployment of RFID tags into motor vehicles nationwide;
- d. Deployment of RFID readers to district offices of LTO and PETCs as well as MVIS; and,
- e. Integration of the RFID System in the PETC IT Provider’s IT System and in the MVIS’ IT System.<sup>56</sup>

Clearly, the terms of the RFID MOA may **not** be subsumed under the scope of the BOO Agreement so as to be merely an enhancement of the latter. Instead, there are significant amendments to the BOO Agreement implemented by the RFID MOA, among which are the following:

### ***1. Workflow***

Section 2.10 of Annex “A” of the BOO Agreement provides for the workflow of motor vehicle registration.<sup>57</sup> This workflow does not take into account the implementation of the RFID Project. In the Business Process Specification therefor submitted by Stradcom to the DOTC/LTO,<sup>58</sup> the new workflow for new motor vehicle registration<sup>59</sup> and renewal of registration<sup>60</sup> includes considerable additions to the existing workflow.

### ***2. Hardware Requirements***

Section 2.14 of Annex “A” of the BOO Agreement specifies the hardware requirements of the system to be supplied by Stradcom. Among these requirements are servers, workstations, notebook computers, printers

<sup>56</sup> Id. at 84.

<sup>57</sup> Id. at 464.

<sup>58</sup> Id. at 328-349.

<sup>59</sup> Id. at 338.

<sup>60</sup> Id. at 342, 345.

and plotters, document imaging system, data backup system, hardware resources mapping, and hardware networking strategy.<sup>61</sup>

Undoubtedly, the addition of the RFID System will significantly modify the hardware requirements provided under the BOO Agreement. Under the RFID MOA, Stradcom shall provide all the necessary hardware and network equipment necessary for the implementation, operation, and maintenance of the RFID System.<sup>62</sup> In the Business Process Specification for the RFID Project, the hardware includes passive RFID Tags, Handheld/Mobile RFID Readers, Fixed Readers with antenna, and middleware.<sup>63</sup> Notably, these additional pieces of hardware are completely new and different from the existing ones already included under the BOO Agreement. In no way can these be considered as mere enhancements of the BOO Agreement.

### ***3. Project Cost***

Under Annex "A" of the BOO Agreement, the initial development of the LTO IT Project is estimated at US \$44,543,017.<sup>64</sup> Clearly, the RFID Project as proposed in the RFID MOA will result in significant additional project cost, considering the proposed new hardware requirements, plus training costs and other incidental expenses.

### ***4. Obligations of the Parties***

Even a brief perusal of the RFID MOA will show that under its terms, the parties have obligated themselves to perform additional functions that are not within the scope of, nor are mere enhancements of, their obligations under the BOO Agreement.<sup>65</sup>

Pertinently, the BOO Agreement itself states what may be considered as an enhancement of the contract, such as the improvement of the **existing** hardware and workflow already provided therein. Section 3.2.2.10 of Annex "A" of the BOO Agreement specifically provides that any changes in or amendment to the contract must refer only to those components already included in the original bid:

3.2.2.10 Execution of Contract

x x x x

Right to Vary

If during the time of delivery/installation of any of the computer hardware/equipment a newer version of the same computer hardware/equipment/software becomes available in the market, LTO reserves the right to ask for a change in the model of any of the computer

<sup>61</sup> Id. at 474-478.

<sup>62</sup> RFID MOA, Sec. 3.2, par. b.

<sup>63</sup> Id. at 332-334.

<sup>64</sup> The cost in pesos was pegged at ₱1,158,118,442, at a conversion rate of ₱26 to US\$1.00, id. at 498.

<sup>65</sup> Id. at 85-86.

hardware/equipment to be supplied **without any change in the cost. Such variations will only be undertaken on the basis of the equipment/products tendered and not for anything that was not offered in the original bid.**<sup>66</sup> (Emphasis supplied.)

To reiterate, the additions introduced by the RFID MOA are those that were not offered in the original bid and entailed changes in the original cost. Thus, from the terms of the BOO Agreement itself, these are not allowable variations.

***Under the IRR of the BOT Law, the RFID Project does not qualify as an allowable contract variation of the BOO Agreement.***

As a general rule, for contracts executed under the BOT Law, the government agency and the project proponent shall execute the draft contract as approved.<sup>67</sup> However, certain contract variations are allowed, as long as they comply with the applicable law at the time the RFID MOA was entered into. Section 12.11 of the 2006 IRR of the BOT Law provides:

SECTION 12.11 - CONTRACT VARIATION

Subject to the prior approval by the Approving Body, upon recommendation by the Agency/LGU, a contract variation may be allowed by the Agency/LGU, Provided, that:

- a. Except as may be allowed under a parametric formula in the contract itself, there is no increase in the agreed fees, tolls and charges or a decrease in the Agency/LGU's revenue or profit share derived from the project; or
- b. There is no reduction in the scope of works or performance standards, or fundamental change in the contractual arrangement nor extension in the contract term, except in cases of breach on the part of the Agency/LGU of its obligations under the contract; or
- c. No additional Government Undertaking, or increase in the financial exposure of the Government under the project; or
- d. Such is necessary due to an unforeseeable event beyond the control of the parties.

Under no circumstances shall a Project Proponent proceed to commence a proposed contract variation unless approved by the Approving Body. Failure to secure approval of the Approving Body shall render the contract variation void.

In this case, however, the RFID MOA is not an allowable contract variation, involving as it does an increase in the agreed fees, tolls, and charges to be exacted upon the public. As previously stated, the RFID

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<sup>66</sup> Id. at 511-512.

<sup>67</sup> 2006 IRR of the BOT Law, Rule 12, Sec. 12.1.

Project will entail an additional charge of ₱350 for every motor vehicle. This charge was not contemplated in the original contract and is not an increase allowed under the formula provided in Article 14 of the BOO Agreement.<sup>68</sup> Further, as already discussed, there is a fundamental change in the contractual arrangement between the parties. It cannot be said either that this contract variation is necessary due to an unforeseeable event beyond the control of the parties.

***To be a valid change order under the ITECC Guidelines, the RFID MOA must also comply with the BOT Law.***

Stradcom claims that the RFID Project, as implemented through the RFID MOA, complied with the procedure set forth in the ITECC Guidelines for a change order.

The ITECC Guidelines was adopted by the NEDA in 2003 and aims to speed up the use and application of Information and Communications Technology (ICT) to enhance overall governance by further encouraging wider and more active private sector participation in the development and implementation of government ICT projects pursuant to the BOT Law.<sup>69</sup> As such, it only serves to supplement existing implementing rules and regulations on the BOT Law.

Section 10.11 of the ITECC Guidelines provides:

10.11 *Change Order Procedure.* **Where the agency or the project proponent see the need for any change in scope and cost of the project, including changes in the system hardware, software, system interfaces, inputs, outputs, functionality or in the way the ICT project is implemented as described in the contract, provided it is not subject to the approval of the ICC in accordance with Section. 10.10 hereof, the implementing agency or the project proponent may at any time request and recommend such change and propose an amendment to the contract in accordance with the following procedures: x x x**

While Stradcom claims that it strictly followed the change order procedure, still, such procedure provided by the ITECC Guidelines may not be interpreted in such a way that would contravene the provisions of the BOT Law and public policy. In fact, among the general guiding principles of the ITECC Guidelines is the encouragement of healthy competition and a level playing field among qualified private sector proponents.<sup>70</sup> ICT shall be used not only as an instrument to promote greater transparency and

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<sup>68</sup> Article 14 provides for the Prices for IT-Based Services and Price Adjustment Procedure. Section 14.2 provides that, effective every first day of the year after the implementation of the prices for the IT-based services as shown in Section 14.1, the prices per type of IT-based services rendered by Stradcom shall automatically be adjusted in accordance with an automatic price adjustment formula provided therein. *Rollo*, pp. 431-433.

<sup>69</sup> ITECC Guidelines, Sec. 1.1.

<sup>70</sup> ITECC Guidelines, Sec. 2.2.

efficiency in government operations, but also to help reduce if not eliminate graft and corruption in government transactions.<sup>71</sup>

As will be discussed below, to allow the RFID MOA upon a mere “change order,” and without the benefit of competitive public bidding, would create an unequal playing field and would not alleviate corruption in government transactions.

***The increase in fees imposed by the DOTC/LTO does not need NEDA approval.***

Petitioners claim that since the RFID Project would entail additional expenses to owners of motor vehicles, the DOTC and LTO should have first obtained NEDA’s approval, pursuant to NEDA Circular No. 01-2008. On the other hand, Stradcom claims that as a mere enhancement of the BOO Agreement, the Project did not require NEDA approval.

We note that NEDA Circular No. 01-2008 has since been amended by NEDA Circular No. 01-2010, issued on 11 August 2010. Section 2.2 of NEDA Circular No. 01-2008, which provides the exceptions to the NEDA approval requirement, has been amended to include those fees imposed in projects under the BOT Law, which are intended to recover total investment. Notably, Circular No. 01-2010 provides that the amendment shall have retroactive effect. Thus, a properly implemented RFID Project under the BOT Law would fall under this category.

It thus appears that if the only change contemplated is the increase in fees, then this factor alone would not cause the need for NEDA approval.

**In conclusion**, while the RFID Project may possibly be considered as an enhancement of the existing LTO IT Project, requiring as it does an integration into the existing motor vehicle registration system and other database and information technology systems, the RFID MOA is not an allowable “enhancement” or variation of the existing BOO Agreement.

**B. The RFID MOA is void for failure to undergo competitive public bidding.**

***As a separate project, the RFID Project should have undergone public bidding.***

Section 5 of the BOT Law provides that upon the approval of a project, a notice must be made inviting all prospective project proponents to a competitive public bidding. The public bidding must be conducted under a two-envelope/two-stage system: the first envelope to contain the technical proposal and the second one to contain the financial proposal.

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<sup>71</sup> ITECC Guidelines, Sec. 2.3.

In this case, it is patently admitted by DOTC/LTO that no public bidding was conducted on the RFID Project, which was presented by Stradcom as a proposal that would enhance the existing LTO IT Project.<sup>72</sup>

Neither does this case fall under the exception to the rule on public bidding.<sup>73</sup>

The requirement of a public bidding is not an idle ceremony. Public bidding is the policy and medium adhered to in government procurement and construction contracts. It is the accepted method for arriving at a fair and reasonable price and ensures that overpricing, favoritism and other anomalous practices are eliminated or minimized. Public biddings are intended to minimize occasions for corruption and temptations to abuse discretion on the part of government authorities when awarding contracts.<sup>74</sup>

The RFID MOA must, thus, be struck down by this Court for failure to comply with the rules on public bidding. There is no guarantee that the RFID fee that will be charged to the public is a fair and reasonable price, as it has not undergone public bidding. Likewise, there is no guarantee that the public will be receiving maximum benefits and quality services, especially from the additional hardware, such as the RFID tags and readers. These are to be procured by Stradcom from its two suppliers,<sup>75</sup> which have not been identified and are not even parties to the RFID MOA. On the other hand, Stradcom, which has been awarded the exclusive right to develop and operate the RFID system without having undergone competitive public bidding, stands to earn considerable amounts of revenue from the contract. In fact, in just three months, the period when the RFID Project was implemented prior to the issuance of the *Status Quo Ante* Order by this

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<sup>72</sup> Second Whereas Clause, DOTC RFID Rules, *rollo*, p. 64; Second Whereas Clause, LTO RFID IRR, *id.* at 67; Fourth Whereas Clause, RFID MOA, *id.* at 82.

<sup>73</sup> Section 5-A of R.A. No. 6957, as amended by R.A. No. 7718, states:

SEC. 5-A. Direct Negotiation of Contracts. - Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:

- (a) If, after advertisement, only one contractor applies for pre-qualification and it meets the prequalification requirements, after which it is required to submit a bid/proposal which is subsequently found by the agency/local government unit (LGU) to be complying.
- (b) If, after advertisement, more than one contractor applied for pre-qualification but only one meets the pre-qualification requirements, after which it submits bid/proposal which is found by the agency/LGU to be complying.
- (c) If, after pre-qualification of more than one contractor, only one submits a bid which is found by the agency/LGU to be complying.
- (d) If, after pre-qualification, more than one contractor submit bids but only one is found by the agency/LGU to be complying. Provided, That any of the disqualified prospective bidder may appeal the decision of the implementing agency's/LGU's Pre-qualification Bids and Awards Committee within fifteen (15) working days to the head of the agency, in case of national projects; to the Department of the Interior and Local Government (DILG), in case of local projects from the date the disqualification was made known to the disqualified bidder: Provided, furthermore, That the implementing agency concerned or DILG should act on the appeal within forty-five (45) working days from receipt thereof.

<sup>74</sup> *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.*, 567 Phil. 255 (2008).

<sup>75</sup> See Stradcom Letter dated 7 August 2009, Annex "F" of the Petition; *rollo*, pp. 97-98.



Court, the LTO had already generated ₱29,894,200 in RFID Fees.<sup>76</sup> Clearly, the evils sought to be avoided by the requirement of competitive public bidding are evident in this case.

***As a substantial amendment to the BOO Agreement, there is a violation of public policy and the BOT Law for failure to execute the contract as contained in the original bid.***

Even if one were to follow Stradcom's argument that the RFID MOA is not separate from the BOO Agreement, still, its case would not prosper. The RFID MOA is not so much a "mere enhancement" of the BOO Agreement as it is a substantial amendment thereof.

It goes without saying that any contract awarded as a result of competitive public bidding must be executed faithfully by the parties. We stressed the importance of such adherence to the original contract in *Agan v. PIATCO*,<sup>77</sup> from which we quote:

Again, we brightline the principle that in public bidding, bids are submitted in accord with the prescribed terms, conditions and parameters laid down by government and pursuant to the requirements of the project bid upon. In light of these parameters, bidders formulate competing proposals which are evaluated to determine the bid most favorable to the government. **Once the contract based on the bid most favorable to the government is awarded, all that is left to be done by the parties is to execute the necessary agreements and implement them. There can be no substantial or material change to the parameters of the project, including the essential terms and conditions of the contract bid upon, after the contract award. If there were changes and the contracts end up unfavorable to government, the public bidding becomes a mockery and the modified contracts must be struck down.** (Emphases supplied.)

Former Chief Justice Artemio Panganiban, in his Separate Opinion in the main Decision in *Agan*,<sup>78</sup> explained that the substantial amendment of a contract previously bid out, without any public bidding and after the bidding process has been concluded, is violative of the public policy on public biddings and the spirit and intent of the BOT Law. The very rationale for public bidding is totally subverted by the amendment of the contract for which the bidding has already been concluded. Competitive bidding aims to obtain the best deal possible by fostering transparency and preventing favoritism, collusion and fraud in the awarding of contracts. That is the reason why procedural rules pertaining to public bidding demand strict observance.

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<sup>76</sup> Commission on Audit (COA) Audit Observation Memorandum No. 10-010-101 dated 8 March 2010, Annex "2" of Stradcom's Motion for Clarification; id. at 771-775.

<sup>77</sup> 465 Phil. 545, 553 (2004).

<sup>78</sup> 450 Phil. 744 (2003).

Indeed, while the contract in *Agan* was amended after public bidding, but prior to its execution, there is no reason why the principle therein should not be applicable where the contract is amended during its execution as in this case.

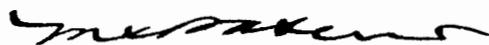
In fact, not only is the public potentially injured by the failure to conduct a public bidding, but so too are other possible project proponents. As held in *Information Technology Foundation of the Philippines v. COMELEC*,<sup>79</sup> the essence of public bidding is, after all, an opportunity for fair competition and a fair basis for the precise comparison of bids. In common parlance, public bidding aims to “level the playing field,” which means that each bidder must bid under the same conditions; and be subject to the same guidelines, requirements and limitations. The purpose is for the best offer or lowest bid to be determined, all other things being equal. Thus, to permit a variance between the conditions under which the bid is won and those under which the awarded contract is complied with is contrary to the very concept of public bidding.

As to the second and third issues raised by petitioners assailing the constitutionality of the DOTC/LTO issuances for being issued in usurpation of Congress’ legislative powers, and for violating the right to privacy, it is unnecessary to rule on the same considering the foregoing discussion declaring the RFID MOA null and void for failure to undergo competitive public bidding.

**WHEREFORE**, the Petition is **PARTIALLY GRANTED**. The Radio Frequency Identification Memorandum of Agreement dated 16 June 2009, entered into by respondents Stradcom Corporation and the Department of Transportation and Communication/Land Transportation Office, is hereby declared null and void.

The RFID fees collected during the implementation of the RFID Project prior to the issuance of this Court’s *Status Quo Ante* Order are likewise ordered refunded to the payors thereof.

**SO ORDERED.**



**MARIA LOURDES P. A. SERENO**

Associate Justice

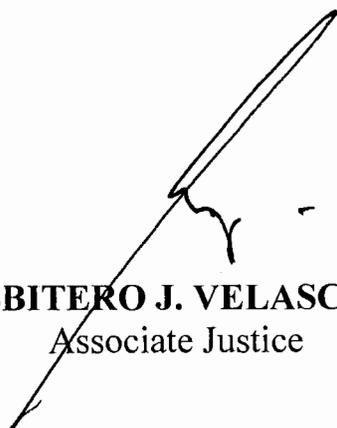
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<sup>79</sup> 464 Phil. 173 (2004).

WE CONCUR:



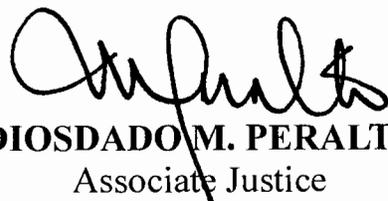
**ANTONIO T. CARPIO**  
Associate Justice



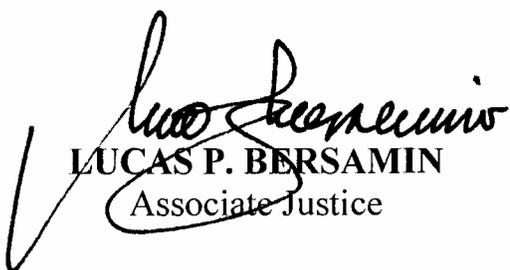
**PRESBITERO J. VELASCO, JR.**  
Associate Justice



**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice



**DIOSDADO M. PERALTA**  
Associate Justice



**LUCAS P. BERSAMIN**  
Associate Justice



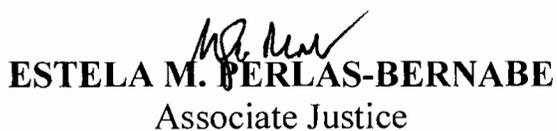
**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice



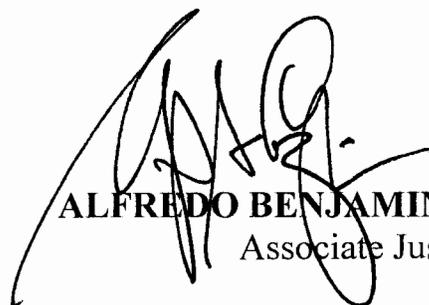
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**MARVIC M.V.F. LEONEN**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

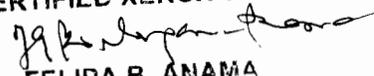
## CERTIFICATION

Pursuant to Section 13 Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**  
Chief Justice

CERTIFIED XEROX COPY:



**FELIPA B. ANAMA**  
CLERK OF COURT, EN BANC  
SUPREME COURT